NYSBA WINTER 2007 | VOL. 9 | NO. 2

Government, Law and Policy Journal

A Publication of the New York State Bar Association
Committee on Attorneys in Public Service, produced in cooperation with the
Government Law Center at Albany Law School

Shared Municipal Services

- Municipal Cooperation and Sharing Services
- General Municipal Law Article 5-G
- Shared Services in the Context of Home Rule Powers
- Financial Incentives to Promote Change
- Local Government Services: Water Supply
- Annexation
- The Countywide School District
- City-County Consolidation
- BOCES: A Model for Municipal Reform
- SMSI Program: The Highlights

Mission Statement: NEW YORK STATE BAR ASSOCIATION

Committee on Attorneys in Public Service

The purpose of this committee shall be to bring together government and public sector lawyers (hereinafter "public service attorneys") to further their common interests and the public welfare. To this end, the Committee, alone or in cooperation with Sections and other Committees of the New York State Bar Association (NYSBA), and such other bar associations or related organizations as may be appropriate from time to time, shall:

1. promote the highest standards of professional conduct and competence, fairness, social justice, diligence and civility;

2. advocate for public service attorneys in their quest for excellence, fairness and justice in the performance of their duties;

3. facilitate the contribution of public service attorneys as members and leaders of their communities, the legal profession and NYSBA;

4. serve as a network system for public service attorneys;

5. provide continuing legal education and resources related to the practice of public service attorneys and enhance the relevance of all NYSBA-sponsored activities and services for public service attorneys;

6. serve as a liaison to NYSBA Committees, Sections, law schools, other bar associations and related organizations;

7. encourage law schools and faculties in New York to develop and offer courses, seminars and publications regarding government practice and public service;

8. promote research of interest to public service attorneys and formulate such reports as may be deemed useful to the profession and advisable to the public interest;

9. undertake all such other activities as may be authorized from time to time by the Committee for the purpose of accomplishing the foregoing.

Adopted 2/99

WINTER 2007 | VOLUME 9 | NO. 2

NYSBA
Government, Law and Policy Journal

Editorial Office
GLP Journal
Government Law Center
Albany Law School
80 New Scotland Avenue
Albany, NY 12208
518.445.2329

Send Address Changes to:
Records Department
New York State
Bar Association
One Elk Street
Albany, New York 12207
518.463.3200
mis@nysba.org

Contents

 ISSN 1530-3942 (print) ISSN 1933-8414 (online). The *GLP Journal* is published twice a year.

Message from the Chair

By Patricia E. Salkin

The Committee on Attorneys in Public Service (CAPS) has been extraordinarily busy and productive over the last six months. It is evident to me that the New York State Bar Association not only continues to provide a welcoming environment for public sector lawyer members, but has also been supportive of the Committee's initiatives. My responsibilities as Committee Chair have been made infinitely easier by the dedication and commitment of the outstanding government lawyers who represent the contributions of public sector attorneys within the Bar Association.

Under the leadership of Lori Mithen DeMasi, David Markus and Donna Sikora Snyder, the Committee sponsored an invitational roundtable in September to explore the government attorney-client privilege. The program was facilitated by Albany Law School Professor Timothy Lytton and Professor Michael Hutter served as the reporter. As a result of the wonderful ideas and recommendations made during the roundtable, the Committee is working on educational initiatives for 2008 that will engage government lawyers in further dialogue.

The Subcommittee on Administrative Law Judges has been renamed the Subcommittee on the Administrative Judiciary. ALJ Co-Chairs James McClymonds and Catherine Bennett have led members through a yearlong process to develop a model code of ethics for state administrative law judges. A significant amount of outreach was made during the development and refinement of this proposed model. At the October Committee meeting, CAPS unanimously approved the model code presented. During the months of November and December, the model code has been circulated for comment, and the Committee hopes to present it to the State Bar Executive Committee and House of Delegates for approval in 2008. If adopted, this model code will be available to state agencies as guidance as they consider whether to adopt codes for their own judges. Watch for more information and training opportunities in 2008.

Annual Program Co-Chairs Mary Berry and Donna Case have once again put together what promises to be an outstanding continuing legal education event for the January 29, 2008, meeting at the Marriott Marquis in New York City. In addition to the annual favorite, the U.S. Supreme Court Update by Brooklyn Law School Professors Susan Herman and Jason Mazzone in the morning, the afternoon will feature a session presented by the new Commission on Public Integrity. This will be the first Bar Association event which focuses on the new state ethics law and operation of the new Commission, which represents a merger of the former State Ethics Commission and the former Temporary State Commission on Lobbying.

Following a year of study by the Awards Committee, Co-Chaired by Anthony Cartusciello and Robert Freeman, the Committee has decided to establish additional recognition opportunities to highlight the significant contributions of government lawyers. More information about criteria and nominations for these new citations will be available in early 2008. Of course, our flagship honor, the Excellence in Public Service Award, will be bestowed during the 2008 Annual Meeting at a special reception. This year, with more nominations than ever before, the Committee had to choose from many well-deserving individuals. The 2008 recipients, Mark L. Davies and Barbara F. Smith, certainly represent the government lawyer's lawyer. They are both people who have demonstrated the highest ethical standards (in fact, both have a long history of working in the field of public sector ethics) and an outstanding commitment to public service and ethics education. These are just a few compelling examples that led to the natural selection of these outstanding government lawyers to receive our public recognition of a job well done.

In 2008 the Committee, with the Government Law Center, will publish a new edition of the popular directory on *Legal Careers in New York State Government*. CAPS' Continuing Legal Education Committee Chair James Horan is working with his team on developing an innovative program focusing on disaster preparedness and what government lawyers need to know. Enhancements to the Committee's web site (www.nysba.org/caps) will be available shortly, thanks to the creativity of Committee members Carl Copps, Linda Valenti and Stephen Casscles. Watch also for some special programs this spring that are being developed under the leadership of Donna Ciaccio Giliberto and Donna Sikora Snyder and their subcommittee. Lastly, I would be remiss without a public special thanks to Committee Coordinators Spencer Fisher, Peter Loomis and Donna Sikora Snyder, who work very hard to make this all look easy.

Of course, this issue of the *Government, Law and Policy Journal* would not have been possible without the continuing leadership of our editor-in-chief, Rose Mary Bailly, and the guest editor of this issue, Paul Moore. Paul's unique perspectives and insights on the issue of shared municipal services have been shaped by decades of experience in the legislative and executive branches of state government. The articles in this *Journal* are but one example of his leadership in coordinating the statewide technical assistance program for the Government Law Center and the Department of State.

I invite you to join us during 2008 at one or more of our events. If you are reading this *Journal* and you are not yet a member of the New York State Bar Association, I urge you to join now as government lawyers continue to bring diversity of perspective to the collective work of the Association.

The New Push for Shared Services

By Paul D. Moore

For as long as most New Yorkers have been alive the structure of local government has been the same: 57 counties outside of New York City; 62 cities; 932 towns; and 550 or so villages. Structural change that did occur was in consolidation of school districts and the creation of thousands of special purpose districts and local public authorities.

The primary funding source utilized by all of these entities is the real property tax, which is generally believed to be a relatively inelastic tax. Now, after elimination of the federal revenue sharing program and substantial reductions in state general purpose aid, local taxpayers are increasingly hostile to the drumbeat of annual increases. At the same time, local government officials are frustrated by the perpetual lack of available "discretionary" funds. After all, what fun is it being a city or village mayor or a town supervisor if the only decisions to be made are raising taxes to pay for mandated services?

"The success of the SMSI program in stimulating shared service proposals, coupled with the Governor's Commission's work, has led many to believe that this combination of efforts may indeed lead to more substantial and sustained levels of change than past efforts."

State policymakers point to the need for lowering New York's overall tax burden to make the business climate more attractive for private sector investment. They point out that the state portion of the combined state-local tax burden has been reduced, and is now only slightly above the national average. It is the local tax burden, they argue, that remains so high—the highest in the nation.

The debate over who is responsible has remained this way for decades. Periodically calls are made for consolidation of governments or functions, or increased used of shared services to provide relief to local property taxpayers from this fiscal vise. Evidence in various research reports has noted that an increasing amount of service sharing is occurring.

To encourage greater use of service sharing, the state enacted the Shared Municipal Services Incentive (SMSI) grant program during fiscal 2005–06, and greatly expanded it in 2006–07. This approach sought to stimulate locally initiated ideas that had the written promise (local resolutions) that all parties involved supported the idea.

In January of 2007, Eliot Spitzer took office as New York's 54th Governor and promptly set up a Commission to review the structure of local governments and make recommendations to reduce the multiple layers of local government, calling them "simply too many, too expensive and too burdensome." The Commission on Local Government Efficiency and Competitiveness has been given the task of making recommendations on "the measures needed to advance partnerships among state and local governments to improve the effectiveness and efficiency of local governments. It will address the issues of local government merger, consolidation, regionalized government, shared services and smart growth." The Commission also seeks to identify local initiatives in the areas of local government merger, consolidation, shared services, smart growth, and regional services, and in response to a letter from the Governor nearly 150 local initiatives have been selected as "model projects" and will be receiving extraordinary legal, logistical and technical assistance from state agencies.

The success of the SMSI program in stimulating shared service proposals, coupled with the Governor's Commission's work, has led many to believe that this combination of efforts may indeed lead to more substantial and sustained levels of change than past efforts.

This issue of the *Government, Law and Policy Journal* is devoted entirely to articles that provide insight into the processes and tools for change. As Editor-in-Chief Rose Mary Bailly describes, the articles and authors are drawn from several different perspectives: state and local government; legislative and executive branch; and academic and practitioner. We are grateful to the New York State Department of State for sponsoring this publication under the SMSI technical assistance grant in an effort to facilitate this push for shared services.

Paul D. Moore is the Director of the Shared Municipal Services Technical Assistance Project at the Government Law Center of Albany Law School.

Editor's Foreword

By Rose Mary Bailly

First and foremost, I want to thank Paul D. Moore, Director, of the Shared Municipal Services Technical Assistance Project at the Government Law Center of Albany Law School, for taking on the daunting task of Guest Editor for this issue of the *Journal*. The depth of his experience and expertise on the subject of shared municipal services was extremely helpful and his talent for identifying our contributing authors to share their views made preparing this issue most enjoyable. He has introduced us to the Shared Municipal Services Incentive (SMSI) grant program and Governor Eliot Spitzer's Commission on Local Government Efficiency and Competitiveness and has set the stage for the discussion by our other esteemed authors which follows.

Secretary of State Lorraine Cortés-Vázquez, in her article, "The Framework for Municipal Cooperation and Sharing Services," describes the basic framework for municipal cooperation and the sharing of services and explains the workings of the SMSI program.

Laura Skibinski, Senior Attorney, Office of the State Comptroller, in "Opinions of the State Comptroller Help Shape Local Options Under the General Municipal Law Article 5-G" examines how Comptroller opinions guide the application of statutes regarding sharing services.

In his article, "Shared Services in the Context of Home Rule Powers," James D. Cole, Special Counsel to the Association of Towns, uses the home rule provisions of the New York State Constitution as a lens through which to view the various mechanisms for "sharing of power."

In "Use of Financial Incentives to Promote Change," State Senator Elizabeth O'C. Little, Chair of the Senate Local Government Committee, shares her personal experience about the emergence of programs to support the development of shared municipal services and provides details into the development and workings of SMSI.

In "Legal Framework for Providing Local Government Services: Water Supply," Member of the Assembly Sam Hoyt, Chair of the Assembly Local Governments Committee, and Member of the Assembly Daniel J. Aubertine, Chair of the Legislative Commission on State-Local Relations, use the subject of supplying water to local governments to consider the lessons to be drawn for shared services.

"Some Observations on Annexation and a Hearty Welcome to the Asian Century," by Kenneth W. Bond, Esq., of Squire, Sanders & Dempsey, shares his observations on annexation both in history and in economics and suggests that we need to find some "Great Annexers" if we wish to see New York assume a more competitive economic role.

Edward McClenathan, Class of 2008 of Albany Law School and a student editor of this *Journal*, invites us to contemplate "The Countywide School District," and suggests that while it may be an appealing cost-saving measure, it could be difficult to achieve.

In "Avenues Toward City-County Consolidation in New York," Amy Lavine, Staff Attorney, Government Law Center, reviews the legal issues presented by a city-county consolidation.

"He has introduced us to the Shared Municipal Services Incentive (SMSI) grant program and Governor Eliot Spitzer's Commission on Local Government Efficiency and Competitiveness and has set the stage for the discussion by our other esteemed authors. . ."

Among other things, SMSI provides support for the development of mergers, consolidations and dissolutions. Robert C. Batson, Government Lawyer in Residence at the Government Law Center of Albany Law School, explores how such activities can take place under New York law in "Merging Local Governments—Consolidations, Dissolutions and Transfers of Functions."

In "Revisiting Regionalism to Streamline Governance in Buffalo and Erie County, New York," Craig R. Bucki, Esq., of Phillips Lytle, LLP, shares a synopsis of a longer study about the experience of Buffalo and Erie County that is scheduled for publication in the December 2007 edition of the *Albany Law Review*.

In "BOCES: A Model for Municipal Reform?" Robert B. Ward, Deputy Director, Rockefeller Institute, examines how the Boards of Cooperative Educational Services (BOCES) provide educational services to school districts in multi-county regions and whether the BOCES model could be adapted to allow other governmental entities the opportunities to share services that schools currently enjoy.

In "Lessons on Sharing Services from the First Two Years of the SMSI Program: The Highlights," Gerald Benjamin, Dean, College of Liberal Arts and Sciences, SUNY New Paltz, Michael Hattery, Senior Research Associate, Department of Public Administration, College of Community and Public Affairs, Binghamton University and Rachel John, Research Assistant, Office of the Dean, College of Liberal Arts and Sciences, SUNY New Paltz, bring us full circle by reflecting on the lessons learned from twelve selected SMSI cases and share observations drawn from a statistical analysis of all applications in the first two years of the program.

Once again, my grateful thanks to all the individuals behind the scenes who brought this issue to fruition. Our Board of Editors made very helpful suggestions and, as always, provided unstinting support. The admirable skills of the Albany Law School student editorial staff, Executive Editor Martha Kronholm and her law school colleagues, Edward McClenathan, Brian Sharma, Kaitlin Rogan, Michelle Duprey, Kevin Hines, Muhammad Umair Khan, and Thomas Wilder, assisted all of us through the editorial process. The New York State Bar Association staff, Pat Wood, Lyn Curtis, and Wendy Harbour, deserve special thanks for their inexhaustible patience and good humor.

Finally, any flaws, mistakes, oversights or shortcomings in these pages are my responsibility. Your comments and suggestions are always welcome at rbail@albanylaw.edu or at Government Law Center, 80 New Scotland Ave., Albany, NY 12208.

The Framework for Municipal Cooperation and Sharing Services

By Lorraine Cortés-Vázquez, Secretary of State

Municipal cooperation is all about partnering for a better New York. Many local governments, in their search for new methods of reducing costs and maintaining services, are reviewing their service delivery systems, setting priorities and determining which services can be provided through arrangements with other local government partners. Intermunicipal cooperation has been found to allow local governments and districts to increase effectiveness and efficiency in the delivery of services and the performance of municipal functions. The use of cooperative agreements to provide services is one of the most useful alternatives available to local governments.

Municipal cooperation is not a new concept. For more than forty years, municipal officials in New York have enjoyed broad authority to enter into cooperative intergovernmental agreements. Various efforts have taken place over the years to encourage the sharing of services and functions among local governments, with varying degrees of success. Governor Eliot Spitzer has given municipal cooperation a fresh start and made it a high priority. In his 2007 State of the State Address, the Governor sounded the call for local government reform, recognizing "the reality that 4,200 taxing jurisdictions are simply too many, too expensive and too burdensome." Local taxes in New York State are now sixty percent higher than the national average.

Governor Eliot Spitzer is committed to making New York State as strong and economically competitive as possible. Key to this is reducing the cost to live here and to do business here. One opportunity to reduce our costs is to work together to maximize our existing resources and to provide our services as efficiently as possible.

The New York Constitution provides that governments shall have the power to agree, as authorized by the Legislature, to cooperatively provide services.[1] In pursuance of this, Article 5-G of the General Municipal Law, enacted by the Legislature in 1959, contains a broad authorization for municipalities and districts to "enter into, amend, cancel and terminate agreements for the performance among themselves or one for the other of their respective functions, powers and duties on a cooperative or contract basis or for the provision of a joint service or a joint water, sewage or drainage project."[2] Basically stated, governments may perform any function or service jointly which they may perform individually. This gives government officials wide latitude to develop joint activities and to enter into contractual agreements to provide the necessary services efficiently and economically. Other legislation has been adopted over the years permitting municipal cooperation and the sharing of services in specific areas.[3]

In April 2007, Governor Spitzer issued an Executive Order establishing the Commission on Local Government Efficiency and Competitiveness to help guide administration policy. The Commission is chaired by former New York Lieutenant Governor Stan Lundine and is overseen by Senior Advisor to the Governor Lloyd Constantine. The Department of State is a member of an interagency task force chosen to assist with the implementation and development of initiatives to support the work of the Commission. Under Governor Spitzer's leadership, the result is a stronger commitment to efficient local government.

"The use of cooperative agreements to provide services is one of the most useful alternatives available to local governments."

At the Department of State, we have been working closely with the Governor to advance his agenda for local government reform. I have come to realize that so much of what we do at the Department affects local governments. In addition to working with local governments, we train firefighters, enforce the state building code, and administer the state's coastal management program to advance our shared goals of an economically competitive and responsive New York.

As Secretary of State, I administer a program which represents New York State's effort to provide incentives for cooperation and consolidation between municipalities. The Shared Municipal Services Incentive Program ("SMSI") at the Department of State provides technical assistance and competitive grants to two or more units of local government for the development of projects that will achieve savings and improve municipal efficiency through shared services, cooperative agreements, mergers, consolidations and dissolutions. The SMSI Initiative is currently starting its third year of funding. Over the first two years,

participation in the grant program has been a success, with 512 applications from municipalities and districts interested in cooperative ventures.

We have learned that a number of services performed by governments lend themselves to attaining economies of scale, whereby unit costs of the services decrease as the volume of the services increases; these services present opportunities for cooperation by eliminating duplication of services. Capital facilities, such as water and sewage treatment plants and incinerators, often show decreasing unit costs for construction and operation up to an optimum point. Supplies, materials and equipment can often be purchased for substantially less if bought in quantity.

Intermunicipal cooperation contemplates a cooperative or contractual arrangement between two or more municipalities. Relationships between local governments and districts can grow stronger as the governments become accustomed to working and interacting with one another and build trust. In many circumstances, it might be good to start with a pilot project between municipalities before gradually increasing the scope and scale. This could help the partners involved to build trust and learn from cooperation before making larger commitments.

Cooperation agreements generally are divided into two categories: joint agreements and service agreements.

A "joint agreement" is used when the participating governments agree to share in the performance of a function or the construction and operation of a facility. It usually provides for significant participation by each of the local governments. There is generally a rough equality among the participants with regard to resources and facilities, so that the potential contribution of each is similar. For example, a joint agreement among municipalities of similar size could provide for combining police services, by establishing single dispatching centers, combined investigative teams or coordinated road patrols. Fire and ambulance dispatching services can also be centralized. By maximizing available resources through the use of joint agreements, local governments can realize many economies of scale and eliminate duplication.

A "service agreement," on the other hand, contemplates a situation where one local government contracts with another to provide a service at a stated price. This agreement may be more appropriate when the participants are substantially different in size or capability, or when a readily definable commodity is being provided. For example, a municipality or district which operates public works such as water supply, sanitary sewer service, and refuse disposal may contract to furnish such services to a municipality which needs them.

The SMSI program helps promote municipal cooperation through both joint agreements and service agreements. Pursuing shared services, cooperative agreements, consolidations and dissolutions is a sensible way for local governments to do this. Some of the projects awarded SMSI grants include:

- To the Town and Village of Saugerties, to conduct a feasibility study for Shared Municipal Services, Police and Public Works Department. The study will provide an analysis to determine the benefits of merging public services that are currently offered by both the Town and Village of Saugerties governments, focusing on public works and police departments.
- To the Towns of Fishkill and East Fishkill, to create an Artificial Wetland Treatment System to treat the leachate at a jointly operated solid waste treatment facility. The landfill generates an average leachate flow of 46,800 gallons per month, which must be hauled away at a cost of $56,160 per year. By treating the leachate onsite, the towns expect to save approximately $250,800 over a five-year period.
- To the Town and Village of Cape Vincent, which will receive a $400,000 grant for the joint purchase of water infrastructure. This will eliminate duplicative spending, water fees and hauling expenses and tank repair expenses for the Village. In addition to reducing costs, this project also helps to improve fire and public health safety and create new development opportunities.
- To the Towns of Bangor, Moria and Fort Covington in Franklin County, which will receive $199,355 to purchase a new road zipper to replace an antiquated paving machine to help keep up with necessary roadway maintenance.
- To the North Colonie School District in Albany County, which will receive approximately $45,000 to prepare a study to consider the feasibility of annexing the adjacent Maplewood-Colonie Common School District.
- To the cities of Cohoes, Watervliet, Rensselaer and Troy and the Village of Green Island, to assist in developing the Albany Pool Combined Sewer Overflow Long Term Control Plan. This project will include the project management and facilities needed to oversee the creation of a six-municipality intermunicipal long-term control plan for the communities' combined sewer overflows. The project received $200,000 in Round 1 and nearly $475,000 in Round 2.

For 2007–2008, the SMSI program has $25 million available for cooperation and consolidation efforts. This includes $10 million for Consolidation Incentive Aid operated through the Division of Budget and $13.7 million for grants administered by the Department of State. This year, eligible municipalities include counties, cities, towns, villages, special improvement districts, fire dis-

tricts, school districts, and Boards of Cooperative Education Services ("BOCES"). Grant awards are available for up to $200,000 per municipality, with a ten percent cash match.

In the selection of shared service grant awards, priority is given to applications that plan or study consolidations, mergers, and dissolutions; include municipalities that meet fiscal distress indicators; promote shared services between school districts and other municipalities; implement shared highway services projects; and develop countywide shared services plans.

The Aid and Incentives to Municipalities ("AIM") program will provide a financial incentive for municipalities to consolidate. Specifically, the consolidated municipality will receive the combined total aid each municipality received separately and, as an incentive to consolidate, a twenty-five percent increase in the combined aid amount. The increase from this consolidation incentive is capped at one million dollars and it will continue to be part of the consolidated municipality's base aid in future years.

"As states and localities strive to grow business and investment, we must do all we can to make New York municipalities competitive and efficient."

The Albany Law School Government Law Center has been a valuable partner in developing the SMSI Regional Technical Assistance project—a key tool to facilitate communication on collaboration and consolidation. The Center has played an integral role in the creation of a Shared Services Incentive Network which provides regional technical assistance through colleges and universities on the topics of consolidations, mergers, dissolutions, cooperative agreements and shared services. Specifically, they have created a highly interactive and involved organization of educational institutions, representatives of statewide municipal associations and other interested parties. In cooperation with these institutions the Law School has provided the Department of State with one round of shared services case studies, with a second round in production, which illustrates both successes and failures. This Shared Services Incentive Network will help the Department of State develop a valuable repository of information on intermunicipal cooperation and consolidation.

Also, the Government Law Center has developed a user-friendly manual for shared municipal services. This manual includes technical assistance for developing effective shared municipal service agreements and other cooperative intermunicipal arrangements. All these work products will be central to an on-line clearinghouse and SMSI Network to be hosted on the Department's Web site.

There are many benefits which can be achieved if local governments work together to provide services to the citizens of New York. As states and localities strive to grow business and investment, we must do all we can to make New York municipalities competitive and efficient. Cooperating, sharing services and consolidating are all a necessary part of this effort.[4]

Endnotes

1. N.Y. Const. art. IX, § 1.
2. N.Y. Gen. Mun. Law § 119-o (1) [hereinafter GML].
3. For example, GML Article 5-J clarifies the authority of municipalities under GML Article 5-G to enter into agreements to undertake comprehensive planning and land use regulation with each other. (Comparable provisions are embodied in N.Y. Gen. City Law § 20-g, N.Y. Town Law § 284 and N.Y. Village Law § 7-741.) Under GML Article 12-C, local governments may form joint municipal survey committees to study and plan cooperative solutions to local government problems. GML Article 14-G makes provision for interlocal agreements with governmental units of other states to allow sharing municipal services, personnel, facilities, equipment and property, provided they have the authority to perform the function or service individually.
4. Our Web site is a great resource for information on local government cooperation and includes information and application forms for SMSI grants. I invite you to explore our Web site at http: / / dos.state.ny.us.

Opinions of the Office of the State Comptroller Help to Shape Local Options Under General Municipal Law Article 5-G

By Laura Skibinski

Intermunicipal cooperation agreements are useful devices that can enable local governments to obtain cost savings by contracting with other local governments to perform their respective functions, either "one for the other" or on a joint or cooperative basis. Article 5-G of the General Municipal Law ("Article 5-G") provides broad statutory authority for local governments to enter into agreements in order to engage in cooperative ventures.[1]

Since the enactment of Article 5-G, the Office of the State Comptroller ("OSC") has rendered dozens of advisory legal opinions to local governments on the topic of intermunicipal cooperation agreements in an attempt to provide guidance to local government officials. In addition, OSC on occasion has requested the introduction of bills that would amend Article 5-G to make it more flexible and to facilitate its use by local governments. In doing so, OSC has played an active role in helping to shape the legal landscape in this area.

"Article 5-G of the General Municipal Law provides broad statutory authority for local governments to enter into agreements in order to engage in cooperative ventures."

Historical Overview of Article 5-G

Statutory grants of authority for local governments to join together in the exercise of their powers and duties have existed for well over a century. It appears that as early as 1894 authority existed for municipalities to provide services on a cooperative basis.[2] However, prior to 1956, the State Legislature's approach to intermunicipal cooperation was piecemeal, addressing cooperative activities function by function. In 1956, a Report of the New York State Joint Legislative Committee on Interstate Cooperation[3] noted that

> requir[ing] specific legislative enactment[s] permitting and providing for each type of possible undertaking separately seems both slow and cumbersome. The inevitable effect of this limited approach is to retard such cooperative ventures and to discourage communities from attempting cooperative projects in respect to subject matter not covered by statutory authorization.[4]

In that same year, a bill was proposed to amend the General Municipal Law by adding a new article, Article 14-G.[5] The proposed measure would have authorized political subdivisions to "use such powers as they already possess [to act] cooperatively with other political subdivisions when this is to the mutual advantage of the cooperating communities."[6] The proposal would have permitted local governments to act cooperatively with other local governments both within[7] and without New York State; although the bill passed, it was vetoed by the Governor.[8]

Prior to his veto of this bill, in 1955 Governor Averell Harriman created a committee, known as The Governor's Committee on Home Rule[9] ("Committee"), to "study the need for expansion of Home Rule powers to meet modern conditions." It was intended that the Committee would advise Governor Harriman "as to recommendations to be made to the Legislature."[10] The Committee, which consisted mostly of members of various state agencies and local governments, was chaired by then State Comptroller Arthur Levitt.[11] Members of the Committee conducted "surveys among local officials, civic bodies and political scientists, and [held] public hearings and conferences in various parts of the State" to assist the Chairman and the Committee members in determining whether legislative or constitutional amendments were necessary to achieve the "maximum amount" of Home Rule authority for local governments.[12]

In 1958, Comptroller Levitt and the members of the Committee compiled a paper entitled "Interlocal Cooperation in New York State: Extent of Cooperation and Statutory Authorization for Cooperative Activity," which contained the Committee's findings and recommendations regarding municipal cooperation. Among its findings, the Committee noted that, although local governments were engaging in some level of cooperative activities, there was not a lot of cooperation taking place.[13] As a result of its study, the Committee concluded that "[t]he laws permitting cooperation are scattered throughout the vast body

of legislation now in effect" making it "difficult for the layperson to discover what or where" the provisions are.[14] It was further concluded that the different statutes regarding cooperation vary from law to law, causing local officials to be further confused.[15] Based upon the conclusions reached in the paper, Comptroller Levitt and the Committee recommended[16] that the New York State Constitution be amended to "provide . . . authority for the financing, construction and operation of joint undertakings."[17, 18]

In fact, in 1959, apparently as a result of the recommendations of Comptroller Levitt and the Committee, Article VIII, § 1 of the State Constitution was amended, effective January 1, 1960, to expressly provide that two or more counties, cities, towns, villages or school districts "may join together pursuant to law in providing any municipal facility, service, activity or undertaking which each of such units has the power to provide separately."[19]

To implement this new express constitutional grant,[20] the Legislature, in 1960, enacted Article 5-G of the General Municipal Law, a broad, general grant of authority that authorized

> municipal corporations[21] and districts, in the performance of [their respective] functions, powers or duties, . . . to enter into, amend, and provide for the duration and termination of agreements . . . for performance among them of their respective functions, powers and duties or for joining together in providing any joint service which each of the participants has power to provide separately.[22]

The legislative history of this amendment indicates that the purpose was to

> provide[] an alternative procedure which may be utilized in place of any detailed statute authorizing cooperation among municipalities. No existing statute is displaced by [Article 5-G]; instead, it merely provides a general alternative procedure under which arrangements may be made for cooperative provision of municipal services.[23]

In fact, the intent to not supersede existing, specific statutes in enacting this general grant of authority is reflected in the language of Article 5-G, which provides that the authority contained in Article 5-G is "[i]n addition to any other general or specific powers vested in municipal corporations or districts" to act cooperatively.[24] As a result, local governments sometimes have the option of exercising the authority contained in Article 5-G or a more specific grant of authority.[25] In several cases, additional requirements relative to specific cooperative activities are superimposed on those of Article 5-G.[26]

Opinions of OSC

Following the enactment of Article 5-G, OSC remained active in helping to clarify and provide guidance to local governments with respect to their authority to engage in cooperative activities under Article 5-G. As previously indicated, OSC renders advisory legal opinions to local government officials and municipal attorneys on various municipal topics, including intermunicipal cooperation agreements. The primary purpose of these opinions is to provide guidance on matters of general interest to local governments and to assist local officials in the performance of their duties.[27]

OSC advisory opinions have helped influence the development of this area of law. The opinions have served to help clarify for local officials the parameters of Article 5-G and, in a few cases, have led to statutory amendments to Article 5-G.

Amendments to Article 5-G

With respect to intermunicipal cooperation agreements, some of the opinions of OSC written shortly after the enactment of Article 5-G resulted in amendments to Article 5-G. For example, prior to 1963 Article 5-G defined the term "joint service" as the "joint provision of any municipal facility, service, activity, project or undertaking which each of the municipal corporations or districts has the power by any general or special law to provide separately."[28] In 17 Opinion of the State Comptroller No. 61-545, at 267 (1961), OSC addressed the issue of whether a city and a city school district could jointly purchase an insurance policy to cover both entities for public liability, automobile liability, and workers' compensation insurance. In answering the question, OSC referred to the definition of "joint service" and expressed the view that "the purchasing of such an insurance policy is not a municipal 'activity' within the meaning of section 119-n of the General Municipal Law."[29] As a result of this opinion, the Legislature amended the definition of "joint service" to include the "'joint performance or exercise of any function or power' which each [municipal corporation or district] may perform or exercise separately" in order to "expand the application of the law"[30] to authorize municipalities to, among other things, jointly purchase insurance.

Another legislative change resulted from OSC's interpretation of Article 5-G in 19 Opinion of the State Comptroller No. 63-237, at 172 (1963). In that opinion, OSC addressed the issue of whether a town and a village situated within the town could enter into an agreement under Article 5-G whereby the village would provide police protection outside the village.[31] The opinion stated that, as a general rule, "[i]n order to avail itself of the

powers granted by article 5-G, each municipality must possess the power to do the act or perform the service separately. Thus, the device of a joint agreement cannot be used to enlarge a limited or circumscribed power."[32] In examining the powers of a village in providing police services, it was noted that the jurisdiction of village police officers "is limited to the confines of the village so far as the power of arrest is concerned."[33] As such, in order for the village police to have jurisdiction outside the village, there needed to be a statute granting the village police this authority; however, at the time, Article 5-G did not provide for the extension of appropriate territorial jurisdiction. Therefore, it was concluded that "a village and a town cannot, by their acts alone, extend the territorial jurisdiction of village policemen."[34]

In light of this conclusion,[35] in 1970 the Legislature again amended the definition of "joint service." This amendment provided that the definition of "'joint service' . . . shall include extension of appropriate territorial jurisdiction necessary therefor."[36] As a result of this amendment, villages and other municipal corporations now have the underlying grant of jurisdictional authority to provide police protection, among other services, outside the boundaries of their own local government pursuant to intermunicipal cooperation agreement in accordance with Article 5-G.[37]

"[M]ost of OSC's advisory opinions concerning Article 5-G do not lead to statutory amendments."

Thereafter, a series of opinions of OSC resulted in the Legislature amending General Municipal Law § 119-o(1). As indicated above, General Municipal Law § 119-o originally provided that municipal corporations and districts could enter into agreements "for performance among them of their respective functions, powers and duties or for joining together in providing any joint service which each of the participants has power to provide separately."[38] Based upon this language, as well as the definition of "joint service,"[39] OSC expressed the opinion that Article 5-G required that there be some type of a joint enterprise, as opposed to one municipality simply providing a service to another municipality in exchange for monetary consideration.[40] In light of this line of opinions,[41] section 119-o of Article 5-G was amended in 1972 to provide that municipal corporations and districts may enter into agreements "for performance among themselves *or one for the other* of their respective functions, powers and duties *on a cooperative or contract basis* or for the provision of a joint service" (emphasis added).[42]

With respect to the definition of "municipal corporation," in 1971 Opinion of the State Comptroller No. 71-122, OSC addressed the question of whether a board of cooperative educational services could participate in an intermunicipal cooperation agreement pursuant to Article 5-G. In that opinion, OSC concluded that neither the definition of "municipal corporation" nor the definition of "district" included a board of cooperative educational services; therefore, a board of cooperative educational services could not participate in a joint activity.[43] In order to expand the application of Article 5-G to allow boards of cooperative educational services to participate in joint activities, in 1973 the Legislature amended the definition of "municipal corporation" to include these entities.[44]

Although not arising directly as a result of an advisory legal opinion, OSC was also instrumental in an amendment to remove a potential disincentive to entering into intermunicipal cooperation agreements. The general rule with respect to the length of the term of a municipal contract is that a contract relating to a governmental activity may not, in the absence of an express statutory authorization, bind successor governing boards.[45] Since intermunicipal cooperation agreements generally relate to governmental activities, this general rule applied to contracts entered into by municipalities under Article 5-G and, at the time, Article 5-G did not contain express authority to allow municipalities to overcome this general rule. In order to overcome the general prohibition regarding binding successor governing boards, OSC drafted and requested the introduction of legislation to amend General Municipal Law § 119o(2)(j) to expressly provide that the term of a cooperation agreement may be for a maximum of five years, subject to renewal.[46] In addition, to ensure that agreements that involved the issuance of debt could run as long as the maximum maturity of the debt so that municipalities could "retain an interest in the project during the time the debt is outstanding," the bill provided that, in the case of agreements with which debt is issued, the agreement could run for a length of time up to the period of probable usefulness fixed for the debt in section 11.00 of the Local Finance Law. [47] This legislation was enacted as chapter 620 of the Laws of 1996.

Other Issues Addressed

Of course, most of OSC's advisory opinions concerning Article 5-G do not lead to statutory amendments. There have been numerous other issues addressed concerning the scope of authority under Article 5-G. The subjects range from the propriety of the performance of an individual, day-to-day function on a joint or "one for the other" basis,[48] to more complex endeavors.[49] Some inquiries have raised particularly noteworthy issues.

One key area that has been discussed in many opinions is precisely which local government functions may be the subject of an intermunicipal cooperation agreement under Article 5-G. For starters, OSC has long expressed the view that Article 5-G authorizes municipal corporations or districts to participate in a cooperation agreement

only for the performance of those functions that each participating municipal corporation or district is empowered to perform individually.[50] Therefore, in order to determine whether a particular function falls within the ambit of Article 5-G, a threshold determination is whether each participant has the power separately to perform the function. While this may seem straightforward, there may be, on occasion, more than one way of characterizing any given activity or project and, depending on how it is characterized, there may be a different conclusion as to whether the activity is permissible under Article 5-G.

For example, as a rule, towns do not have the power to provide firefighting services directly as a town function.[51] In 1996 Opinion of the State Comptroller No. 96-19, at 41, the issue was whether a town and a fire district located within the town could jointly purchase land and construct a building thereon to be used as the town hall and fire station. In analyzing this question, it was stated in the opinion that:

> both towns and fire districts are authorized to acquire lands and construct buildings for their respective functions. Specifically, towns may acquire land and construct a building for, among other things, use as a town hall (Town Law, §§ 64 [2], 81 [1] [c], 220 [3]). Similarly, fire districts are authorized to acquire lands and construct buildings for the preservation, protection and storing of fire equipment and for the social and recreational use of firefighters and district residents (Town Law, § 176 [14]).[52]

Thus, it was determined that the function in question was not the provision of firefighting services (in which case the town could not participate with the fire district), but rather, more generically, the construction of a building that coincidentally would be used by a fire district as a firehouse. Clearly, both towns and fire districts have authority to construct buildings for their respective purposes.[53] Accordingly, it was concluded that "the town and fire district may, pursuant to article 5-G, jointly acquire land and construct thereon a building suitable for a combined town hall and fire station."[54]

Another important issue that has arisen in connection with municipal cooperation agreements is whether, through the terms of their agreement, the parties can create a separate entity. This issue has been addressed several times in the opinions of OSC.[55] In answering this question, OSC has indicated that "municipalities which enter into a cooperation agreement pursuant to Article 5-G of the General Municipal Law, are not authorized to establish a separate entity, governmental or non-governmental, to carry out the particular object or service."[56]

In *Rice v. Cayuga-Onondaga Healthcare Plan*, the Appellate Division, Fourth Department agreed with OSC's position on this issue.[57] In *Rice*, several school districts entered into a cooperation agreement under Article 5-G to jointly provide certain dental and healthcare benefits to qualified employees of their school districts through a program of self-funding or the purchase of health benefits contracts.[58] In doing so, they formed an "Employees' Health Care Plan" ("Plan") and created a board of directors to govern the Plan. A qualified employee made a claim for certain health insurance benefits under the Plan and was denied. An action was brought against the Plan, as opposed to the individual school districts that made up the Plan. The defendants argued that the Plan was not a proper party to the action. The court agreed with the defendant's argument since the court had found that the ultimate decision regarding payments from the self-insurance fund remained with the individual school districts. The court stated that "[t]he payment of district funds pursuant to the Plan was a responsibility the District alone could exercise and could not delegate to any other entity."[59] Furthermore, citing the opinions of OSC,[60] the court stated that "the Plan is not a separate and distinct governmental entity but rather is an extension or part of each of the participants and subject to their control."[61]

"Article 5-G should be the first stop when analyzing the underlying authority for cooperative ventures."

More recently, OSC addressed the issue of whether, from a legal perspective, there are geographical limitations on the location of local governments that wish to participate in an intermunicipal cooperation agreement. Specifically, the question of whether two non-contiguous villages may enter into a municipal cooperation agreement under Article 5-G for the provision of police protection as a joint service was posed.[62] As neither the definition of "municipal corporation" nor any other provision of Article 5-G requires that municipal corporations be contiguous in order to participate in a joint service, OSC concluded that two non-contiguous villages may enter into a cooperation agreement for the provision of police protection as a joint service.[63]

Article 5-G continues to be an important tool for local governments contemplating engaging in cooperative activities with fellow New York State local governments. Indeed, Article 5-G should be the first stop when analyzing the underlying authority for cooperative ventures. In its effort to help facilitate intermunicipal cooperation, OSC will continue to provide assistance to local governments concerning issues arising under Article 5-G.

Endnotes

1. N.Y. GEN. MUN. LAW §§ 119-m *et seq.* (McKinney 1999).
2. *See* L. 1894, ch. 667, which authorized municipalities to provide sewerage services on a joint basis. Currently, General Municipal Law § 120 contains specific authority for two or more municipalities to jointly construct, provide, maintain and operate a sewerage system.
3. The Joint Legislative Committee on Interstate Cooperation was established in 1955 pursuant to Joint Legislative Resolution (*see* Public Papers of Governor Averell Harriman, 1955, p. 387). Then State Comptroller Arthur Levitt was among the members of the Joint Legislative Committee.
4. Report of the New York State Joint Legislative Committee on Interstate Cooperation, Leg. Doc. 1956 No. 66, pp. 364–365 [hereinafter Interstate 1956].
5. *See* Assembly Int. 2690, Pr. 2869; *see also* Interstate 1956, *supra* note 4, at 365, 373–377.
6. Interstate 1956, *supra* note 4, at 365.
7. To the extent the bill would have authorized intermunicipal cooperation within the state, it was not intended that the bill would supersede the existing statutes which contained specific statutory grants for municipal cooperation. *See id.* at 366.
8. 1956 McKinney's Session Law, Veto Mem #137 on veto of Assembly Int. 2690, Pr. 2869, at 1744; *see also* Interstate 1956, *supra* note 4, at 367. In his Veto Memorandum, Governor Harriman noted that the bill would have applied not only to agreements between political subdivisions of New York State, but between any public agency of another state, and stated that "[t]he broad grant of powers embodied in this bill may, in effect, result in the unconstitutional sanctioning of powers which are not now possessed, and which may not be granted by the Legislature." The legislative history of this bill seems to indicate that one of the reasons for the Governor's veto of the bill was also that there was concern about adding a general statute authorizing municipal cooperation intrastate in light of the existing structure of enacting specific statutes in this area. The following year, a similar bill, which was drafted in cooperation with OSC, was enacted that amended the General Municipal Law by adding an Article 14-G to allow only interstate municipal cooperation and only for certain listed functions. S*ee* Report of the New York State Legislative Committee on Interstate Cooperation, Leg. Doc. 1957 No. 46, p. 237, L. 1957, ch. 859.
9. *See* Public Papers of Governor Averell Harriman, 1955, p. 389.
10. Proceedings of Nassau-Suffolk Home Rule Conference, sponsored by the Governor's Committee on Home Rule, held at Mineola, New York on June 9, 1958, p. 6.
11. *See id.* at i; *see also* Interlocal Cooperation in New York State: Extent of Cooperation and Statutory Authorization for Cooperative Activity, Prepared for the Governor's Committee on Home Rule, 1958, p. 2 (hereinafter Interlocal 1958).
12. Proceedings of Nassau-Suffolk Home Rule Conference, *supra* note 10, at 6–7.
13. *See* Interlocal 1958, *supra* note 11, at 29–30.
14. *Id.* at 29.
15. *See id.*
16. It should be noted that the Committee made three recommendations to the Governor in total. One of the other recommendations provided that there should be a law authorizing "joint ownership of highway and other capital equipment by neighboring municipalities." Interlocal 1958, *supra* note 11, at 31. In support of this recommendation, the Committee cited two opinions of OSC in which it was concluded that there was currently no statutory authority for two towns to jointly purchase a piece of highway equipment. *See* 5 Ops St Comp No. 3637, at 72 [1949]; 5 Ops St Comp No. 3641, at 76 [1949].
17. Proceedings of Nassau-Suffolk Home Rule Conference, *supra* note 10, at 11; *see also* Interlocal 1958, *supra* note 11, at preface.
18. According to the legislative history, the Committee recommended a constitutional amendment because they "felt that it was preferable for [municipal cooperation] arrangements to be given unequivocal constitutional status." Proceedings of Nassau-Suffolk Home Rule Conference, *supra* note 10, at 11. This was possibly based upon Governor Harriman's Veto Memorandum. *See* 1956 McKinney's Session Law, Veto Mem #137 on veto of Assembly Int. 2690, *supra* note 8. Note that, other than the authority for local governments to contract joint indebtedness in connection with a shared service arrangement (see discussion infra), it is not clear that a constitutional amendment was necessary in order for local governments to be given broad statutory authority to simply contract with each other to provide their services on a cooperative basis.
19. 1959 McKinney's Session Law, Proposed Constitutional Amendment, Assembly Print No. 4005, p. LV; *see also* 1960 McKinney's Session Law, Constitutional Amendments, Article VIII-Local Finances, p. LIV. The Legislature was granted the power to further expand the authority of municipalities to provide cooperative services by this constitutional amendment, which also provided that local governments may be authorized by the Legislature "to contract joint or several indebtedness, pledge [their] faith and credit for the payment of such indebtedness for such joint undertakings and levy real estate or other authorized taxes or impose charges therefor." N.Y. CONST. art. VIII, § 1.
20. N.Y. GEN. MUN. LAW § 119-m (providing that it was the intent of the Legislature to effectuate, in part, "section one of article eight of the constitution as amended January first, nineteen hundred sixty").
21. "Municipal corporation" was defined at that time as "a county outside the city of New York, a city, a town, a village, or a school district." *See* L. 1960, ch. 102.
22. L. 1960, ch. 102.
23. Bill Jacket L. 1960, ch. 102, Letter from Executive Department of the State of New York, Office for Local Government regarding S1122.
24. N.Y. GEN. MUN. LAW § 119-o(1); *see also* N.Y. GEN. MUN. LAW § 119-m (providing that the "[t]he provisions of this article . . . shall be in addition to and not in substitution for or in limitation of any other authorization for performance by municipal corporations or districts of their functions, powers or duties on a cooperative, joint or contract basis").
25. *See, e.g.*, N.Y. GEN. MUN. LAW § 120-a (authorizing municipalities and districts to, *inter alia*, contract with each other or jointly contract with third parties for the construction, operation or maintenance of a sewerage system). Appendix A is a listing of many of the separate grants of authority for intermunicipal cooperation, in addition or as a complement to Article 5-G.
26. For example, General Municipal Law Article 3-A provides certain requirements for cooperative investment agreements entered into in accordance with Article 5-G. Also, Insurance Law Article 47 contains provisions relating to "shared funding" municipal cooperative health benefit plans established or maintained pursuant to a municipal cooperation agreement authorized by Article 5-G.
27. It is the policy of OSC to render certain advisory legal opinions at the request of municipal attorneys or local government officials acting in a supervisory capacity concerning the propriety, under general State law, of prospective actions of the local government on whose behalf the opinion is requested. In rendering these opinions, OSC generally does not assess the propriety of actions already taken, and does not comment on matters that are the subject of litigation. In the case of questions that significantly impact the powers and duties of more than one local government, a joint inquiry by all affected local governments is generally

requested. Many inquiries are responded to by telephone rather than by written opinion.

28. L. 1961, ch. 681.
29. 17 Ops St Comp No. 61-545, at 267 (1961).
30. 1963 McKinney's Session Law, Legislative Memoranda regarding L. 1963, ch. 15, pp. 1925–1926.
31. At the time, General Municipal Law § 121-a authorized certain towns and villages to form a joint village and town police department; however, this statute did not similarly authorize villages to provide police protection services to towns.
32. 19 Ops St Comp No. 63-237, at 172 (1963).
33. *Id.*
34. *Id.*
35. *See* 1970 McKinney's Session Law, Legislative Memoranda regarding L. 1970, ch. 331, pp. 2909–2910.
36. L. 1970, ch. 331.
37. *See, e.g.*, 2000 Ops St Comp No. 2000-24, at 63.
38. *See, e.g.*, L. 1960, ch. 102, *supra* note 21.
39. *See* discussion *supra*.
40. *See, e.g.*, 19 Ops St Comp No. 63-237, *supra* note 32; 1968 Ops St Comp No. 68-662; 1969 Ops St Comp No. 69-629; 1971 Ops St Comp No. 71-71.
41. *See* 1972 McKinney's Session Law, Legislative Memoranda regarding chapter 407, pp. 3308–3309.
42. L. 1972, ch. 407.
43. *See* 1971 Ops St Comp No. 71-122.
44. *See* L. 1973, ch. 171.
45. *See, e.g.*, *Karedes v. Colella*, 100 N.Y.2d 45, 760 N.Y.S.2d 84 (2003); *Morin v. Foster*, 45 N.Y.2d 287, 408 N.Y.S.2d 387 (1978); *Edsall v. Wheeler*, 29 A.D.2d 622, 285 N.Y.S.2d 306 (4th Dep't 1967); *Hendrickson v. City of New York*, 38 A.D. 480, 56 N.Y.S. 580 (2d Dep't 1899); *see also* 1987 Ops St Comp No. 87-54, at 81.
46. *See id.*; *see also* Bill Jacket, L. 1996, ch. 620, Letter from Senator Mary Lou Rath to Michael Finnegan, counsel to the Governor, regarding S 7153-B.
47. Bill Jacket, L. 1996, ch. 620, Memorandum of the Office of the State Comptroller on S7153-B.
48. *See, e.g.*, 1981 Ops St Comp No. 81-89, at 90, a county may agree to provide computer services to another municipality; 1988 Ops St Comp No. 88-12, at 20, two villages may agree to jointly acquire equipment and hire personnel to provide for refuse collection services; 1991 Ops St Comp No. 91-14, at 53, a town on behalf of a refuse district may agree to collect refuse in a village; 1991 Ops St Comp No. 91-1, at 1, 18 Ops St Comp No. 62-23, at 15 (1962), 18 Ops St Comp No. 62-803, at 381 (1962), cooperative bidding and joint purchasing. Appendix B contains a listing of many of OSC opinions on intermunicipal cooperation agreements.
49. *See, e.g.*, 2002 Ops St Comp No. 2002-12, at 27, two villages may combine their water, sewer and street departments under the supervision of a single superintendent of public works.
50. *See, e.g.*, *id.*; 21 Ops St Comp No. 65-647, at 499 (1968); 1978 Ops St Comp No. 78-603; 1996 Ops St Comp No. 96-7, at 18; N.Y. GEN. MUN. LAW § 119-o (1); N.Y. CONST. art. VIII, § 1; N.Y. CONST. art. IX, § (1)(c).
51. *See, e.g.*, 1993 Ops St Comp No. 93-6, at 10.
52. 1996 Ops St Comp No. 96-19, at 41.
53. *See* N.Y. TOWN LAW §§ 64(2), 81(1)(c), 176(14), 220(3).
54. 1996 Ops St Comp No. 96-19, *supra* note 52, citing 1973 Ops St Comp No. 73-104; 21 Ops. St. Comp., 163 (1965); N.Y. GEN. MUN. LAW §119-o(2)(e).
55. *See, e.g.*, 1973 Ops St Comp No. 73-1208; 1974 Ops St Comp No. 74-736; 1978 Ops St Comp No. 78-405; 1985 Ops St Comp No. 85-67, at 99.
56. 1978 Ops St Comp No. 78-405, *supra* note 55 (citations omitted).
57. 190 A.D.2d 330, 599 N.Y.S.2d 344 (4th Dep't 1993).
58. *Id.*
59. *Id.* at 346.
60. The Fourth Department cited 1985 Ops St Comp No. 85-67, at 99, and 1978 Ops St Comp No. 78-405.
61. *Rice*, 599 N.Y.S.2d at 346; *but see Am. Ref-Fuel Co. of Niagara, L.P. v. Northeast Southtowns Solid Waste Mgmt. Bd.*, 291 A.D.2d 861, 737 N.Y.S.2d 494 (4th Dep't 2002).
62. *See* 2000 Ops St Comp No. 2000-24, at 63.
63. *See id.* In reaching this conclusion, OSC also noted that "the extension of extra-territorial jurisdiction . . . [in N.Y. GEN. MUN. LAW § 119-n (c)] is not conditioned on municipal corporations being contiguous."

Laura M. Skibinski is a Senior Attorney with the New York State Office of the State Comptroller, Division of Legal Service.

This article is not intended, and should not be cited, as an advisory legal opinion of the Office of the State Comptroller.

Appendix A
Listing of Other Statutes Governing Intermunicipal Cooperation

The following is a listing of many of the statutes that, in addition to General Municipal Law ("GML") Article 5-G, authorize intermunicipal cooperation for particular functions or activities:

Commemoratives/Memorials

GML §§ 72-b and 72-i:	Acquisition of lands and erection of memorial buildings by towns and villages.
GML § 77-a:	Construction and maintenance of memorial building or monument by county or city.

Education

GML § 99-i:	Participation in certain programs to promote progress and scholarship in the humanities and the arts.
Education Law Article 126:	Community colleges and state-aided four-year colleges.
Education Law § 255:	Establishment of a joint public library.
Education Law § 1950:	Establishment and operation of boards of cooperative educational services.

Environment

GML § 99-j:	Control of aquatic plant growth.
GML § 119-p:	Projects relating to the use of atmospheric water sources.
GML § 120-x:	Agreements for joint acquisition, construction and operation of public docks.

Health

GML § 126-a:	Joint hospitals for cities, towns or villages.
Public Health Law § 320:	Joint appointment of local health officer.
Public Health Law § 341:	Abolishment of city, town, village or consolidated health districts and assumption of powers and duties by county health district.

Police/Fire/Emergency

Executive Law § 226:	Town / village contract with State Police.
GML § 91-a:	Arson investigation.
GML § 97:	Power of municipalities in certain counties to furnish and contract for fire and police communication system.
GML § 121-a:	Creation of joint village and town police department in certain towns and villages.
GML § 122-b:	General ambulance services and emergency medical service.
GML §§ 209 and 209-a:	Calls for assistance by local fire departments, companies and airport crash-fire-rescue units.
GML §§ 209-b and 209-d;	
Town Law §§ 176 (22) and	Contracts for outside service by volunteer fire

184; Village Law § 4-412(3) (9); and County Law § 225-a:	departments and companies and emergency rescue and first aid squads.
GML § 209-j:	Mutual aid programs in counties.
GML § 209-m:	Outside service by local police; civil disturbance control.
GML § 209-p:	Relay of fire and emergency calls.
GML § 209-s:	Contracts between municipalities and fire districts for joint fire training centers.
GML § 209-t:	Contracts for joint fire alarm systems.
GML § 209-y:	Establishment of county hazardous materials emergency response teams.
GML § 431:	Establishment, operation and maintenance of jails.
Town Law Article 11-A; and Village Law § 22-2210:	Joint fire districts.

Procurements and Competitive Bidding

GML § 103 (3) and	Extension of county contracts to political
County Law § 408-a:	subdivisions.
GML § 104:	Extension of state contracts to political subdivisions.
Executive Law § 837 (8-c):	Extension of NYS DCJS contract relating to fingerprint identification system-related materials, equipment and supplies, and authority for cost-sharing arrangements relating to criminal justice data communications.

Public Improvements

Highway Law § 133-a:	Rental or hiring of county highway machinery, tools or equipment.
Highway Law § 135-a:	Control of snow and ice conditions on county roads.
Highway Law § 142-b:	Removal of snow and ice, making of repairs, and rental of town highway machinery—school and other districts; emergency use of town highway machinery by other municipalities.
Highway Law § 142-c:	Removal of snow and ice from streets and repair of sidewalks in villages.
Highway Law § 142-d:	Rental or hiring of town highway machinery, tools or equipment to other municipalities within the county.
GML § 72-j:	Parking garages and parking spaces, public off-street loading facilities.

Recreation/Youth Programs

GML § 244-b:	Joint playgrounds or neighborhood recreation centers.
GML § 244-d:	Joint recreation commissions.
Executive Law § 422:	Establishment, operation and maintenance of youth programs.

Solid Waste

GML § 99-a:	Use of municipally operated dumping ground by another municipality.
GML § 120-w; Town Law § 221:	Contracts and agreements for solid waste management, collection and disposal.

Transportation

GML § 98-a:	Acquisition and lease of railroad facilities.
GML § 119-s:	Participation in Federal and State assistance programs for mass transportation and airport and aviation projects.
GML § 353-a:	Joint airports for counties, cities, towns or villages.

Water/Sewer/Public Utilities

GML § 99-f:	Comprehensive sewer and water studies.
GML Article 5-B:	Provision of common water supplies.
GML Article 5-C:	Development of excess water supply for sale to public corporation or improvement district.
GML Article 5-D:	Development of excess sewage capacity.
GML Article 5-E:	Construction and development of excess drainage capacity.
GML Article 5-F:	Provision of common drainage facilities.
GML § 120:	Contracts for purification of water and sewage.
GML §§ 120-a - 120-s:	Contracts for sewage disposal.
GML § 120-t:	Town and village water service.
GML § 120-u:	Mutual aid for water service.
GML § 120-v:	Contracts for disposal of sewage outside the state.
GML § 361:	Provision of surplus public utility service beyond territorial limits.
Town Law § 198 (1), (3); Village Law Articles 11 and 14; and County Law Article 5-A:	Contracts for outside water, sewer service.

Zoning/Planning

GML § 99-c:	Agreements for jointly engaging building inspectors.
GML Article 5-J:	Intermunicipal cooperation in comprehensive planning and land use regulation.
GML Article 12-A:	City and village planning commissions.
GML Article 12-B:	Metropolitan, regional or county planning boards.
GML Article 12-C:	Intergovernmental Relations Councils.
Village Law § 7-741; Town Law § 284; General City Law § 20-g:	Intermunicipal cooperation in comprehensive planning and land use regulations.

Miscellaneous

GML § 99-h:	Participation in Federal programs.
GML § 99-r:	Contracts for certain services with State agency, public benefit corporation, SUNY.

GML § 251:	Agreements between municipal corporations regarding lost and found property.
GML Article 3-A:	Cooperative investments.
GML Article 12-C:	Intergovernmental relations councils.
GML Article 14-G:	Interlocal agreements with governmental units of other states.
GML Article 19-A:	Cooperative operation of business improvement districts.
Real Property Tax Law § 523:	Agreements between municipal corporations within county for hearing of complaints when there is a conflict.
Real Property Tax Law § 576:	Assessment under cooperative agreements.
Real Property Tax Law § 972:	County collection of real property taxes in certain circumstances.
Insurance Law Article 47:	Municipal cooperative health benefit plans.

Public-Private Cooperation*

GML § 119-s-1:	Provision of mass transportation (Tompkins County).
GML § 119-ooo:	Inclusion of Cornell University as a member of a municipal cooperation agreement for water system and distribution in Tompkins County.
Public Health Law § 2803-a and GML § 103 (8):	Public and private hospitals and other health-related facilities joint purchasing and joint services.

***There is no general authority analogous to Article 5-G for cooperative ventures between municipal corporations and private entities.

Appendix B
Opinions of the State Comptroller

The following is a compilation of many of the advisory legal opinions rendered by OSC dealing with the application of Article 5-G and other municipal cooperation statutes:

Capital Improvements

1996 Ops St Comp No. 96-19:	Joint construction by fire district and town of building to be used as fire station and town hall.
1989 Ops St Comp No. 89-57:	Town improvement of village street.
1986 Ops St Comp No. 86-27:	Construction of town sidewalk by village.
1981 Ops St Comp No. 81-359:	Financing project owned by another local government.
21 Ops St Comp, 1965, at 163:	Joint construction and operation of building as town and village hall.

Computer Services

1981 Ops St Comp No. 81-89:	County providing computer services to other municipalities.
34 Ops St Comp, 1978, at 1:	BOCES and school district may jointly purchase, own and operate computers.

Insurance

1997 Ops St Comp No. 97-2:	Authority for joint self-insurance plan to provide health care benefits (*see also Rice v. Cayuga-Onondaga Healthcare Plan*, 190 A.D.2d 330, 599 N.Y.S.2d 344).
1988 Ops St Comp No. 88-64:	No authority for joint agreement between municipality and public housing authority to provide employee health and dental benefits.
1985 Ops St Comp No. 85-67:	Joint contract for administrative services on liability and casualty self-insurance.
1982 Ops St Comp No. 82-109:	Joint purchase of single health insurance policy by BOCES and school districts.
1980 Ops St Comp No. 80-72:	Joint purchase of student accident insurance and joint participation in risk prevention program by BOCES and school districts.
1977 Ops St Comp No. 77-429:	Joint purchase of liability insurance in connection with joint recreation program.

(It may be advisable to consult with the State Insurance Department prior to entering into certain cooperative agreements relating to insurance contracts or self-insurance; *see also* Article 47 of the Insurance Law, relative to "shared funding" municipal cooperative health benefit plans.)

Investments

1988 Ops St Comp No. 88-46:	Cooperative investments (see GML, Article 3-A [§§ 42-45] enacted by the Laws of 1998, Chapter 623).

Joint Indebtedness

1985 Ops St Comp No. 85-23:	Statutory requirements.

Parks and Recreation/Youth Programs

1991 Ops St Comp No. 91-36:	Use of village park trust fund moneys to develop facilities in town park.

1988 Ops St Comp No. 88-40:	Delegation of immediate control and supervision of joint youth program.
1983 Ops St Comp No. 83-207:	Need for joint ownership of real property in connection with joint playground or recreation center (*see also* 1991 Ops St Comp No. 91-36).
1981 Ops St Comp No. 81-279:	Expenditure of village general fund moneys to maintain and operate park facilities on town property.
1980 Ops St Comp No. 80-777:	Joint contract between town and school districts to provide youth programs.

Police and Fire

2000 Ops St Comp No. 2000-21:	Procedures for creation of joint fire district.
1998 Ops St Comp No. 98-21:	Article 5-G does not provide authority for town and fire district to jointly contract with private ambulance company.
1996 Ops St Comp No. 96-7:	Authority for fire districts to jointly implement advertising campaign to recruit volunteer firefighters.
1993 Ops St Comp No. 93-6:	Article 5-G does not provide authority for town to enter into protection contracts (*but see* Town Law § 184).
1988 Ops St Comp No. 88-78:	Provision of police protection by town police department upon abolishment of police department in village.
1983 Ops St Comp No. 83-241:	Use of training facility of one fire district by another.
1980 Ops St Comp No. 80-284:	Additional police protection to village by county sheriff.
1979 Ops St Comp No. 79-415; 1979 Ops St Comp No. 79-415-A:	Village supplying police protection to neighboring village.
1979 Ops St Comp No. 79-5:	Cooperative use of storage space by two fire districts.
1978 Ops St Comp No. 78-613:	Creation by town and village of joint police department (*see also* 1986 Ops St Comp No. 86-60).
1977 Ops St Comp No. 77-423:	Joint ownership, operation and maintenance of fire hall.

Procurement and Competitive Bidding

2004 Ops St Comp No. 2004-9:	Purchases on behalf of municipal hospital or nutrition program pursuant to joint arrangement under PHL § 2803-a.
1991 Ops St Comp No. 91-1:	Cooperative bidding for public work (*see* GML § 103 [3] and County Law § 408-a, as amended by the Laws of 1996, Chapter 620).
1989 Ops St Comp No. 89-57; 1983 Ops St Comp No. 83-201; 1981 Ops St Comp No. 81-104:	No need for competitive bidding where one municipality provides a service to another.
1980 Ops St Comp No. 80-19:	County supplying blacktop to town and village.
32 Ops St Comp, 1976, at 120:	Joint purchase of sand and salt for winter highway use.

Public Improvements

1989 Ops St Comp No. 89-57:	Town improvement of village street.
1980 Ops St Comp No. 80-396:	Use of town equipment and personnel to install equipment at school district.
1980 Ops St Comp No. 80-578:	City and school district sharing use of snow plowing equipment.

33 Ops St Comp, 1977, at 78:	Town assisting village in the repair and improvement of the village water system.
1976 Ops St Comp No. 76-794:	Town and village renting highway equipment to each other.

Senior Citizen Programs

1980 Ops St Comp No. 80-764:	Town and city jointly operating Meals on Wheels program for senior citizens.
1979 Ops St Comp No. 79-713:	Town and village cooperative operation of senior citizens center.

Zoning and Planning

1984 Ops St Comp No. 84-50:	Authority of town and village to jointly engage a building inspector.

Miscellaneous

2002 Ops St Comp No. 2002-12:	Combining street, water and sewer departments of two villages.
2001 Ops St Comp No. 2001-14:	Intermunicipal agreement does not constitute a "contract" for conflict of interest purposes.
2000 Ops St Comp No. 2000-24:	No requirement that participating municipalities be contiguous.
1998 Ops St Comp No. 98-1:	County contracting with public authority for transportation of Medicaid clients.
1994 Ops St Comp No. 94-10:	Establishment of joint town-village-wide human rights commission.
1979 Ops St Comp No. 79-244-A; 1976 Ops St Comp No. 76-1241:	Joint preparation of payroll by several municipalities.
33 Ops St Comp, 1977, at 139:	Town school crossing guards performing services for village.
1976 Ops St Comp No. 76-929:	County and towns acting jointly to clean and dredge lake.

Copies of the full text of Opinions of the State Comptroller since 1988 are available on the State Comptroller's Web site at www.osc.state.ny.us. Individual copies of other opinions may be obtained by written request to the Division of Legal Services, 14th Floor, 110 State Street, Albany, New York 12236, or by fax to 518-474-5119. Note that each opinion represents the views of the Office of the State Comptroller at the time it was rendered, and may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.

Shared Services in the Context of Home Rule Powers

By James D. Cole

Approach

This article will summarize the home rule provisions of the New York State Constitution and relate these provisions to the various mechanisms for "sharing of powers." It will examine the Bill of Rights for local governments and the delegation of powers to local governments, both set forth in the State Constitution, and the Statute of Local Governments enacted by the Legislature as a mandate of the Constitution.

The purpose is to facilitate review of the various articles in this publication through the lens of home rule provisions. It is imperative that these provisions, setting forth the relationship between municipal corporations and the State, be considered in any analysis of proposals for shared powers.

Early Home Rule

Home rule in New York evolved from the 19th century political struggle between New York City, dominated by one political party, and the rural areas of the State, represented by another political party.[1] Although New York City contained over 50% of the population of the State, its representation in the Legislature was considerably less than this percentage. This divergence resulted in legislative involvement in many of the local affairs of the City. The City sought protection under the State Constitution. In 1894, the Constitution was amended, providing the first constitutional basis for home rule in New York.[2] The 1894 amendment consisted of a restriction on the Legislature when acting in relation to the property affairs or government of cities. If a State law was not a "general law," as defined in the Constitution, it was subject to a "suspensive" veto. The State law was submitted to the mayor of the affected city, who would indicate whether the city accepted the proposal. If rejected, the Legislature was required to pass the bill a second time and forward it to the governor for action.

Thus, the first home rule provision of the Constitution had as its purpose preservation of the basic powers and independence of local governments. Since that time, home rule has evolved through fits and starts until 1963, when Article IX of the State Constitution was enacted, providing home rule authority to all levels of local government—towns, cities, villages and counties.[3] Article IX, in stronger and more comprehensive provisions, protects all levels of local government from State intrusion into their governmental operations and control of their property and affairs.[4]

Unlike the 1894 Constitution, Article IX includes not only a restriction on the Legislature when acting in local affairs but also an extensive grant of power to local governments. Effective home rule cannot be realized without both elements.

Bill of Rights for Local Governments

The New York State Bill of Rights provides that effective self-government and intergovernmental cooperation are purposes of the State. In furtherance of these purposes, local governments have rights, powers, privileges and immunities supplemented by those granted by other provisions of the Constitution.[5]

"It is imperative that these provisions, setting forth the relationship between municipal corporations and the State, be considered in any analysis of proposals for shared powers."

Under the Bill of Rights, every local government shall have a legislative body elected by the people with authority to enact local laws as provided in other provisions of Article IX.[6] All officers of local governments are to be elected by the people or appointed by other officers of the local government.[7] Local governments have the power to agree, as implemented by the Legislature, with the Federal government, a state, or one or more other local governments, to provide cooperatively, jointly or by contract any service or activity which each local government has the power to provide separately.[8] The power of annexation of a portion of the territory of a local government to another local government is specifically conditioned upon the vote of the people in the territory proposed to be annexed and with the agreement of the governing bodies of each affected local government.[9]

Thus, the Bill of Rights is a source of basic inalienable rights of local self-government; voluntary municipal cooperation; and annexation conditioned upon approval by the people and affected local governments.

Statute of Local Governments

Under Article IX, § 2(b)(1) of the State Constitution, the Legislature is required to enact a Statute of Local Governments granting local governments the powers of

local legislation and administration, in addition to other powers vested in them by other provisions of Article IX. Significantly, "[a] power granted in such statute may be repealed, diminished, impaired or suspended only by enactment of a statute by the legislature with the approval of the governor at its regular session in one calendar year and the re-enactment and approval of such statute in the following calendar year."[10]

The legislative intent underlying the Statute of Local Governments is to provide for effective self-government and intergovernmental cooperation to implement the provisions of the Bill of Rights.[11] Under § 10 of the Statute of Local Governments, each local government has the power to adopt, amend, and repeal legislation in the exercise of its functions, powers, and duties; the power to acquire real and personal property for its corporate purposes; the power to establish recreational facilities in parks and on other land; the power to dispose of its real and personal property; the power to levy and collect rents, charges, fees, and penalties; in a city, village or town, the power to adopt, amend and repeal zoning regulations; and the power to perform comprehensive or other planning work relating to its jurisdiction.

The Statute of Local Governments reserves certain powers to the Legislature: laws relating to the defense or protection of the State or to the continuity of State or local government operations during emergencies or disasters; laws requested by local governments; laws relating to matters other than the property, affairs or government of a local government; and significantly, the State Legislature is empowered to enact and amend State laws authorizing the voluntary transfer of a power by a local government to another local government or authorizing the voluntary exercise of a power by a local government in cooperation with another local government.[12]

Thus, under the Statute of Local Governments, municipalities have been given broad powers of self-government. These powers are protected from interference by the Legislature through the double passage requirement. Significantly, the Legislature is empowered to authorize municipal cooperation and transfer of functions only on a voluntary basis.

The Grant of Local Law Power

Under Article IX, § 2(c), as implemented by § 10 of the Municipal Home Rule Law, every local government is empowered to enact local laws covering a broad range of subjects. Among the significant grants of power are the authority to enact local laws relating to its property, affairs or government; membership and composition of the legislative body; transaction of business; the government, protection, order, conduct, safety, health and well-being of persons or property in the local government (the police power); and the power to enact local laws relating to the powers, duties, qualifications, number, mode of selection and removal, terms of office, welfare and safety of a local government's officers and employees. This grant of local law power is limited by the requirement that local laws be consistent with "general laws" enacted by the Legislature.[13] A general law, as applied to towns, is a State law that applies to *all* towns in the State.[14] This definition applies, respectively, to villages, cities and counties. State laws classifying towns according to population or some other criterion are not general laws. Thus, a town local law is required to be consistent with only a State law that applies to *all* towns. This provision protects a town or several towns from legislative interference in its affairs. This distinguishes the Article IX definition of general law from other definitions of general law for purposes of equal protection and other matters.

Basic Powers Upheld

Local laws effectuating these core powers have been upheld by the courts.[15] These decisions have recognized and confirmed the authority of local governments to determine their basic operations and corporate functions.

Thus, local governments have been granted extensive powers. The requirement that local laws must be consistent with "general" State laws prevents the Legislature from, in effect, preempting local laws passed by one or more but not to all, for example, towns. The apparent intent is recognition that a State law applicable to all towns establishes State-wide policy, whereas a State law applying to one or more but not all towns is an intrusion in local affairs.

Restriction on State Legislature

Therefore, local laws must be consistent with general State laws. As noted, the converse, a "special law" is a State law that in terms and in effect applies to one or more but not all, for example, towns. Similarly, the definition applies, respectively, to cities, villages, and counties. Under Article IX, § 2(b)(2), the Legislature may act in relation to the property, affairs or government of any local government by special law only on the request of that local government (referred to as a home rule request). This limitation on the Legislature is broad and effectively prevents it from interfering in integral powers of local governments affecting their viability as municipal corporations.

The home rule request, therefore, is another source of protection against unwarranted State involvement in local affairs.

Narrowing of Local Powers

In discrete areas the courts have applied the doctrine of "matter of State concern" to require that local laws be consistent with any State law and alleviating the need for a home rule request. Examples of State concerns are protection of the Adirondack Park;[16] the Long Island

aquifer;[17] elimination of the New York City commuter tax;[18] and establishment of the salaries of district attorneys, responsible for representing the people of the State in criminal matters.[19] When a subject is declared to be a State concern, the Legislature may act through the normal legislative process. Obviously, limitations on the Legislature set forth in the State Constitution cannot be overcome by the doctrine of State concern—nor can delegation by the State Constitution of the core powers of local governments.

Conclusions

The various authorizations in the Constitution for shared services, only on a voluntary basis, in our view, have an obvious purpose. A determination must be made by local government officials and residents that the local government would benefit from such arrangements. Local government officials and residents are in a unique position to determine the effectiveness of their governments, judged by the efficiency and adequacy of provision of services and their costs. In some cases, local governments, with the support of their residents, may decide that discrete services can best be performed through municipal cooperation or some other method of sharing of services. But this is a judgment that can only be made by local governments and their residents in the exercise of discretion and on a voluntary basis as provided by the express provisions of the State Constitution.

Thus, sharing of services in the various ways authorized by law are all premised on a judgment by each local government whether it serves the public interest. The factors that enter that decision making are unique for each local government, based upon such considerations as population, climate, geography, and varying needs for services. It has been our experience that residents have a close identification with their towns and officials. Public hearings and meetings are accessible and therefore resident views can readily be transmitted to policy makers. The various decisions made by town officials regarding sharing of services will be influenced by these views. Each local government must make its own decisions. This is the design of the New York State Bill of Rights, Statute of Local Governments, delegation of powers to local governments and restrictions on the State Legislature, all constitutionally derived.

Finally, and most importantly, Article IX of the New York State Constitution is a comprehensive delegation of powers. Its provisions specify the various schemes for shared services, all on a voluntary basis. It follows that any additional authorizations would require an amendment to the State Constitution.

"[S]haring of services in the various ways authorized by law are all premised on a judgment by each local government whether it serves the public interest."

Endnotes

1. W. Bernard Richland, *Constitutional City Home Rule in New York*, 54 COLUM. L. REV. 311 (1954).
2. N.Y. CONST. art. XII, § 2.
3. To a limited extent villages, cities, and counties were granted home rule powers prior to 1963.
4. Article IX was developed by the former Office for Local Government. The Office reviewed home rule provisions in other state constitutions and received input from constitutional experts. Also, workshops were conducted throughout the State.
5. N.Y. CONST. art. IX, § 1.
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. N.Y. CONST. art. IX, § 2(b)(1).
11. N.Y. STAT. LOCAL GOV'T LAW § 2.
12. N.Y. STAT. LOCAL GOV'T LAW, § 11.
13. N.Y. CONST. art. IX, § 3(d)(1); N.Y. MUN. HOME RULE LAW § 2(5).
14. The converse is a "special law," which applies to one or more but not all towns, cities, villages or counties. N.Y. CONST. art. IX, § 3(d)(4); N. Y. MUN. HOME RULE LAW, § 2(12).
15. *City of New York v. Patrolmen's Benevolent Assn.*, 89 N.Y.2d 380, 654 N.Y.S.2d 85 (1996); *Westchester County Civ. Serv. Empls. Assn. v. Del Bello*, 47 N.Y.2d 886, 419 N.Y.S.2d 494 (1979); *Matter of Resnick v. County of Ulster*, 44 N.Y.2d 279, 405 N.Y.S.2d 625 (1978); *Nydick v. Suffolk County Legislature*, 36 N.Y.2d 951, 373 N.Y.S.2d 554 (1975).
16. *Wambat Realty Corp. v. State of New York*, 41 N.Y.2d 490, 393 N.Y.S.2d 949 (1977).
17. *Town of Islip v. Cuomo*, 64 N.Y.2d 50, 484 N.Y.S.2d 528 (1984).
18. *City of New York v. State of New York*, 94 N.Y.2d 577, 709 N.Y.S.2d 122 (2000).
19. *Kelley v. McGee*, 57 N.Y.2d 522, 457 N.Y.S.2d 434 (1982).

James D. Cole is Special Counsel, Association of Towns of the State of New York.

Use of Financial Incentives to Promote Change

By Senator Elizabeth O'C. Little

Abolition of one or the other of the governments is almost out of the question politically; it could be done but it would take a great deal more drive than anyone seems to be willing to put into it.

On the other hand, State Comptroller Arthur Levitt has explained how such overlapping governments can save the taxpayers vast sums of money simply by cooperating and getting rid of a few of the useless jobs. This is what we would like to see; it will remain a pipe dream until the people of the community decide to do something about it.

Thus opined then-editor Peter Cox of the *Adirondack Daily Enterprise* in June 1964. He was describing a potential savings that could be achieved on behalf of local taxpayers through cooperation by a town and village on a plan to expand a firehouse and locate a police department in the same building.

The concept of sharing municipal services is not new. It certainly predates Mr. Cox' editorial by many years. But it is one that, for various reasons, has not gained a lot of traction.

"[T]he most compelling factor contributing to my interest in sharing services has been the inability of local taxpayers to finance the rising cost of government."

My interest in sharing services has evolved for a number of reasons.

First, before winning election to the New York State Assembly in 1995, I served on the Warren County Board of Supervisors for nine and a half years. This was an invaluable experience that helped me develop a strong understanding of the relationship, albeit sometimes strained, between local governments and state government.

Following seven and a half years in the State Assembly, I was elected to the State Senate in November 2002, where I took on the responsibility of not only representing about 300,000 residents, but working with the six counties, 88 towns, 25 villages, 2 cities and 53 school districts that comprise the 45th Senate District. Additionally, I have served as Chair of the Senate Local Government Committee.

But perhaps the most compelling factor contributing to my interest in sharing services has been the inability of local taxpayers to finance the rising cost of government.

Local government expenditures have been rapidly increasing as a result of many factors including higher pension costs, rising health insurance costs, unfunded state mandates and, most recently, volatile energy prices. When the cost of government increases, an increase in property taxes is the result. A 2005 Global Insight report found that New York State supports more local government units than any other state, and in 2002, local government spending was almost $4 billion higher than the average of ten states that provided similar services. When income, local sales and other taxes are added in, New York rises to number one in tax liability.

According to the New York State Comptroller's 2006 Annual Report on Local Governments, property taxes provide the largest source of revenue for local governments, accounting for 31 percent of all local government revenue and a staggering 43 percent when New York City is excluded. (New York City property taxes are not as high due to a city income tax which supports school funding). Between 2000 and 2005, property tax levies grew two to three times the rate of inflation. Sales tax revenue and state aid have not risen at the same level. In addition, school tax levies have usually increased by greater percentages and account for the larger portion of a person's total property tax bill. 2007 school aid from the state was the highest in history, yet the average property tax increase was 4 percent. In addition to high property taxes, many municipalities in New York State are nearing their constitutional debt limits as dictated under state law, which is an indication of fiscal stress.

One creative approach of local governments striving to meet the challenge of diminishing revenue and an overreliance on property and sales taxes has been to share services. These agreements have existed both informally and formally for many years.

Under current law, whatever any village, town, city, improvement district, school district, BOCES or county has the authority to do individually, it has the same authority to do jointly with another locality, so long as each

of the individual entities joining together has the authority to act alone.

However, many joint projects require an initial boost of funding. For example, if two towns have an interest in merging their highway departments, it may be necessary to expand one facility when one facility is closed. The expansion of the facility may initially require capital construction work to accommodate more equipment.

In April 2004, I introduced legislation to establish the Quality Communities Study Grant program in the Department of State. Modeled after a long-standing school district program called Reorganization Incentive Aid, the legislative intent was simply to provide a financial incentive for municipalities to share services. Municipalities applying for grants would have to demonstrate that their cooperative effort would save money while providing the same or improved level of service.

Provisions of the bill included:

- Stating the importance of promoting enhanced cooperation and mergers of local government, the need for a single state agency to assist local government in this manner, and the need for the state to provide financial assistance in the form of quality community grants;
- Adding a new subdivision to section 153 of the Executive Law to provide state grants to two or more municipalities to assist with mergers, consolidations, cooperative agreements and shared services by way of feasibility studies, capital improvement and other necessary expenses; and
- Adding a new section 154 to article 6-b of the Executive Law to provide for the Quality Communities Study Grant program, stating that two or more municipalities could apply to the Department of State for grants to assist with mergers, consolidations, cooperative agreements and shared services.

The grants would have covered up to 50 percent of a project's cost, not to exceed $100,000. The Secretary of State was directed to establish guidelines for the grant program based on general criteria set forth in the bill.

The bill passed the Senate, but remained in Assembly committee that year. The legislation also was a component of the Senate Majority's $4 billion Mandate Relief Plan, which was not adopted as part of the 2004–05 enacted budget.

While advocating for a statewide shared municipal services program in 2004, I provided a $6,000 member item grant for a feasibility study for the Towns of Willsboro and Essex intermunicipal highway garage. Personally, I was disappointed because the study cast a negative light on the project by focusing on obstacles while lacking an emphasis on the long-term benefit of improved efficiency. It was more about locating two DPWs in one building than sharing services.

However, that same year, I awarded a member item initiative of $45,000 for expenses to facilitate a merger of the Village of Cambridge and Village of Greenwich police departments. The opportunity for this joint department came as one of the police chiefs was retiring and a joint meeting was held to discuss the possibility of combining the departments in order to save taxpayer dollars. The outcome was positive and today, working under one administration, thousands of dollars are being saved while the quality of police coverage in both villages has improved. This is an excellent example of how the State was able to partner with local government to provide seed money to facilitate this merger that has successfully saved taxpayer dollars without a loss in service.

"As Chair of the Senate Committee on Local Government, I felt it was important to learn more by hearing directly from local officials about their shared services experiences."

Throughout 2004, I continued to advocate for a statewide shared services program. I was pleased Governor George Pataki included in his 2005–06 Executive Budget proposal $5.5 million to implement the Shared Municipal Services Incentive ("SMSI") program, which was based in large part on the proposal I had introduced the year prior. The program's funding was decreased to $2.75 million in the final budget, but it was an important first step.

The first grants were awarded in February 2006. The program provided grants of up to $100,000 per municipality with a 10 percent local match. Feasibility studies, capital improvements, legal and consultant costs were allowed under the program, but salaries and other recurring expenses were not funded.

During the first round of the program, 266 applications were received requesting a total of $34.6 million. Twenty-two projects were approved for a total of $2.45 million in grants. Funded projects ranged from a coordinated rail and bus network, to shared municipal buildings, to a variety of feasibility studies addressing municipal works, to mergers and consolidations.

Clearly there was a strong interest in the program. As Chair of the Senate Committee on Local Government, I felt it was important to learn more by hearing directly from local officials about their shared services experiences. I wanted to identify obstacles that could be eliminated and assistance that could be provided to better support intermunicipal agreements.

During the Spring of 2005, my office sent a statewide survey to all town and county supervisors, county legislators, village mayors and small city mayors asking about their experiences with sharing of services. The survey asked if the local officials had considered intermunicipal agreements, implemented them or failed to implement them, and what obstacles may have stood in the way.

My office received hundreds of responses and, after reviewing the surveys, we contacted many of the elected officials to gather more information. That fall, I invited a dozen local officials to Albany for an informal roundtable discussion about their shared services experiences.

I discovered that many local communities throughout New York State were already sharing a wide range of services including: animal control, assessors and assessing, building and code enforcement, court facilities, dispatching, economic development, fire services, highway services and equipment, joint town and village halls, planning and architectural services, police services, purchasing, real property tax systems, recreation and park services, recycling, sanitation services, support staff for justice courts, water and sewer departments, and youth commissions. The most common shared services agreements were between town and village highway departments.

I also learned that there was no standard arrangement or substantive set of guidelines for sharing services. Some municipalities had very informal agreements while others adopted town and village resolutions allowing, for example, their highway departments to work in a neighboring municipality.

In December 2005, I published a report on intermunicipal agreements entitled "Sharing Services and Saving Tax Dollars," in which I recommended expanding the shared services program by: 1) targeting highway departments with increased incentives; 2) providing local governments with needed technical support; and 3) revising municipal laws.

Included in the Appendix of the Report were narratives written by local officials who had a history of intermunicipal cooperation. In the Town and Village of Cobleskill they reported a savings of $70,000 with the joint purchase of a backhoe that is now used by both municipalities. In the City of Rochester, former Deputy Mayor Hannon highlighted a number of areas where they share services with the county, neighboring towns, and city school district. For example, the city and the county implemented a property maintenance program which provided an annual financial benefit to Monroe County of approximately $1.3 million while the City of Rochester benefited from additional personnel. Another example provided was a joint road rehabilitation project between the City of Rochester and Town of Brighton in 1995.

As a result of the report and the success of the first round of the SMSI, there was enough evidence of interest to warrant an expansion of the program.

The 2006–07 enacted budget provided up to $25 million dollars for incentive grants in five funding areas. The expanded shared municipal services program made $5.5 million available for expansion of the general program; $4 million for highway services; $4.5 million for health insurance; $1 million for countywide shared service plans; and $10 million for municipal consolidation incentive funding. The second round of funding saw 246 applications received for a total of $52.3 million in grants requested. The breakdown of applications was as follows:

- 150 Shared Services for $28.4 million
- 87 Highway for $21.8 million
- 6 Health Insurance for $1.6 million
- 3 Countywide for $458,500

A total of 46 projects were funded under the main SMSI program totaling $7.8 million; 16 projects totaling $3.7 million under the shared highway services category; two projects amounting to $305,150 for the shared health insurance services program; and two projects for a total of $400,000 under the countywide services incentive program.

In addition to the grant program, $700,000 was specifically allocated for the creation of a statewide databank of intermunicipal agreements to provide legal and technical assistance relating to consolidations, mergers, dissolutions and cooperative agreements.

This project is coordinated through the Government Law Center at Albany Law School and the intent is to provide a so-called "one-stop shop" for local governments to refer to for legal and technical advice. This continually evolving databank is available on-line and will be updated on a frequent basis to reflect the most recent case studies, intermunicipal agreements and contracts.

In 2007–08 Governor Eliot Spitzer continued the program by allocating $25 million for SMSI, $10 million of which has been allocated for a 25 percent increase in municipal aid for municipalities that consolidate. The remaining $15 million is supporting the competitive grant program, which has been amended to incorporate a priority scoring system for applications that include the following:

- Fiscally distressed municipalities;
- Consolidations, mergers or dissolutions of local governments;
- Shared services between municipalities and school districts;

- Consolidation of health insurance plans by two or more municipalities;
- Shared highway services; and
- Countywide shared services.

In this third round, eligible applicants include counties, cities, towns, villages, special improvement districts, fire districts, school districts and BOCES. Grants will be awarded up to $200,000 per municipality with a 10 percent local share for feasibility studies or for services that demonstrate financial savings.

Through my years of working on shared services and my discussions with local officials, it seems that joint water and sewer districts are the easiest to consent to since the infrastructure costs are enormous. Small communities otherwise end up with very high per capita costs.

In September 2007, the Office of Real Property Services announced the Centralized Property Tax Administration Program, a separate initiative, to encourage more cooperative agreements and intermunicipal cooperation in the realm of real property assessing. A total of $50,000 is available for the county assessing initiative to prepare a study of county assessing. Up to $50,000 will be awarded to counties to study the implementation of a county-level real property tax database as well as to defray the costs of implementing the database. For each new county assessing unit formed, $2 per parcel will be provided

For each new county-coordinated assessment program, counties will receive $2 per parcel when they manage all of the property in the county and $1 per parcel for management of less than all of the parcels. The deadline for this program was December 31, 2007. It is my belief that there are many opportunities to streamline real property assessment services to ensure more uniformity and efficiency. Towns within a county should assess property using the same methodology, resulting in a fair approach. Similarly, fewer assessors in a county could result in more uniformity.

Today, more than ever, we all have a responsibility to work cooperatively to increase government efficiency to save tax dollars. Meeting the needs of our constituents while working to control local taxes is a responsibility of all elected officials. Shared services have been and will continue to be one way for local governments to save tax dollars. New York State's new partnership with local governments to support their efforts is not only important, it is proving effective and is something for which I will continue to advocate.

Thus we ask, why is it so difficult to implement mergers and reductions in the size of government? Two glaring obstacles are the fear of loss of jobs, and salary differentials in affected municipalities, as well as the perception of a loss of control at the local level.

Village residents, in particular, feel that they will have less of a voice in the development of their communities. This obstacle can be overcome by keeping the village entity while turning over all services to the town government that covers the village. The size of the village is also a consideration when merging and consolidating are being considered. The smaller the village, the greater the savings are and the easier it is to implement change. Up front, accurate marketing of the proposed concept is crucial to success.

"Reducing the size of government is truly an idea whose time has come."

Communication and trust are important when municipalities begin working together as well as overcoming past problems in their relationship.

As state funding is curtailed, our schools and municipalities, aware that property tax increases are unacceptable, will be forced to look more closely at reductions in their budgets. Sharing, merging departments, and consolidation will become a necessity.

Currently I am seeing changes in my Senate district with more open discussion among village, town, county, and school officials. Declining enrollment in our schools needs to be addressed through a greater use of BOCES services for administration, food, athletic, and transportation services. Today's technology makes this all possible despite distance between facilities.

Towns established more than 100 years ago, when travel was limited, could merge in total or in particular departments, e.g., recreation, highway, judicial, assessing, etc., and thereby reduce costs while maintaining quality services. Reducing the size of government is truly an idea whose time has come. Incentives, as well as technical assistance, along with the will to provide better government with less tax burden, should move us in that direction.

Legal Framework for Providing Local Government Services: Water Supply

By Assemblyman Sam Hoyt and Assemblyman Darrel J. Aubertine

Hon. Sam Hoyt

This article outlines the current legal framework—the constitutional and statutory authority, selected court cases, and opinions of the comptroller and attorney general—for supplying water in counties, cities, towns and villages, with an emphasis on the authorization for shared services, and discusses the importance of accountability and transparency in shared service arrangements. Water supply is illustrative of the types of issues facing local governments, and the outline is intended to facilitate broader discussions on how to provide local government services in an effective and efficient manner.

The legal framework for providing water supply described here is illustrative of the new resource currently under development by the Legislative Commission on State-Local Relations, the Legal Framework for Providing Local Government Services at <http://assembly.state.ny.us/comm/?sec=post&id=54>. The site covers key areas of local government operations, from annexation to zoning, and has been developed in cooperation with the Government Law Center of Albany Law School. The resource updates information in the report called "New York's State-Local Service Delivery System: Legal Framework and Services Provided," published by the Commission in 1987.

A reliable and affordable water supply is critical to the prosperity and quality of life in all communities. Local officials continually face challenges in meeting the demand for water whether providing service to new areas under development, replacing existing, aging infrastructure, or meeting tighter standards for water quality, all within budget constraints.

The web of financial, engineering, health and safety concerns involved in supplying municipal water is complex, and the legal framework to address the concerns is equally and perhaps necessarily complex. The Court of Appeals observed in 1911:

> The statutes, relating to the matter of procuring a water supply for the various communities in the state, disclose the wide range of legislation upon this subject. In some cities the water works systems are operated as a part of the general municipal government; in others, the powers and liabilities pertaining thereto are imposed upon special officers or boards, either with or without distinct corporate powers. This is also true of villages, some of which obtain their water supplies under the general village law, while others are supplied by private water corporations, or under special statutes.[1]

Hon. Darrel J. Aubertine

Today, almost a century later, the "range of legislation" has further expanded.

The authority for local governments to cooperate with each other and to contract with public and private corporations in providing a water supply is "built in" to the statutes because a water source often spans municipal boundaries, the costs are high, and the process is time-consuming, technical and complex. Also, cooperation is critical to ensure an adequate water supply under emergency conditions.

The need for efficient and affordable ways to supply water to meet the demands of population growth in suburban municipalities drove the movement that led to changes in New York State statutes allowing more flexible ways for local governments to provide water and other services.

The authority for local governments to provide water services stems from various statutes including the County Law, Town Law, General City Law and Village Law

Authority for Counties to Provide a Water Supply

Upon the recommendation of the State Comptroller's Committee on Problems Affecting the Distribution of Water, Chapter 868 of the Laws of 1953 amended the County Law to provide for the formation of county water districts. County districts, it was argued, could include an area in more than one town and parts of cities and villages, permitting the development of a supply of water at economies not possible by individual municipalities or through town improvement districts. County water dis-

tricts provided the model for the establishment of other kinds of county districts that followed.[2]

A county water district may be established upon petition to the county legislative body or upon motion of the county legislative body. The petition must be executed by the chief executive officer of a municipality or water district, or by at least twenty-five owners of taxable real property within the municipality or water district. The process includes the preparation of maps and plans, a public hearing, a determination of the county legislative body that the proposed district is in the public interest, that all properties within the district are benefited, and, for "high cost" districts where debt will be incurred, approval by the State Comptroller.[3]

Upon the establishment of a county water district, the administrative head of the district may enter into contracts providing for interconnections of water systems of a county, county water authority, city, town or village with the approval of that municipality, and may also enter into contracts regulating the sale or purchase of water by any of the parties to the contract. The contract is subject to the approval of the Department of Environmental Conservation.[4]

A city, town or village included in a county water district may provide for water facilities, in excess of those required for the district, for use by future districts or extensions in the county.[5]

Authority for Towns to Provide a Water Supply

Town Law authorizes towns to provide water by establishing water districts pursuant to Articles 12 and 12-A, and by providing water improvements without establishing a district pursuant to Article 12-C and, for suburban towns, Article 3-A. In any case, the town board is responsible for water supply.

Unlike cities and villages, towns do not have the authority to provide a water supply as a general town function. Towns are prohibited from incurring indebtedness except for town purposes.[6] Comptroller Opinion 82-6 clarifies that water supply and distribution is not a town function, and a town may not issue obligations to finance construction of public water mains in an area of the town that is not included within the boundaries of a water district, water supply district, or water improvement area, except in a public emergency.

Under Town Law, Articles 12 and 12-A, a town improvement district, including a water district, may be established in a portion of the area of a town located outside of any village, and expenses are borne entirely by the lands benefited. Article 12 provides a process whereby owners of taxable real property in the area of a proposed district may petition the town board to establish a district. Under Article 12-A, the town board may pass a resolution subject to permissive referendum to initiate the process of establishing a district, as an alternative to the lengthier petition process. In either case, the process must include the preparation of maps and plans, a public hearing, a determination by the town board that all properties within the proposed district are benefited and that the establishment of the district is in the public interest, and, for "high cost" districts where debt will be incurred, permission of the State Comptroller. Once established, the authority of the town board, the method of financing and other issues related to the operation of the districts are the same.

If a water district needs to be extended as may be necessary to accommodate population growth, the extension process is the same as the process for establishment of the district. The town must maintain separate accounts for each district.

"Upon the establishment of a county water district, the administrative head of the district may enter into contracts providing for interconnections of water systems of a county, county water authority, city, town or village with the approval of that municipality, and may also enter into contracts regulating the sale or purchase of water by any of the parties to the contract."

Upon the establishment of a water district, the town board may contract for up to forty years with any person, corporation (municipal or otherwise), town or county on behalf of a water district for a supply of water, and resell the water to consumers in the district. The town board may also sell water, for the benefit of the water district, to municipalities, water districts, water supply districts and fire districts. In addition, the town board may allow any person or corporation owning real estate outside the water district to use water from the district system so long as the use will not reduce the water supply so that it will be insufficient for the district or its inhabitants.[7]

A town board may sell, subject to mandatory referendum, or lease for up to forty years, subject to permissive referendum, all or any part of the property and facilities of a water district to a county, city, village, town, public authority or a joint waterworks system.[8]

A town may also establish another kind of district, a water supply district, to allow the town board to contract for up to forty years for delivery of a supply of water to the district by a water district, municipal corporation, water authority, or a waterworks corporation for fire, sani-

tary or other public purposes, and to furnish fire hydrants in connection with the water supplied.[9]

In addition, a town may establish a water storage and distribution district that consists of water districts and water supply districts, for the purpose of developing a supply of water for sale to the water and water supply districts within the water storage and distribution district.[10]

To give towns greater flexibility in cooperating with the Pure Waters Program, Chapter 920 of the Laws of 1966 enacted Article 12-C of the Town Law, authorizing towns to provide sewer improvements without establishing an improvement district. The Association of Towns of the State of New York argued at the time that certain provisions of the improvement district process are "rigid and clumsy" and supported the enactment of the more flexible provisions of 12-C.[11] Two years later, in 1968, water improvements were included in Article 12-C.[12] Subsequently, drainage improvements were included.[13]

Article 12-C authorizes towns to provide water, sewer and drainage improvements to the entire area of a town outside a village or to "special assessment areas" or "improvement areas," and allows the cost of the improvements to be borne by the area of the town outside any village, by the lands benefited, or a combination of the two. The measure has the effect of extending to all towns, with respect to water, sewer and drainage improvements, the alternative powers previously made available to suburban towns in the Suburban Town Law, Chapter 1009 of the Laws of 1962, providing special assessment areas similar to those used in cities and villages.

The water, sewer and drainage improvements authorized under Article 12-C are the same as those authorized under Articles 12 and 12-A.[14] If a town board determines to provide water, sewer or drainage improvements as a town function under Article 12-C, the board may, by resolution subject to permissive referendum, dissolve existing water, sewer or drainage districts.[15]

A town board may, upon establishing a water district pursuant to Articles 12 and 12-A, or providing water improvements pursuant to Articles 12-C and 3-A, enter into an agreement with a public water authority having reciprocal powers for the public authority to award contracts, order engineering services, order work performed, and furnish materials and supplies in connection with the construction, development, extension or improvement of a water supply or distribution system. The agreement may contain provisions equitably allocating costs.[16]

Certain town water districts, established under Town Law, Article 13, are governed by the town board as well as by a three-member elected board of commissioners. The board of commissioners is authorized to prescribe how water connections are made and to establish water rates. The town board may delegate additional authority to the commissioners.

Authority for Cities to Provide a Water Supply

A city may:

- acquire property within or without city limits for the construction, maintenance and operation of a water supply system;[17]
- construct and operate water supply systems and acquire a water supply system owned and operated by a waterworks corporation;[18] and
- sell the water supply system to a water authority, a county water district or a joint waterworks system.[19]

Authority for Villages to Provide a Water Supply

Village Law, Article 11 allows villages to establish or to acquire existing water supply systems. A Village Board of Water Commissioners may:

- sell to a corporation, individual or water district outside the village the right to connect to village water mains and may contract with the State to furnish water to State institutions, unless the water supply is not sufficient for the village and its inhabitants.[20] A village may terminate supplying water to outside residents upon reasonable notice;[21]
- contract for up to forty years with an individual or corporation for supplying water to the village for extinguishing fires or other public purposes;[22]
- contract for up to ten years with a town, village, or fire district to furnish water for fire protection, sanitary or other public purposes. A village may contract for up to forty years with any public corporation or improvement district with the power to sell a supply of water in order to purchase all or a portion of the water supply of the village from the public corporation or improvement district.[23] A proposition may be submitted at a village election to authorize a village to contract with the City of New York for a supply of water for village purposes.[24]

Cooperative Water Supply

In addition to the general authority provided in Article 5-G of the General Municipal Law for municipalities to enter into agreements to perform among themselves or for one another their respective functions on a cooperative or contract basis, authority for cooperative efforts to supply water is further expanded in the General Municipal Law, Unconsolidated Laws, and Transportation Corporations Law.

A village board of trustees and a town board may adopt propositions to establish a joint water district to contract with any water company or other party or person to supply water for the town and village for fire, sanitary or other purposes.[25]

Any county (on behalf of a county water district), city, town (on behalf of a town water district), or village may provide for the development of a supply of water in excess of its needs for sale to a public corporation or improvement district and may contract indebtedness for such purpose.[26]

Two or more municipalities may enter into a contract with each other and with a public authority with reciprocal powers to provide for a common water supply, including joint acquisition, construction, operation and maintenance.[27]

A town, village and water district may jointly acquire, construct, maintain, and operate a waterworks system governed by an appointed board of trustees.[28]

A city, town and village may jointly consent to the formation of a waterworks corporation to supply water by mains or pipes. Two or more waterworks corporations may merge or consolidate according to procedures in Article 9 of the Business Corporation Law.[29]

A city, village, school district, fire district, public benefit corporation which owns and operates a water system, a suburban town operating a water system, a town water district and a county water district may establish a mutual aid plan for water service in the event of a possible emergency. Any of the above entities is authorized, in case of emergency, to construct interconnections between its water system and other water systems to provide water service.[30] The State Commissioner of Health may facilitate the interchange of waterworks among municipalities in event of emergencies.[31]

Owners or operators of a community water system that supplies drinking water to more than 3,300 people must submit a water supply emergency plan to the Commissioner of the State Department of Health, who must approve the plan.[32]

Accountability and Transparency in Shared Services

In making any decision related to providing a municipal water supply, local officials must weigh the advantages and disadvantages of the various alternatives summarized above. By contracting with a public authority and/or a private water company, for example, local officials are able to share some of the responsibility for providing critical water services. Such arrangements, however, may raise issues of accountability and transparency that need to be taken into consideration.

Elected local officials are accountable to voters, whereas boards of a public authority are generally appointed and thus are more insulated from the electorate. Also, debt service on State-funded borrowing by public authorities is paid by taxpayers; however, none of this debt is approved by the voters.

Concerns that public authorities operate without true accountability or oversight are addressed in a number of public authority reform measures under consideration in the State Legislature. See, for example, a recent press release of the Governor dated May 24, 2007, at <http://www.ny.gov/governor/press/0524075.htm>. And audits by the State Comptroller of individual public authorities have identified certain areas of authority operations that may need to be addressed. See, for example, public authority audits 2003–2007, available at <http://www.osc.state.ny.us/pubauth/audits.htm>.

"Two or more municipalities may enter into a contract with each other and with a public authority with reciprocal powers to provide for a common water supply, including joint acquisition, construction, operation and maintenance."

It should be noted here that the Public Authorities Law provides that a contract with a public benefit corporation authorized to enter into contracts with any water authority, municipality, county, town, village, or water district may include provisions requiring such entity to purchase water only from the public benefit corporation during the term of the contract.[33]

The public interest must be carefully considered in the terms of any contract with a private corporation, which is primarily accountable to its shareholders. In the past, when most of the statutes authorizing contracts with private water companies were enacted, water companies were small and were usually part of the community they served. Today, however, water companies may have less connection to the communities they serve and may have headquarters in another state and even in another country.

Whatever the arrangement, any case involving shared services for water supply is a serious, complex undertaking. The Southwest Erie County Regional Water Project is an ongoing, collaborative initiative among four towns and two villages in southwest Erie County to consider the option of placing a joint water system under a lease-management agreement with the Erie County Water Authority to address their immediate and long-term water supply needs. A summary of the project, which received a grant under the Shared Municipal Services Incentive Program, is available at <http://www.dos.state.ny.us/lgss/smsi/smsicasestudiespage.html>.

Some of the arguments, pro and con, illustrate the complexities of providing shared services.

On the positive side, the new structure would alleviate individual municipalities from the financial and administrative obligation of operation and maintenance of the water supply system; a water board of community representatives would provide local involvement; the cost-sharing approach could save money; the new structure would solve issues regarding State health regulations; and the ultimate decision would rest with residents in a referendum.

Concerns over equity have been raised about the new structure because the need for public water varies from community to community, and costs will vary for each community. In addition, the project is complex, with many legal hurdles including local resolutions, environmental reviews, intermunicipal agreements and individual water district formation. There are also concerns over the actual cost of the project, the loss of the sense of independence and autonomy, and the historically strained relationship between the municipalities and the Erie County Water Authority.

The issues being addressed by municipalities involved in the Southwest Erie County Regional Water Project illustrate some of the issues that are likely to be discussed by other municipalities considering similar shared services projects.

Concluding Observations

State statutes provide broad authority for municipalities to supply water, individually and collectively. Open discussion of the issues involved in ensuring a reliable and affordable water supply requires an investment of time and resources, and is crucial to the success of any project. Any discussion on ways to promote cost savings in providing a water supply should also include a discussion of measures to promote smart growth to effectively utilize existing water infrastructure as an alternative to constructing costly new water facilities, as well as a discussion of measures to reduce the sources of water contamination and the resulting need for costly water treatment facilities. The old adage, "an ounce of prevention is worth a pound of cure," applies here.

The information provided in this article is designed as a guide for municipalities, and does not completely discuss the various legal issues surrounding local governments or the water supply services they provide. This information is not a substitute for professional legal advice and local officials should consult with their attorneys.

Endnotes

1. *People ex rel. Farley v. Winkler*, 203 N.Y. 445, 449, 96 N.E. 928 (1911).
2. See Chapter 794 of the Laws of 1954 authorizing county sewer districts, Chapter 429 of the Laws of 1955 authorizing county drainage districts, Chapter 1018 of the Laws of 1963 authorizing county refuse districts, Chapter 388 of the Laws of 1980 authorizing county wastewater disposal districts, Chapter 761 of the Laws of 1981 authorizing county lake protection and rehabilitation districts, and Chapter 622 of the Laws of 1984 authorizing county water quality treatment districts.
3. N.Y. COUNTY LAW, art. 5-A.
4. N.Y. COUNTY LAW § 263.
5. N.Y. COUNTY LAW § 253-a.
6. N.Y. CONST. art. VIII, § 2.
7. N.Y. TOWN LAW § 198(3)(b); *see also* Ops St Comp 2005-07.
8. N.Y. TOWN LAW § 198(12); *see also* Ops St Comp 95-29.
9. N.Y. TOWN LAW § 198.8.
10. N.Y. TOWN LAW § 190-a.
11. Bill Jacket—See correspondence dated July 10, 1966, from William K. Sanford, Executive Secretary of the Association of Towns, to Gov. Nelson A. Rockefeller.
12. Chapter 716 of the Laws of 1968.
13. Chapter 567 of the Laws of 1973.
14. N.Y. TOWN LAW, § 209-q.1.
15. N.Y. TOWN LAW § 209-r.
16. N.Y. TOWN LAW § 197-a.
17. N.Y. GEN. CITY LAW § 20(2).
18. N.Y. GEN. CITY LAW § 20(7).
19. N.Y. GEN. CITY LAW § 20(7-a).
20. N.Y. VILLAGE LAW § 11-1120.
21. Attorney General Informal Opinion 99-31.
22. N.Y. VILLAGE LAW § 11-1100.
23. N.Y. VILLAGE LAW § 11-1124.
24. N.Y. VILLAGE LAW § 11-1126.
25. N.Y. GEN. MUN. LAW § 120-t.
26. N.Y. GEN. MUN. LAW, art. 5-C; N.Y. COUNTY LAW § 253-a.
27. N.Y. GEN. MUN. LAW, art. 5-B.
28. N.Y. UNCONSOL. LAWS, tit. 16, ch. 19.
29. N.Y. TRANS. CORP. LAW, art. 4.
30. N.Y. GEN. MUN. LAW § 120-u.
31. N.Y. GEN. MUN. LAW § 120-u(12).
32. N.Y. PUB. HEALTH LAW § 1125.
33. N.Y. PUB. AUTH. LAW § 2880-a.

Assemblyman Sam Hoyt is Chair of the Assembly Local Governments Committee and Assemblyman Darrel J. Aubertine is Chair of the Legislative Commission on State-Local Relations.

Some Observations on Annexation, and a Hearty Welcome to the Asian Century

By Kenneth W. Bond

The Great Annexers

Under New York law, annexation is the legal process in which one municipality incorporates land into its boundaries from another. Each state has its own procedural regime for annexation, which varies among the states. In its broadest application, annexation can be an effective process to enlarge urban areas and create more centralized local government. By eliminating smaller and overlapping local jurisdictions, the cost of government can be reduced and economic development and infrastructure needs addressed through regional planning. However, in New York, and most states, the decision to become annexed is left to the residents of the affected area; uniformly these voters reject annexation when cities attempt to expand their footprint.[1] Thus, the promise that local governments might consolidate on their own initiative to provide public services more efficiently and with less friction in accomplishing public purposes goes unfulfilled. New York's local government structure leaves the state unprepared to compete in the 21st century global marketplace.

History proves the point, however, that annexation produces good results for governments and business in the long run. Consider America's two great annexers: presidents Thomas Jefferson and James K. Polk.[2] Jefferson penned the Louisiana Purchase in 1803, paying $15 million to Emperor Napoleon (who needed the money for his own annexation effort in Europe) and gave the United States the lands west of the Mississippi to the Idaho-Montana border running through Texas to New Orleans. Polk didn't pay Mexico until 1848 after Zachary Taylor (Polk's successor in the White House) chased General Santa Anna back to Mexico City, and then claimed everything north of the Rio Grande (New Mexico and Arizona). But that's not all. Polk's agents fomented revolt in California, forming the Bear State Republic, which drove out the Mexicans and joined the Union in 1850.

These early national leaders employed money, guile and force to bring about America's manifest destiny. Without their bold moves the North American continent might well be chopped up into squabbling little "republics" like the South American. Who would have been there to stop the annexation of Europe into Germany in the 1930s and 1940s had there not been a very big and powerful United States?

Annexation in Business Corporations

In the world of business, annexation is a way of daily life we take for granted. Wall Street thrives on mergers, spin-offs, and consolidations to create entities which do what they do more efficiently and profitably and discard things which don't make money or lose or fail to gain appeal with consumers. For example, we love A-1 Sauce on our steaks, but do not consider that it was originally made in England by a company which went bankrupt, which was annexed by Heublein & Brothers, which was annexed by R.J. Reynolds Tobacco, which was spun-off to Kraft Foods, which was annexed by R.J. Reynolds, which sold Kraft to Philip Morris (now Altria Group, Inc.). We enjoy Dr. Pepper as a unique refreshment of southern origin but hardly recall that it was annexed by Cadbury Schweppes after a merger between Dr. Pepper and Seven-Up and produced under license to Coca-Cola or Pepsi bottlers. We admire the new four-door Jeep Wrangler, but we don't remember that the company which created the Jeep for the U.S. Army (Willys Motors) was annexed by Kaiser-Frazer, which was annexed by American Motors,[3] which was annexed by Chrysler Corporation, which was annexed by Daimler Benz and spun out on its own again in 2007.

We enjoy A-1 Sauce, Dr. Pepper and Jeeps today because they were annexed by larger corporations with the money, guile and force sufficient to market and produce goods and services profitably on a global basis. Annexation creates value, wealth and power, and advances civilization. It is never a painless process, but the resulting whole is usually greater than the sum of the separate parts.

Annexation in Municipal Corporations

In the world of municipal corporations, there is no better example of annexation than the City of New York. By combining the counties of New York (Manhattan), Queens, Kings (Brooklyn), Bronx and Richmond (Staten Island) a huge metropolitan area was created at the dawn of the 20th century which enabled one municipal government to plan and construct a unified port system, a central public education system, a water resource and distribution system reaching hundreds of miles into the Catskills, and a coordinated subway system which provides the most efficient business commuter transportation network of any major city in the world. The New York City example has been followed by Baton Rouge, Nashville, Jacksonville and Indianapolis among major U.S. cities which have grown substantially in the 20th century through consolidating counties or neighboring municipalities[4] Likewise, Texas' major cities—Houston, Dallas, and San

Antonio—have grown substantially through involuntary annexation.[5] These cities today are wealthy and powerful; they are home to headquarters of global corporations; their museums, libraries, symphony orchestras and research universities advance civilization.

In New York, outside New York City, consolidation of local governments through annexation, consolidation or other means has never gained traction. As New York's economic prowess reached its historical zenith in the 1950s and 1960s, the large upstate cities were in no position to annex surrounding towns and villages. Instead, they became stranded by adjacent suburban towns and villages whose new residents, nestled in leafy developments, fled "those people" by moving into their urban neighborhoods and sending their children to the public schools. Had Rochester, Buffalo, Syracuse, Binghamton or Utica wanted to emulate the New York City consolidation example by the 1960s to capture the tax-rich lands of the sprawling bedroom communities developing outside their borders, it was too late. In 1964 Governor Rockefeller signed the Home Rule Amendment[6] to the New York Constitution thereby assuring forever that future efforts to expand the territory of the State's upstate urban centers by annexation to make them major metropolitan centers able to compete effectively in the 21st century global economy were doomed.

"In New York, outside New York City, consolidation of local governments through annexation, consolidation or other means has never gained traction."

The Home Rule Amendment: Article IX, New York Constitution

Article IX is a camp follower of model home rule provisions for state constitutions designed in the 1950s to delineate the division of powers of the state versus local governments in legislating matters of local interest.[7] These home rule provisions, of which Article IX is one, actually grant local governments pro-active powers to initiate local interest legislation, without regard to statewide concerns, and with little risk of state intervention. Among these home rule powers in New York is the power to annex territory from one municipality to another.[8]

At the time of its enactment, Article IX accomplished two things: (i) it consolidated various local law provisions in the city, village, town and county laws into one comprehensive procedure for enacting local laws, including annexation, and (ii) it specified those substantive areas of law which were not pre-empted by the state and granted power to municipalities to legislate in these areas through comprehensive procedures which require voters' ultimate determinations. Article IX requires that all New York municipalities are subject to the same uniform annexation procedure. There is nothing which might distinguish different annexing entities (cities v. counties; large towns v. small villages) or areas to be annexed (entire municipalities v. contiguous development areas within an adjoining municipality) in applying the procedures for annexation. Thus, Article IX's inflexibility has assured its inapplicability given the demographics in New York since its enactment. The procedural codification of the annexation power granted municipalities in Article IX is set forth in Article 17 of the General Municipal Law ("GML").

Article 17 is typical of the most stringent state annexation legal procedures. An annexation proceeding is commenced by a petition of residents or property owners in the area to be annexed[9] filed with the governing board of the municipality in which the area to be annexed is located, with a copy sent to the governing board of the annexing municipality. Within twenty days of receipt of the petition, the governing boards of both municipalities must publish a notice and mail it to the property owners in the area to be annexed setting forth the date, time and location of a public hearing at which the proposed annexation will be considered.[10] As a *sine qua non* of annexation, the annexing municipality must assume the debt and collect the real property taxes of the issuer and taxing jurisdiction, respectively, with respect to the area to be annexed.[11] Within ninety days of holding the hearing, the governing board of each affected municipality is required to determine by total voting strength majority vote whether, *inter alia*, the proposed annexation is in the "over-all public interest."[12] If all agree, the governing boards must prepare an order and file same with the clerks of the affected municipalities.[13] If one governing board does not agree on the "over-all public interest" determination, or a party with standing brings a CPLR Article 78 action against the annexing entities, the annexation must be reviewed by a panel of three referees in a special proceeding brought in the appellate division. The panel must submit a report (findings of facts and conclusions of law on the sole question of whether the annexation is in the over-all public interest) to the court within thirty days after the matter is finally submitted (the referees are authorized to conduct a *de novo* review trial for all practical purposes). The appellate division then conducts oral argument on the referees' report and makes its own determination, "substituting its judgment for that of any of the governing boards" of the affected municipalities.[14] And so, after all that, should the referees and the court agree with one or more governing boards that the proposed annexation is in the over-all public interest, we should have annexation. Right?

No. Annexation is a right granted under the Home Rule Amendment subject to voter approval in all cases.[15] In New York, it is strictly a matter of local interest and

not viewed in any way as a matter of statewide concern. Imagine if Presidents Jefferson or Polk had to deal with something like Article IX in annexing Louisiana or Texas.[16] Would any corporate merger take place with shareholder consent if the price paid for the acquiring company did not net a tidy profit for its shareholders? To see how effective annexation has been in New York, simply read the names of the parties in all the cases annotated in Article 17 of the GML (McKinney's). Every municipality captioned in the cases is in existence today.

What Home Rule Hath Wrought

Given the social-economic trends present and developing in cities in the Northeast in the 1960s, the annexation process ushered in by the Home Rule Amendment had, upon reflection a half century later, the sinister effect of promoting economic and perhaps racial segregation. As blacks and minorities flooded Northeastern cities after World War II, returning GIs and their budding families wanted nothing more than to get out of the "old neighborhood" into the Azalea Falls, and later the McMansion Heights, springing up in developments outside the city. With the construction of the Interstates and gasoline at under $.50 per gallon in the 1950s, dad could commute to work while mom stayed home with the kids who attended brand new schools—far away from "those people." The older cities were granted urban renewal powers funded with urban development action grants ("UDAGs")[17] to address housing and infrastructure issues for people left out or kept out of the suburbs. New York's upstate cities began to die.

One might have thought that the apparent segregative effects of "affected area referenda-based annexation" would result in challenging the constitutionality of the Home Rule Amendment and Article 17, particularly on equal protection grounds under the 14th Amendment. However, the impact of *Brown v. Board of Education*[18] and the school desegregation funding cases did not have the effect of knocking out annexation laws which foster the establishment of permanent boundaries between dead or dying cities and the Azalea Falls / McMansion Heights. Equal delivery of educational services based on race never required the annexation or consolidation of school districts to accomplish the desired end of equal opportunity for education. Likewise, equal delivery of municipal services based on wealth as a suspect classification, a far better argument to challenge affected area referenda-based annexation, while briefly recognized in California in the 1970s, was rejected in the federal system.[19] As we know from *Kelo v. City of New London*,[20] the federal judiciary is not likely to disturb local determinations arrived at through colorable proceedings, and will look hard to find a party that lacks standing to sue in cases brought on federal questions but dealing with state law matters.[21]

City leaders were not unaware of these trends and the damaging impact they would have on the long-term socio-economic health of their communities. They envied the newly tax-rich lands of the Azalea Falls and McMansion Heights and sought to expand urban areas through annexing these areas, but to no avail. Under New York's annexation laws, where the tyranny of democracy is in the hands of every area to be annexed (which was always in a potentially well organized town or village), annexation failed. Which persons would vote to be taxed to pay for the needs of "those people" left in the cities after working so hard to buy a house and a car in the suburbs for a better standard of living in the individual pursuit of the American dream?

For example, under present law, assume the City of Leaky Sewers, located in Lavender County, wishes to annex the Town of McMansion Heights, including the town's incorporation village, Azalea Falls, through a petition of a requisite number of qualified voters of the town and village and an ordinance approving the annexation by the Leaky Sewers common council. Doubtless, the Azalea Falls trustees and possibly the McMansion Heights town board would bring an action in the appellate division under § 712 of the GML seeking a judicial determination that it is not in the over-all public interest to approve the annexation. Opponents of annexation would argue (i) why pay for Leaky Sewers' problems, (ii) we don't want to lose our local control through our trustees and town board, and (iii) we don't want to lose all our government jobs. Proponents of annexation would argue (i) services will be uniformly delivered at reduced per unit cost, (ii) Leaky Sewers will be developed into a sophisticated small city with new restaurants, an expanded university, a revitalized museum, a new hotel and condominium developments and neat retail shops, and (iii) we'll reduce the amount of government and cost to the taxpayers. However, if the governing boards' basis for determining that the annexation of the Heights and the Falls is in the over-all public interest has been that a consolidated metropolitan government would enhance municipal service delivery and regional planning, the judge would have had no trouble throwing out the determination. Appellate division proceedings indicate that annexation has been sanctioned only for limited short-term objectives, i.e., to facilitate condominium developments.[22] Apparently, the argument that consolidation through annexation of two or more municipalities will achieve efficiency and competitiveness has never been presented for adjudication. Further, not surprisingly, the New York Court of Appeals has held that environmental review under SEQRA is necessary in determining if the annexation is in the over-all public interest.[23]

Annexation in Other States

As scholars have pointed out, state annexation laws fall roughly into five categories:[24] (i) popular determination, which is petition by affected property owners or direct election by the affected area and / or annexing municipality, (ii) unilateral action of the annexing municipality (involuntary annexation), (iii) judicial determination, oversight and review, (iv) independent boundary review board or commission, and (v) special state legislative determination. Some states use a combination of these methods; some employ different annexation methods to the particular facts of the area to be annexed.[25] In all state annexation laws, a critical fact required to proceed is that the area to be annexed is contiguous to the annexing municipality. In states where involuntary annexation applies, another critical fact is that the area to be annexed be an "unincorporated area," not an incorporated municipality. These facts exacerbate effective deployment of New York's annexation laws because (i) the multiple and small nature of villages and towns while economically related to a city are often not contiguous, and (ii) there are no "unincorporated areas" in the state—sparsely populated or undeveloped areas that would be unincorporated areas of a county in most states are incorporated in New York as towns—which are the primary candidates for involuntary annexation in other states. Further, Article 17 of the GML and the Home Rule Amendment, unlike many states, do not provide a choice of annexation methods; i.e., annexation initiated by a city council which might stimulate urban growth and open an approach toward metropolitan government is not an option.

Annexation is easiest to accomplish where the state law permits it involuntarily with respect to the affected area through a resolution or ordinance of the initiating municipality's governing board. Take the case of North Carolina, which currently enjoys the highest rate of urban growth through annexation among the states.[26] While there has been opposition to North Carolina cities' aggressive urbanization of unincorporated areas contiguous to towns and cities, state policy declares that sound urban development is essential for economic development such that a town or city may expand its boundaries solely on the action of a municipal governing board to (i) generally develop the annexed area for urban uses (ii) where basic services will be provided within a reasonable time.[27]

A variation of involuntary annexation which spreads the process over a number of years is found in Texas and referred to as "limited purpose annexation."[28] In this model, certain cities may annex a contiguous "unincorporated area" for the limited purpose of planning and zoning in the affected area to prevent uses incompatible to city zoning rules and protect environmental resources. In the first year of limited purpose annexation, the city must develop a land use plan for basic services in the affected area. In the second year, the city must develop a long-range financial forecast for the affected area and identify its future needs for capital improvements. In the third year, full city services must be provided in the affected area (police, fire, water, sewers, etc.). The only vote permitted is by petition of a majority of the land owners or registered voters in the affected area submitted between the first and third year to the annexing municipality for "disannexation."[29]

While a broader review of state annexation laws is beyond the scope of this article, the illustrations from North Carolina and Texas demonstrate that some states, particularly in the South and West, have policies which encourage urban growth and the creation of metropolitan government through annexation without primary regard to the local interest in the affected area. In other words, orderly growth and development of local government is made a matter of statewide concern. By virtue of the Home Rule Amendment, New York is precluded from establishing a statewide policy on annexation and, to that extent, the reorganizing of the state's local governments.

Annexation as a Matter of Statewide Concern

There are several reasons why annexation should be reconsidered a matter of statewide concern. First, as North Carolina demonstrates, sound urban and regional development under state supervision is essential to economic development.[30] Multiple local governments, each with its own land use and economic development powers, which inhabit a single metropolitan area, cannot effectively coordinate the development of large private sector capital projects. In New York, programs like Empire Zone incentives, while well-intended, attract only small projects which have questionable results in terms of increasing permanent employment, reducing blight and increasing property values.[31] To attract large projects which would employ hundreds of new persons and add substantial facilities, the approach has to be led at a higher level of government under state-mandated criteria which supersede powers granted municipalities under the Home Rule Amendment. Second, while the demographic trend has been to exit cities for the past half century, there is evidence that healthy cities are attracting the young and the affluent back from the suburbs,[32] which may be better prepared to provide essential municipal service than improvement districts in towns or smaller suburban municipalities.[33] However, in New York, this point begs the near impossibility of upstate cities to expand their footprint beyond historic borders on account of the veto power of persons residing in contiguous suburban towns and villages under the state's annexation laws. Third, some scholars point out that areas incorporated into cities should be guaranteed the right to receive equal essential services.[34] This point is best applied in states, such as Texas, where cities may unilaterally annex contiguous rural areas to be developed over many years; or applied in reverse in a state like New York, where tax-rich suburban towns and villages have left inner cities

with declining locally derived revenue sources. As noble as this policy may be, applied to or from the city, it is not enforceable as a constitutional right under equal protection theory.[35]

Welcome to the Asian Century

The most important reason annexation should be a matter of statewide concern is that New York, and the rest of America, lives in the Asian Century.[36] One only has to read the daily financial news to learn that China or India or Russia are growing economically much faster than the United States or Western Europe. Their cash-rich banks are now investing outside their respective regions;[37] their growing corporations will in the not distant future follow mature Japanese corporations to headquarter and manufacture in the United States. Unless New York addresses its local government framework, the next major Asian infusion of private sector capital in the United States will continue to go to states in the South and West.

New York's annexation laws are designed to protect persons and families from the encroachment of undesirable neighbors through the pretext of extending democratic principles to land-use outcomes. This may have been popular policy when post-war families were spreading into the suburbs, but today these laws ensure that any broader interest of the state in enlarging and strengthening the planning, economic development, and infrastructure powers of local governments is entirely frustrated. As the Urban Land Institute has recently pointed out,[38] the minutiae of democratic proceedings required by multiple layers of state and local government in the United States to affect land-use decisions is a negative factor to global corporations in making decisions to expand their infrastructure. It does not compare well with developing countries in Asia now building wealth, and growing much faster than the U.S. economy, on government models using familiar, time-tested command and control regimes. Consider two examples. From 1932 to 1937 Joseph Stalin constructed the 128 kilometer Moscow-Volga Canal, which connects the Moskva River near Moscow to the Volga River in the north, providing Moscow access to the White Sea and the Baltic Sea and half of Moscow's water supply.[39] It was built through central state planning using, essentially, slave labor, and the project buried everything—including entire villages—in its path: no one got a vote on where the canal went; there were no environmental review proceedings. Today China is constructing the Three Gorges Dam on the Yangtze River, the largest hydroelectric dam in the world, through central state planning at a cost in excess of $(US)22 billion.[40] Although the dam will provide power and flood control, it will displace 4 million people from the banks of the Yangtze. These folks are supposed to be "relocated" with government aid, but they don't have a vote on where they are going. Who knows about the environmental review proceedings?

In the global world we now live in,[41] it is difficult to imagine how New York, with its constitution and statutory provisions for annexation, can compete for capital-intensive projects coming from developing global corporations arising in the Asian century. Fifty years after much of Japan was rendered an atomic wasteland, Japanese companies are investing plant and equipment and creating jobs in the United States, but in North Carolina[42] and Texas,[43] not New York. It would be presumptuous to suggest that those states' annexation laws, briefly outlined herein, made the difference in where Toyota or Honda put its money, but the ability of the cities of San Antonio and Burlington (NC) to expand their borders under state law to meet the needs of central planning for large capital projects, employing hundreds, had to be a positive factor.

A state which is losing its thirty-something-year-olds at an alarming rate[44] creates more public sector jobs than private sector jobs upstate,[45] and levies the highest property taxes of any state in the Union,[46] should probably seriously consider a modern overhaul of its Constitution and statutes. Someone from another planet reading New York's Constitution today would expect us to be driving around in Packards, Studebakers and Nashes, and would be surprised to learn we regularly use fax machines, cell phones and the Internet. Yet it is the lack of friction in the economic development laws of growing economies in Asia empowered by technology, and the more accommodating annexation laws in states like North Carolina and Texas, which should concern us. Our complex and restrictive powers and operations of state and local governments place New York in an increasingly uncompetitive position in the global economy. Although the New York State Constitution provides for periodic conventions to update its provisions, the last major overhaul to the State Constitution was in 1938.[47]

So How Do We Fix It?

To some extent New York has enacted certain half-measures since the 1960s to address more efficient and competitive local government. With certain limitations, the GML authorizes joint operations and financing of capital projects by and among municipalities.[48] School districts are aided regionally in areas like special education through boards of cooperative educational services, each comprised of several contiguous school districts,[49] and occasionally they merge and consolidate.[50] On a limited and completely voluntary basis villages can evaporate into their respective towns; with special state legislation, villages and towns have formed a unitary government. To induce the use of these powers, in 2005 the Legislature began putting up several million dollars for grants to local governments to plan for cooperative operations under the rubric of "shared services."[51] And, finally, the Gover-

nor has established a commission to study ways to make local governments more efficient and competitive.[52] Cruel but true, the efficiency part of the Governor's commission's inquiry is not hard to discern: reduce the number of people employed by government, reduce their pension and retiree health benefits, reduce the number of governments and centralize service delivery at the city and county level, make public education a function of cities and counties, and privatize certain functions carried on as state or local government enterprises—water distribution, bridges and tunnels, and the Thruway. However, the popular appeal of such radical efficiency moves is such that any elected public official who might espouse them would find her/himself working in the private sector or unemployed after the next election. We love our state and local government supported economy. But how will we pay for it in the future?

The answer lies, in part, in the state's becoming competitive in attracting the capital being produced during the Asian century. In the 20th or American century, Wall Street has paid for it and still will to a major extent. But in the expansion of global capital finance, more deals are now done in London than New York. New Yorkers require another engine to drive the upstate economy: attracting the new capital from the players in the Asian century. Modernizing our annexation laws would help move toward that objective.

Assuming our government leaders would consider amending the State Constitution, disconnecting annexation laws from the Home Rule Amendment to develop metropolitan areas around urban areas through state planning would be a good place to begin. The Home Rule Amendment may need only a slight incision to loose selective annexation powers from its grip. Mere papering over the Home Rule Amendment with "authority reform"-type legislation is likely to be ineffective and simply creates paperwork. Instead, enabling legislation which induces and then requires cities, towns and villages, probably within existing county boundaries, to either form a single metropolitan government in part or unite the entire county, and establish central planning and financing powers may be effective. Imagine the City of Leaky Sewers (renamed Lavender City), Azalea Heights and McMansion as a single unit of government comprising the urban areas of the county and attracting wind turbine and solar panel manufacturers from India and China.

Such bold moves would require lots of money to phase out existing governments, retooling boards of trustees and town boards into "advisory boards," and former municipal corporations into administrative units. But we have models available from General Motors and other corporations which have had to shrink their businesses. It would require lots of guile to provide the leadership and make the case politically for metropolitan government. And ultimately it would require the force of state law to make it happen involuntarily, leaving voters the right vote to "disannex." But we have the annexation laws in North Carolina, Texas and other states which are having successful results with involuntary annexation and limited purpose annexation which can be phased in over a period of years. It would be nice if Jefferson, Polk, or Seward were around to help us out on this one. But we will have to find our own "great annexers" in the future.

Endnotes

1. Daniel R. Grant, The States and the Urban Crises 65 (Alan K. Campbell ed., 1990).
2. William Seward, Presidents Lincoln and Johnson's secretary of state (and New York governor and U.S. senator) makes runner up for buying Alaska from the Russians (Tsar Alexander II needed the money and feared a British takeover in the region) in 1867.
3. Run for many years in the 1950s and 1960s by George Romney, father of Mitt Romney.
4. *Supra* note 1.
5. *Id.*
6. N.Y. Const. art. IX, § 1.
7. Jefferson B. Fordham, Model Constitutional Provisions for Municipal Home Rule (1953).
8. N.Y. Const. art. IX, § 1(d); *see also* N.Y. Gen. Mun. Law, art. 17 (2007) (these provisions do not apply to school districts).
9. N.Y. Gen. Mun. Law § 703 (2007) (providing that persons in the annexing entity have no right to petition for, and the governing board of the annexing entity has no right to commence, annexation on its motion).
10. N.Y. Gen. Mun. Law § 704 (2007).
11. N.Y. Gen. Mun. Law §§ 708, 710.
12. N.Y. Gen. Mun. Law §§ 705,711.
13. The over-all public interest test is met where the area to be annexed and the annexing municipality have a unity of purpose and facilities, meaning, *inter alia*, condominium developments in towns adjacent to villages with water and sewer works may become annexed to the village. *Village of Warwick v. Town of Warwick*, 393 N.Y.S.2d 47, 56 A.D. 928 (1st Dep't 1977); *Village of Ilion v. Town of Frankfort*, 690 N.Y.S.2d 606, 261 A.D.2d 952 (2d Dep't 1999). But if the annexing municipality has no specific plans for development and there is no current need for city services in the affected area (*City of Port Jervis v. Town of Deer Park*, 565 N.Y.S.2d 131, 169 A.D.2d 764 (2d Dep't 1991)), or both affected areas have their own municipal services (*Village of Saugerties v. Town of Saugerties*, 614 N.Y.S.2d 774, 201 A.D. 52 (3d Dep't 1994)), or annexation would avoid a town's zoning laws and the town would lose tax revenues (*Village of Spring Valley v. Town of Ramapo*, 694 N.Y.S.2d 712, 264 A.D.2d 519 (2d Dep't 1999)), there is no unity of purpose.
14. N.Y. Gen. Mun. Law § 712; *Town of Plattsburgh v. Town of Saranac*, 711 N.Y.S.2d 263, 274 A.D.2d 852 (3d Dep't 2000).
15. N.Y. Gen. Mun. Law § 713(1) (insinuating that if the judge hasn't put an end to this thing, the voters soon will).
16. Shall the people of France sell the areas known as "New France" to our ally, the former colony of our enemy, England, so that the Empire of France has sufficient francs to pay for the war against Austria-Hungary and Prussia? Shall the people of Mexico authorize the annexation of Texas, the New Mexico Territory, and California into the United States of America?

17. UDAGs are administered by the U.S. Department of Housing and Urban Development.

18. *Brown v. Board of Education of Topeka*, 347 U.S. 482 (1954).

19. *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971), *theory rejected in San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

20. 545 U.S. 469 (2005).

21. *Cuno v. Chrysler Daimler*, 126 S. Ct. 1854 (2006).

22. *Supra* note 13 (however, recall that even if an Appellate Division determination found that consolidation is in the over-all public interest, the voters in both municipalities must approve annexation).

23. *City Council of Watervliet v. Town of Colonie*, 3 N.Y.3d 508, 516 (2004) ("SEQRA promotes, rather than undermines, the public interest purposes of article 17 of the General Municipal Law and therefore conclude that General Municipal Law § 718 (5) does not exempt the annexation process from SEQRA review.").

24. Charles Tyler, *Municipal Annexation: A Reconsideration*, 6 Inst. for Pub. Service and Pol'y Res. 35-44 (1995).

25. Jamie L. Palmer & Greg Lindsey, *Classifying State Approaches to Annexation*, 33 St. and Loc. Gov't Rev. 60 (2001).

26. Edward S. Cherry, *Aggressive Urban Annexation and Conservation Site Protection in North Carolina*, 2005 Ann. ESRI User's Conf. (2005).

27. N.C. Gen. Stat. § 160A-24 to -58.28 (2007).

28. Tex. Loc. Gov't Code Ann. § 43.001 (2007).

29. Tex. Loc. Gov't Code Ann. § 43.033.

30. N.C. Gen. Stat. § 159-3. The North Carolina Local Government Commission closely oversees all financings of the states, counties, cities and towns, an outgrowth of defaulted bonds in the 1930s.

31. On October 17, 2007, the Citizens Budget Commission ("CBC") called for the elimination of the Empire Zone programs because it forgoes hundreds of millions of dollars in property tax revenues, lacks accountability, and condones "shoddy practices" in job retention and job creation. Citizens Budget Commission, Options for Budgetary Savings for New York State 32 (2007).

32. Winnie Hu, *Leaving the City for the Schools and Regretting It*, N.Y. Times, November 13, 2006, at A1.

33. Sam Roberts, *Census Shows More Black Residents Are Leaving New York and Other Cities*, N.Y. Times, September 12, 2007, at B1. It should be remembered that small cities and large villages own or control the bulk of water and systems in New York and frequently sell water and sewer services to outlying areas.

34. *See supra* text accompanying note 19.

35. Kenneth W. Bond, *Toward Equal Delivery of Municipal Services in the Central Cities*, 4 Fordham Urb. L.J. 263 (1976).

36. The "Asian Century" is a term used to describe the belief that if current demographic and economic trends in growth persist, particularly in China, India, and Russia, the 21st century will be dominated by Asian government and culture, similar to how the 20th century is referred to as the "American Century" and the 19th century is referred to as the "British Century." Countries in this region do not share the democratic traditions and concepts of personal liberty and the rule of law long established in the United States.

37. Rick Carew & Jason Leow, *China Makes Splash, Again*, Wall Street Journal, October 26, 2007, at C1 (reporting that state-owned Chinese banks are investing billions of (U.S.) dollars in banks and financial institutions in the U.S., the U.K., and South Africa).

38. Urban Land Institute and Ernst & Young, Infrastructure 2007: A Global Perspective (2007).

39. Wikipedia, Moscow Canal, http://en.wikipedia.org/wiki/Moscow_Canal (last visited Oct. 30, 2007).

40. Wikipedia, Three Gorges Dam, http://en.wikipedia.org/wiki/Three_Gorges_Dam (last visited Oct. 30, 2007).

41. Thomas L. Friedman, The World Is Flat: A Brief History of the Twenty-First Century (2005).

42. A subsidiary of Honda will build a $27 million jet aircraft plant with GE in Burlington, NC and create 140 jobs with average annual pay of $62,000 plus benefits. http://world.honda.com/news/2007/c070717Honda-Aero/.

43. Toyota Motor Manufacturing, Texas, Inc., established in 2003, employs 1,955 persons and has invested $780 million in plant and equipment in San Antonio, TX. http://www.businessfacilities.com/bf_03_09_special1.asp.

44. Sam Roberts, *Flight of Young Adults Is Causing Alarm Upstate*, N.Y. Times, June 13, 2006, at A1.

45. Business Council of New York State, Inc., Ahead of the Curve (2006).

46. Office of the NYS Comptroller, Division of Local Government Services and Economic Development, Property Taxes in New York State (2006).

47. *See generally* Eugene W. Harper, Jr., Symposium: *Proposals to Strengthen New York State Municipal Finance Laws*, Fordham Urb. L.J. 1 (1979) (discussing constitutional reform).

48. N.Y. Gen. Mun. Law § 119-m *et seq.*; *see also* N.Y. Local Fin. Law § 15.00.

49. N.Y. Educ. Law § 1950.

50. N.Y. Educ. Law §§ 1501-27; *see also* N. Colonie Cent. Schs., *Voters Overwhelmingly Approve Annexation Referendum*, October 11, 2007, http://www.northcolonie.org/annexation/annexation.htm.

51. Shared Municipal Services Initiative Program, administered by the New York Department of State, provides grants to local governments to reduce the cost of government and improve the local business climate.

52. This is the Commission on Local Government Efficiency and Competitiveness., whose Web address is http://www.nyslocalgov.org.

Kenneth W. Bond is a partner with Squire, Sanders & Dempsey L.L.P., New York, New York, and an adjunct professor at Albany Law School.

The Countywide School District: Cost Saving Measure; Extremely Difficult to Achieve

By Edward W. McClenathan

Introduction

Faced with ever increasing costs, and taxpayers at near revolt stage, many local governments and municipalities in New York State have entertained the idea of consolidating services with other local governments to help keep budgets and taxes in line. Snow plowing, water supply, and public safety services are typically considered for either vertical or horizontal consolidation. But when the typical New York homeowner gets the tax bills, it rarely is the local village, town, or county bill that is the most shocking—it is the school taxes, which are sometimes three to four times that of these other local taxing authorities. Any consolidation plan proffered to save taxpayers money by eliminating duplication of services is remiss if it does not include a discussion of consolidation of school district services.

Taking a typical example from Monroe County: the Town of Irondequoit's town taxes are $7.187084 per thousand of assessed value; its county taxes are $7.8462 per thousand. Residents in either of the town's two school districts (East Irondeqouit Central and West Irondequoit Central), however, will pay at least $28.53 per thousand in school tax.[1] Even if the town taxes could be *completely eliminated*, this would mean a tax savings to the Irondequoit homeowner of only roughly 16%. Similar savings could be realized by reducing the school district tax rate by about a quarter without touching the town taxes. Which is likely more feasible—reduction of the town tax rate by 100% or finding enough consolidation solutions in the school districts to reduce a tax burden by a quarter?

School districts can realize cost savings through consolidation in a number of ways. All schools need common supplies, like paper and other office supplies, and each provides common services, like student meals. Economies of scale would seem to easily apply to these types of services. Less obvious (and perhaps less manageable) opportunities are sharing of buildings and facilities for sports or other extra-curricular activities or the sharing of a busing fleet, or better yet, multiple districts contracting out for a common busing service. In a typical county which may house over a dozen school districts, it seems the opportunities for cost saving consolidation abound.

Rather than analyze specific areas of consolidation that school districts might use to reduce costs, this article will focus on a larger consolidation concept in the context of public schools—a regional or countywide school district. Accepting that school districts afford ample opportunity for consolidation through economies of scale, this article will attempt to look at the legal methods and barriers to its logical extension—not just looking at consolidating school district services, but at consolidating school districts themselves.

Methods of Consolidation

The New York State Legislature has provided methods for affecting district consolidation in the Education Law, but the mechanism for such consolidation comes in varied forms. A step-by-step approach is best, and begins with identifying the types of school districts one wishes to combine or consolidate, and determining if a consolidation, annexation, or centralization, or a combination of these is the method by which the new district will be created.

New York State has five legally recognized types of school districts: central school districts, union free school districts, central high school districts, common school districts, and city school districts. City school districts are further broken into two types: cities above 125,000 in population[2] and below 125,000 in population.[3] Common districts[4] are the oldest and are rare, numbering fewer than a dozen remaining in the state.[5]

Central high school districts are unique to Nassau County and number only four.[6] The three remaining district types—city, central, and union free—are the most common and will be the focus of this article.

The next step in creating a countywide school district is determining where and with which school districts to start. It is important to note at this point there are several structural barriers to the creation of such a district in New York State. There currently are no provisions for the consolidation, annexation, or centralization of any of the "Big 5" School Districts–that is the districts of the cities of Buffalo, Rochester, Syracuse, New York City, and Yonkers.[7] These are the only districts that currently fall in the city school district over 125,000 in population category. These districts do not have independent taxing and indebtedness authority; rather, they rely on their city governments for appropriations and overall budget approval.[8] As such, the counties of Erie (Buffalo), Monroe (Rochester), Onondaga (Syracuse), and Westchester (Yonkers) cannot have a countywide school district without statutory change from the State Legislature. The New York City School District encompasses the five boroughs (counties) and effectively already has a "countywide" district.

Further, no city school district under 125,000 in population can be centralized or annexed.[9] In order to consolidate with a city school district, the city school district must essentially annex adjacent school districts.[10] This process may expand beyond the immediately adjacent districts to those districts contiguous to those adjacent with the city district. This can continue until another city school district is met. Because city school districts cannot be consolidated with each other,[11] if a county contains two (or more) city school districts, it will be unable to attain a countywide district. So, counties with two or more city school districts, and the Big 5 counties noted above, are not candidates for a countywide school district. When the appropriate county is found however, the process can be accomplished in checklist fashion.

Types of Consolidation

There are three types of reorganization of school districts: centralization, consolidation, and annexation.[12] Annexation is further available in two forms—annexing to an existing union free school district[13] and annexing to an existing central school district.[14] Annexation is the process by which no new school district is created; rather, another district is absorbed into the annexing district. Consolidation is also available in two forms—a method for union free and common school districts[15] and a method for city school districts.[16] As will be seen below, the consolidation process for city school districts resembles annexation in purpose and effect. Consolidation of union free and / or common school districts results in the creation of a new school district, while consolidation of a city school district does not.

General Overview of the Process

After determining that you have a county in which creation of a countywide school district is possible, a district by district approach is necessary to identify which type of reorganization method is to be used. The following chart may be helpful.

There are several common features of each type of reorganization, most notably that the process involves both state and local participation. While technically most reorganizations are initiated by the Commissioner of Education, typically the Commissioner will not take any action without a strong showing of local support from the affected districts.[17] The general process for each type of reorganization is summarized below, followed by important legal steps which must be taken.

Centralization:

The creation of a central school district begins with the "laying out" of the new district by the Commissioner of Education. The act of laying out a new central district essentially constitutes a proposal made by the Commissioner of the residents of the affected area; it does not constitute the establishment of the district as an actual operating structure.

Although the Commissioner of Education may "lay out" a central district at any time he / she determines it educationally desirable to do so, in practice this power is exercised only after extensive study, evidence of support in the respective districts and upon recommendation of the respective boards of education and / or the District Superintendent. The new central district becomes operational only after the centralization order is approved by the qualified voters *in each school district* included in the centralization. If each district approves the order by a majority vote, the new district will begin operation on July 1, following the vote. If approval of the order is defeated in any district included in the proposed centralization, the new district is not created, and the

	City	**Central**	**Union Free**	**Common**
City	N / A	City Consolidation	City Consolidation	City Consolidation
Central	City Consolidation	Centralization, Central Annexation	Centralization, Union Free or Central Annexations	Centralization, Central Annexation
Union Free	City Consolidation	Centralization, Union Free or Central Annexations	Centralization, Union Free-Common Consolidation, Union Free Annexation	Union Free-Common Consolidation, Centralization, Union Free Annexation
Common	City Consolidation	Centralization, Central Annexation	Union Free-Common Consolidation, Centralization, Union Free Annexation	Centralization, Union Free-Common Consolidation

question may not be voted upon again for one year.

If the order is presented a second time, and is approved, the new district begins operation. If the order is defeated a second time—or if it is not brought to referendum within two years of the initial referendum—then the original order becomes null and void.[18]

Critical Legal Actions:

The Commissioner of Education must "make and enter" an order laying out the new proposed central school district.[19] Within ten days of laying out of the new district, the Commissioner must transmit a certified copy of the order to the clerk of each affected district, and the clerks must, within five days of receipt, post the order in five conspicuous places within the district.[20] After the Commissioner issues the order, a petition must be completed by the qualified voters of the proposed district formally requesting the Commissioner call a "special meeting" to determine if the new district will be established.[21] This special meeting is actually a referendum vote on the creation of the district which must be held in accordance with N.Y. Education Law § 1803-a(2). If a majority of the votes cast in each district (counted separately) approve the order, then a new central school district is created.[22] If, however, the order is not approved in any of the affected districts, then the order fails and cannot again be brought before the voters for one year, and if it is not brought within two years, or fails again after one year, the order is considered null and void.[23]

Annexation by a Central School District:

An annexation to a central school district, like centralization, begins with the issuance of an order by the Commissioner of Education after study of the proposed annexation, evidence of local support, and upon request of the affected boards of education and / or the District Superintendent.

The order is subject to permissive referendum in any of the affected districts. A referendum on annexation is held independently in each district requesting a vote, and ballots are counted on a district-by-district basis. The referendum must pass in each affected district for the order to become final.

If no petitions requesting a referendum are filed with the Commissioner within sixty days, or if a referendum approves the annexation order, the order becomes final. If a referendum is held, and the order is rejected by either district, the question may not be again presented for one year. If the proposition is passed by one district and not the other, only the district in which the proposition was defeated can revote.

If the order is not again presented within two years of the first vote, or if it is presented and again rejected, the original order becomes null and void. If the annexation is presented to referendum a second time and is approved, the annexation order becomes final. If approved, the reorganization will become effective on July 1 following the referendum unless otherwise specified.[24]

Critical Legal Actions:

Similar to centralization, the Commissioner, in a central annexation, must issue an order to annex the territory of an adjacent district and transmit a certified copy to the clerks of the affected districts within ten days of the order.[25] The clerks must post copies in five conspicuous places within five days of receipt.[26] The voters of any affected school district may trigger a referendum on the annexation by petitioning the qualified voters of the district within sixty days of filing by the district. Failure to file results in automatic approval of the annexation by that district.[27] If a referendum has been ordered, the Commissioner must publish notice of this in local newspapers and ten conspicuous places within the district at least ten days before the referendum.[28] As with centralization, if the referendum passes each district, the annexation becomes effective. Districts which did not pass the referendum are the only districts which have the opportunity to vote again after one year and before two years.[29]

Union Free Annexation:

An annexation to a union free school district, like a centralization, begins with the issuance of an order by the Commissioner of Education after study of the proposed annexation, evidence of local support, and upon request of the affected boards of education and / or the District Superintendent.

An Annexation Order in accordance with Education Law Section 1705 must be approved by the qualified voters in each school district included in the Order. If each district's residents approve the Order, the reorganized district begins operation July 1, following the vote.

If the order is rejected by either district, the question may not be again presented

for one year. If the proposition is passed by one district and not the other, only the district in which the proposition was defeated can revote.

If the order is not again presented within 2 years of the first vote, or if it is presented and again rejected, the original order becomes null and void. If the annexation is presented to referendum a second time and is approved, the annexation order becomes final.[30]

Critical Legal Actions

The legal actions required for an union free annexation are a hybrid of the centralization and central annexation processes. The Commissioner must issue an order to annex the territory and transmit a certified copy within ten days to the appropriate clerks.[31] However, within thirty days the Commissioner must call special meetings to decide upon the annexation.[32] This occurs without the need for petition of electors. Notice of the special meeting must be published in local newspapers and posted in ten conspicuous places at least ten days before the special meeting.[33] If the order passes, the annexation becomes effective; if not, only districts not passing the order in the first vote have the opportunity to vote again after one year but before two years from the original vote.[34]

Union Free/Common District Consolidation

Unlike the previous types of reorganization, union free/common consolidation is initiated by petition of the voters of the affected districts. Petitions with signatures of at least ten voters in each affected district are submitted to the Commissioner requesting approval of the proposed consolidation.[35] The respective boards of education must submit to the Commissioner supporting documentation, including a consolidation plan, approved board resolutions supporting the consolidation, and evidence of support from the District Superintendent.[36] Upon approval of the Commissioner, the respective boards must publish notice of a special meeting to be held not fewer than twenty days and not more than thirty days from publication to approve the proposed consolidation.[37] Additionally, notice of the special meeting must appear at least once per week for three consecutive weeks at least twenty days before the meeting and must be posted in five places within each affected district.[38]

If every affected district separately approves the consolidation, it becomes effective. If any district does not approve the consolidation, the matter cannot again be addressed for a minimum of one year.[39]

City Consolidation:

Quite different from the aforementioned reorganization methods, and more resembling annexation, consolidation with a city school district (which is the only consolidation/reorganization option when one of the districts is a city district) originates from the initiating district's voters approval of a proposition to consolidate.[40] The city school district's board of education must then approve a resolution consenting to the consolidation, which then triggers the Commissioner's order to consolidate.[41] At that point the districts have been consolidated and the city school district now encompasses the formerly adjacent district. This applies to single districts or multiple districts contiguous with districts adjacent to the city district that have each approved consolidation propositions.[42] This method seems the most efficient of the reorganization mechanisms, and is likely the best method for slowly creating a countywide school district.

The Big Reason to Consolidate

At the heart of all consolidation plans is the desire to provide better services at lower costs. The costs referred to are typically the costs taxpayers see in the form of their annual tax bills from local taxing authorities. School district tax bills are typically the largest (and most shocking) to the homeowner-taxpayer. While other reasons may exist to consolidate school districts, and strong arguments against school district consolidation abound, likely the single most persuasive argument for consolidation is New York State's incentive program for consolidation. New York State, in an effort to both encourage consolidation and help defray costs of consolidation, increases state aid to a newly consolidated (or annexed or centralized) district by 40% over the new district's standard state aid formula amount.[43] This increased funding amount remains for five years, and then is reduced by 4% each year for the next nine years, providing increased funding to the newly created district for fourteen years.[44] Rarely will you find a local government that would not want to reduce the taxes that its homeowners see every year.

Additionally, this local tax savings can extend for a significantly longer time when a county has decided to pursue a countywide school district. With careful planning, and slow, steady progress, the additional state aid can extend for decades.

Maximizing State Aid While Creating a Countywide School District

As mentioned above, a newly created or annexed district receives an increase in state aid above the standard state aid formula by 40% for five years following consolidation. Keeping in mind that after each annexation or consolidation, a new district exists, annexing or consolidating to this new district every five years will allow

the ever expanding school district to maximize its 40% incentive funding. For example, a county with ten school districts wishes to move to a countywide school district. Rather than attempt to convince each of the ten districts at once, it begins with its city school district and one adjacent district. The adjacent district thinks consolidation is a good idea, and at its next budget vote, approves a proposition to consolidate with the city school district. The city district's board of education approves of the consolidation, and the Commissioner of Education issues the order consolidating the adjacent district into the city district. In year one of consolidation, the newly expanded district receives its 40% incentive increase in state aid, and the taxpayers of the new district blissfully watch their tax bills shrink. Over the next five years, the newly expanded city school district discusses consolidation with the next contiguous district, and they too think it is a good idea, and the process repeats itself. The city school district has now extended its 40% incentive funding to ten years—five for the first consolidation, and five for the second. If this continues for each district in the county, not only will a countywide district have been created, but the 40% incentive funding will have been received by the district for 45 years! The chart on the next page shows the progression of state aid increase over the basic state formula and assumes one additional district is added every five years.[45]

Conclusion

The countywide school district is difficult to achieve. It cannot be created in any of the counties with the Big 5 city school districts or in any county which has two or more city school districts because of the limitations on how consolidation of school districts can occur. Advocates of a countywide school district may face strong opposition from voters who want to maintain the status quo, preferring what is versus what could be.

But, in the right county, with steady, deliberate steps, local taxpayers could see substantial, long-term savings by moving to a countywide school district.

Endnotes

1. 2007 Monroe County Town and County Tax Rates, *available at* http://www.monroecounty.gov/property-taxrates.php.
2. N.Y. EDUC. LAW § 2550 *et seq.*
3. N.Y. EDUC. LAW § 2501 *et seq.*
4. N.Y. EDUC. LAW § 1601 *et seq.*
5. New York State Department of Education, *Guide to Reorganization of School Districts in New York State, available at* http://www.emsc.nysed.gov/mgtserv/sch_dist_org/GuideToReorganizationOfSchoolDistricts.htm#II.%20Structure%20of%20New%20York%20State%20School%20Districts.
6. *Id.*
7. *See generally* N.Y. EDUC. LAW § 1501 *et seq.*
8. N.Y. EDUC. LAW § 2554.
9. N.Y. EDUC. LAW §§ 1510-1514, 1705, 1801.
10. N.Y. EDUC. LAW § 1524.
11. *Id.*
12. *Supra* note 9.
13. N.Y. EDUC. LAW § 1705.
14. N.Y. EDUC. LAW §§ 1801, 1803.
15. N.Y. EDUC. LAW §§ 1510-1514.
16. N.Y. EDUC. LAW § 1524.
17. N.Y. EDUC. LAW §§ 1510-1514, 1705, 1801.
18. New York State Department of Education, *supra* note 5, at III.(A.)(3.).
19. N.Y. EDUC. LAW § 1801(2).
20. N.Y. EDUC. LAW § 1801(3).
21. N.Y. EDUC. LAW § 1803-a(2).
22. N.Y. EDUC. LAW § 1803-a(7).
23. N.Y. EDUC. LAW § 1803-a(6).
24. New York State Department of Education, *supra* note 5, at III.(B.)(3.).
25. N.Y. EDUC. LAW § 1801.
26. N.Y. EDUC. LAW § 1801.
27. N.Y. EDUC. LAW § 1802(2)(a), (b).
28. *Id.*
29. N.Y. EDUC. LAW § 1803(8).
30. New York State Department of Education, *supra* note 5, at III.(C.)(3.).
31. N.Y. EDUC. LAW §§ 1705 (a), (b).
32. N.Y. EDUC. LAW § 1705 (b).
33. *Id.*
34. *Id.*
35. N.Y. EDUC. LAW §§ 1510–1511.
36. N.Y. EDUC. LAW § 1511.
37. *Id.*
38. *Id.*
39. N.Y. EDUC. LAW § 1512.
40. This section deals exclusively with city school districts in cities with populations under 125,000. City districts in cities with over 125,000 (the Big 5) cannot be consolidated or reorganized under current law. *See* Types of Consolidation, *supra.*
41. N.Y. EDUC. LAW § 1524.
42. *Id.*
43. New York State Department of Education, *supra* note 5, at IV. (3.).
44. *Id.*
45. *See* percentage increase over state aid formula as incentive for consolidation, next page.

Edward W. McClenathan is a 2008 graduate of Albany Law School, the 2007 Edgar A. and Margaret Sandman Fellow of Albany Law School and is currently affiliated with the law firm of Drake, Loeb, Heller, Kennedy, Gogerty, Gaba, and Rodd, PLLC, New Windsor, New York.

Percentage increase over state aid formula as incentive for consolidation										
district #	1	2	3	4	5	6	7	8	9	10
year #										
1	40	40								
2	40	40								
3	40	40								
4	40	40								
5	40	40								
6	36	36	40							
7	32	32	40							
8	28	28	40							
9	24	24	40							
10	20	20	40							
11	16	16	36	40						
12	12	12	32	40						
13	8	8	28	40						
14	4	4	24	40						
15	0	0	20	40						
16	0	0	16	36	40					
17			12	32	40					
18			8	28	40					
19			4	24	40					
20			0	20	40					
21			0	16	36	40				
22				12	32	40				
23				8	28	40				
24				4	24	40				
25				0	20	40				
26				0	16	36	40			
27					12	32	40			
28					8	28	40			

district #	1	2	3	4	5	6	7	8	9	10
year #										
29					4	24	40			
30					0	20	40			
31					0	16	36	40		
32						12	32	40		
33						8	28	40		
34						4	24	40		
35						0	20	40		
36						0	16	36	40	
37							12	32	40	
38							8	28	40	
39							4	24	40	
40							0	20	40	
41							0	16	36	40
42								12	32	40
43								8	28	40
44								4	24	40
45								0	20	40
46								0	16	36
47									12	32
48									8	28
49									4	24
50									0	20
51									0	16
52										12
53										8
54										4
55										0
56										0
57										

Avenues Toward City-County Consolidation in New York

By Amy Lavine

I. Introduction

With more than 4,200 local government entities,[1] New York's local government structure has been criticized for being one of the most fragmented in the country.[2] A recent study suggests that the classifications of cities, towns, and villages no longer correspond to population densities or development patterns, supporting the proposition that New York's governmental structure is outdated, overly complex, inefficient and somewhat irrational.[3] Given these figures, as well as the financial problems and increasing tax burdens in many communities,[4] it is not surprising that policy makers across the state have raised the possibility of reforming local government structures in order to improve efficiency and quality in service delivery, to attract new economic development, and to better enable local governments to address regional issues and challenges.[5]

One approach to structural reform in particular has recently been given considerable attention, both in and outside of New York: city-county consolidation[6]—a process whereby a county government merges with one or more municipalities to create an entity with characteristics of both.[7] The interest in consolidation is based in part on the desire to minimize the unnecessary and costly duplication of services by different layers of government, but this only partly explains the recent resurgence in interest in city-county consolidation, as there is speculation as to whether city-county consolidation actually results in cost savings.[8] Another, more current basis for supporting consolidation is found in the regionalist movement, which posits that modern life has transformed the nature of local units in such a way as to require increased cooperation among local government units.[9] Regionalists claim that, whereas town, village, and city governments were once effective in securing public goals and objectives, changing demographic patterns, combined with modern transportation and communication options, have made regions, rather than single municipalities, the "real cities" of the twenty-first century.[10] Regional governance is considered to be necessary not only to improve efficiency and quality in service delivery, but also to more effectively deal with issues that are inherently regional in scope, such as environmental degradation, land use planning and sprawl, urban-suburban income disparities, and the decreased ability of highly fragmented regions to attract economic development.[11]

Although city-county consolidation is not a perfect response to regionalist ideals, as county lines often do not correspond with regional boundaries, it has the benefit of using preexisting governmental structures—counties—to meet regional needs, rather than requiring the creation of new governmental and geographic entities.[12] Consolidation is also advocated as a better option than other forms of intergovernmental cooperation because it simplifies local government structures rather than adding more layers of complexity.[13] It should not be assumed, however, that city-county consolidation is the best solution to regional problems; numerous scholars and politicians have amassed a host of criticisms weighing against city-county consolidation, ranging from the claim that it does harm to federalist ideals of local government, to the suggestion that it decreases efficiency by interfering with the market for services, to the possibility that it may disenfranchise the poor and minority city dwellers that it purports to benefit through regionalization.[14]

In New York, city-county consolidation has been suggested primarily as a means to address the inefficiencies caused by overly fragmented governance and to thereby lower municipal taxes, but regionalist principles have entered into the debate as well, even if they are not expressly stated as such. This is illustrated by the 2007 executive order that established the New York State Commission on Local Government Efficiency and Competitiveness. Although the order focuses on the costs of unnecessary duplication of government functions and the effect that this has on taxes and economic competitiveness, Governor Spitzer also made clear that local government reform is necessary to facilitate the implementation of "smart growth practices, and otherwise improve the living environment for New Yorkers."[15] These concerns have also been voiced in relation to the city-county consolidations that have been considered by various governmental and public interest groups across the state.[16]

City-county consolidation, however, is not well facilitated by the laws of New York as they now stand. Unlike towns and villages, for which the legislature has provided means for merger, consolidation and dissolution by local action, cities and counties have not been provided with specific legislation authorizing consolidation or setting forth a process by which it can be accomplished. Although city-county consolidation *is* possible under current New York law, the processes by which city-county consolidation could presently occur are complex, involving constitutional and statutory issues and requiring action by many parties. Because these legal challenges themselves may constitute one of the greatest barriers to city-county consolidation in New York, the goal of this

article is to distill the various legal provisions that may inhibit city-county consolidation, and to suggest means by which consolidation may be effected.

II. The Validity of Consolidated City-Counties Under the New York Constitution

Perhaps the most fundamental question relating to city-county consolidation is whether consolidated city-counties would be valid under the New York State Constitution, since a 1938 amendment prohibits the creation of any new type of general purpose municipal government.[17] The short answer to this question is that there is no constitutional bar to the creation of consolidated city-counties, so long as they are classified as either cities or counties. In most cases, a consolidated city-county in New York would likely opt to retain its county status, but it is conceivable that a smaller county, such as Schenectady or Rockland, might opt to become a single city.[18]

A more difficult question is whether this type of "super county" would be able to improve efficiency and urban-suburban equity as effectively as city-county governments in other states, which are often vested with the attributes and powers of both cities and counties.[19] The inability to classify a consolidated city-county as anything but a city or county could also have practical effects on the ability of the resulting entity to impose taxes and incur debts.[20] Whereas separate governments may impose separate taxes and incur separate debts in order to provide the aggregate of services provided in the city and county, a "super county" would be subject to the constitutional tax and debt limitations for counties. As a result, the city-county would be left with only one source of taxing and borrowing power to provide the services previously funded by two different entities. Moreover, limiting consolidated city-counties to either the city or county classification could interfere with the distribution of state and federal aid.

In order for a new type of city-county government to be created that could address these and related problems, constitutional amendments would be necessary. The complexities involved in predicting what this kind of constitutional amendment would look like, however, are beyond the scope of this article.

III. Processes to Establish City-County Governments in New York

Without a constitutional amendment, state authorization of some type would likely be necessary before a city-county government could be created, as New York law does not currently enable cities and counties to consolidate, merge or dissolve.[21] There are several methods by which this could occur: by general legislation authorizing cities and counties to consolidate through local action; by special legislation authorizing a particular city and county to consolidate upon the request of the affected local governments and their constituencies; by a transfer of substantially all of a city's functions to its county; or by general or special legislation mandating the consolidation of a city and county. Each of these approaches has particular benefits, and each has its own drawbacks and possible barriers.

A. Consolidation by General Legislation

The state legislature is vested with the power to "provide for the creation and organization of local governments,"[22] and via this power the state may enact laws authorizing cities and counties to consolidate, merge or dissolve.[23] Such provisions do, in fact, exist for towns and villages, which may, in certain circumstances, choose to alter their existences without further state involvement.[24] General authorization of this type, applicable to all cities and counties (or certain classes thereof) would provide the most straightforward method for cities and counties to pursue consolidation.

Any general legislation enacted providing for city-county consolidation could be tailored to require state involvement in the process. Legislation along these lines has been enacted in other states, where cities and counties may consolidate only after study, consent of the governments and constituencies to be consolidated, and approval by the state.[25] Alternatively, general legislation could be enacted authorizing or mandating the consolidation of only a certain class of city and county governments. The classification could be based on such factors as population size or density of either or both the city and county, and in this manner the state could ensure that only certain governments would be eligible for consolidation.[26]

B. Consolidation by Special Legislation Upon Local Request

Nearly all of the city-county consolidations to have occurred in the United States, including those to have occurred pursuant to general legislation, have been initiated at the local level and have been dependent upon the consent of the affected local governments and their constituents.[27] Consent-based city-county consolidation may be more sustainable in the long term than state-mandated restructuring, as this process ensures that a significant percentage of the local population and its representatives desire government reorganization and are committed to implementing the new government in as effective a manner as possible.[28] This bottom-up approach may also serve to increase the public's participation in local government by encouraging dialogue, fostering a sense of community, and reminding citizens of their ability to effect change and influence their region's future in positive ways.[29] The disadvantage of this method of consolidation, however, stems precisely from the fact that it operates only upon approval of the people and governments to be affected by the consolidation. Rural and suburban municipal governments often oppose consolidation with their counties for the simple reason that they would like

to continue to exist, and public support for city-county consolidation is often defeated by inertia in the face of dramatic governmental changes and a preference for maintaining the status quo. Moreover, even when the government and residents of a city support consolidation, the effort can still be overcome if a sufficient number of county residents oppose the consolidation (and they often do, fearing increased taxes and changes in services).[30] Indeed, few consolidation referenda are successful.[31]

Because local governments in New York are vested with only those powers that have been granted to them by the state,[32] and no legislation exists generally authorizing the consolidation, merger or dissolution of either cities or counties, the first step to be taken by a New York city and county presently wishing to consolidate would be the filing of a home rule request by both local governments seeking legislation authorizing a consolidation.[33] Such legislation would entail the creation of a new county charter, and the Municipal Home Rule Law would require the new charter to be approved separately by the residents of both the city and the county.[34] Accordingly, city-county consolidation pursued in this fashion would require the approval of: (1) both the city and county governments; (2) the state; and (3) the residents of the city and county. The length of this process and its need for repeated approvals contribute to the failure of many city-county consolidation proposals, but it embodies fundamental democratic principles by ensuring that all stakeholders have an opportunity to voice their hopes and concerns.

C. De Facto Structural Consolidation Without State Approval

As noted above, the power to dissolve a city in order for it to be consolidated with its county lies exclusively with the state, absent legislation authorizing cities to dissolve through the enactment of purely local laws. However, it may be possible for a city to transfer substantially all of its functions to its county without the need for state enabling legislation.[35] This would leave the city intact as a mere shell and achieve a de facto city-county consolidation. A consolidated city-county of this type, might, in fact, be preferable to other forms of consolidated city-counties due to the debt and taxing limits contained in the constitution, as discussed above. In a de facto city-county consolidation, the city could retain its powers to tax and incur debt, and it could thus provide increased fiscal capacity to the restructured government entity. Moreover, under a de facto city-county consolidation approach, the risk of interruptions to state and federal aid provided to the city would be minimized, as the city would technically continue to exist.

A de facto city-county consolidation would be authorized by Article IX, section 1(h) of the State Constitution and sections 33 and 33-a of the Municipal Home Rule Law. Together, these provisions authorize counties to adopt alternative forms of county government and to transfer functions among the units of local government within a given county. Because the adoption of such an alternative form of county government would require the adoption of a new charter, approval of the populations of the city and county separately would be necessary.[36] In addition to the complexities of transferring certain functions to the county,[37] there is a potential legal barrier to the formation of a de facto consolidated city-county: the Municipal Home Rule Law prohibits county charter amendments from abolishing units of local government.[38] It is unclear whether a de facto city-county consolidation, which would leave the city intact as a mere shell, would be considered to be the equivalent of dissolving the city itself.

D. State Mandated Consolidation

Indianapolis / Marion County, Indiana, is the only consolidated city-county in the United States to have been mandated by state act without the request of the local governments involved.[39] The absence of more widespread state mandated city-county consolidation may seem somewhat surprising, as the United States Supreme Court ruled in 1907 that, subject only to state constitutional restraints, the states have the power to extinguish and modify their municipal governments as they see fit.[40] Numerous state courts, including those of New York, have reaffirmed the broad state powers to create, modify and rescind the powers and characteristics of municipal governments.[41]

While state mandated consolidation would be contentious among elected officials and residents, top-down consolidation has one particularly significant benefit over consolidation initiated at the local level: the State can impose consolidation upon all of the municipalities located within a county (or any proportion of them).[42] As previously explained, the typical city-county consolidation involves a large city and its county, leaving other municipalities within the county as independent governments. Because of this reality, city-county consolidation has frequently been criticized for failing to achieve its economic and regionalist goals; the state is left with one less local government (out of possibly thousands); the duplication of services is removed only as between two local governments; and the fragmented suburbs and rural areas continue to compete with the city by enacting lenient land use ordinances and imposing low taxes, thereby sustaining continuing patterns of sprawl and urban-suburban inequity.[43] While there are still benefits to city-county consolidation, requiring, or somehow strongly encouraging, the county's other local governments to join in the consolidation is what is needed to make city-county consolidation most effective.[44] An important question, then, is whether the legislature has the power, under the laws of New York and the State Constitution, to order a city-county consolidation against the opposition of the municipal governments that it seeks to consolidate,

or even against the residents of those municipalities. This is not a simple question, and an understanding of New York's constitutional home rule provision is necessary to answer it.

Home rule laws were enacted in many states in the nineteenth and early twentieth centuries in order to guarantee local governments a certain degree of protection from state actions intrusive upon their internal functioning. Article IX of the New York State Constitution, enacted in 1923, contains the basis of New York's home rule laws. It draws a distinction between "general" and "specific" laws: general laws are those that apply equally to all local governments, or a general class thereof, while special laws are directed at particular local governments. The Home Rule Article provides that the state "[s]hall have the power to act in relation to the property, affairs or government of any local government only by general law"[45] There are two exceptions laid out in this rule. First, the state may act by "special law" upon a home rule request by a municipality (as would occur in the case of a locally initiated consolidation proposal). The second exception applies when the governor certifies that the special law is needed due to emergency circumstances. As noted above, it would be possible for the state to draw general legislation mandating the consolidation of a particular city and county by restricting the application of the legislation, possibly by population size and/or density. In this manner, the legislation, while generally applying to all local governments falling within such parameters, could have the practical effect of applying only to one city and its county.[46] Whether the state could do away with this pretext and enact special legislation ordering a city-county consolidation is a more difficult question.

The home rule article prohibits special legislation that interferes with local governments' "property, affairs and government." On its face, this provision seems to restrict quite narrowly the traditionally broad powers that states are said to hold over their local governments. However, two cases decided in 1929 held that home rule protections are trumped when the subject matter of a special law involves a "state concern." The first of these cases, *New York v. Village of Lawrence*,[47] is of particular relevance to the issue of consolidation, as it concerned another form of municipal boundary change—annexation. The case involved a dispute between New York City and the town of Hempstead over the location of the municipalities' borders. When the legislature passed a special law unilaterally designating the boundary and annexing the contested strip of land to Nassau County, the city sought to overturn the law on the basis that it violated the home rule article by interfering with its property and affairs. The court explained, however, that the constitutional home rule provision did not alter the state's authority to fix municipal boundaries:

> The power to enlarge or restrict the boundaries of an established city is an incident of the legislative power to create and abolish municipal corporations and to define their boundaries. . . . Legislation relating to the boundaries of political divisions of the State is a matter of State concern, and its benefits extend beyond the limits of the property, affairs and government of the city which is affected.[48]

Thus was born into New York jurisprudence the doctrine of state concern, which holds that matters of state concern do not implicate the home rule prohibition of special laws. The doctrine was strengthened later that year, when the Court of Appeals upheld a special law relating to New York City tenements in *Adler v. Deegan*.[49] It is Justice Cardozo's concurring opinion that has resonated through the years, particularly his determination that matters involving local concerns nevertheless may fall without the scope of home rule protection if they also implicate sufficiently important state concerns.[50]

These principles have been repeatedly upheld,[51] although the 1963 amendments to the constitution expanded municipal home rule protection. Notably, these amendments included an annexation provision,[52] which requires the consent of the affected local governments before any annexation may take place. While some have viewed this as an indication that local consent should be required for all municipal boundary changes,[53] it has also been suggested that, by limiting the amendment to annexation, the legislature intended to exclude from the consent requirement other forms of municipal alteration, including merger, dissolution and consolidation.[54]

Another interesting twist was added to the home rule jurisprudence in 1990, when the Court of Appeals decided that state legislation authorizing Staten Island to place on the ballot a question relating to its possible secession from New York City did not violate the State Constitution.[55] While the supreme and appellate courts ruled in favor of the state, based on the state concern doctrine, the Court of Appeals dodged the issue and affirmed on the narrow ground that the law did not interfere with the property, affairs or government of the city because the authorized referendum was merely advisory and could not itself result in any change to the city's boundaries.[56] Whether the court's refusal to adopt the state concern doctrine in this case was indicative of its hesitancy to follow the home rule precedent, or whether it was simply deciding the case on the narrowest ground possible, is not known. The dissenting judge, however, made a forceful case for rejecting the state concern doctrine and requiring a home rule request.

This rather protracted discussion is intended to illustrate that the question of whether the state could force a city and county to consolidate is thoroughly unclear.

Long-standing precedent supports the power of the state to alter local government boundaries and classifications as it wishes so long as such action would involve significant state interests, and the economic and regionalist principles supporting city-county consolidation likely fall within this category. In this regard, the use of state power to consolidate communities (including those that would not do so voluntarily) in order to provide for regional governance that is more equitable to all of the citizens within a large metropolitan region is peculiarly a matter of state concern. At the same time, however, the extent of the impact that a forced city-county consolidation could have on the concerned municipalities calls for deference to local consent, and the developments in home rule jurisprudence since 1929 have clearly strengthened local governments' stance in relation to the state. Moreover, the lack of American examples of mandated consolidation may also suggest that imposed consolidation has not generally been seen as a viable approach. In short, if and how this issue will be decided is uncertain, but it is nevertheless one avenue toward city-county consolidation that should be discussed, if only to better understand the interrelationships that are at play in any city-county consolidation, both those between municipalities and the state and those among the municipalities themselves.

IV. Beyond Statutory Authority: How to Make Consolidation Work in New York

This article has barely scratched the surface of the political concerns that are involved in city-county consolidations, but a few points should be clear: city-county consolidation has significant potential to improve outdated municipal structures that are inefficient, inequitable, and harmful to regional and economic needs; consolidation has the most potential to ameliorate current local government problems when it extends beyond the major city in a county to include suburban and rural municipalities, even though these local governments are unlikely to voluntarily join in any consolidation; and, while state imposed consolidation would have the benefit of providing for inclusive city-county consolidations, it is not politically or legally attractive. For these reasons, and because the major restructuring of local governments entails a long and expensive transition, financial incentives for consolidation may prove to be the most desirable approach to making city-county consolidation possible in New York. Even if such incentives were only significant enough to encourage one or two consolidations, these local governments could then be studied and evaluated by others that might consider following the lead. Nevertheless, in order for incentives to be successful in encouraging city-county consolidation, local governments need a straightforward process by which they can begin to consider and implement plans for consolidation. In addition to resolving some of the murky issues presented in the consolidation approaches presented in this discussion, state legislation detailing preferred consolidation approaches would also provide a signal that the acceptance of city-county consolidation in New York State is growing. This would help to move the discussion and debate to the next level.

Endnotes

1. Office of the New York State Comptroller, 2006 Annual Report on Local Governments 29-30, *available at* http://www.osc.state.ny.us/localgov/datanstat/annreport/06annreport.pdf [hereinafter 2006 Annual Report]. In addition to these 4,200 local governments (which include cities, towns, villages, school and fire districts, and special purpose entities), there are more than 6,900 town special districts, adding another layer of complexity to the mix. Office of the New York State Comptroller, Town Special Districts in New York: Background, Trends and Issues (2007), *available at* http://www.osc.state.ny.us/localgov/pubs/research/townspecialdistricts.pdf.
2. David Rusk, Upstate New York: A House Divided 10, *available at* http://www.gamaliel.org/DavidRusk/Thruway%20Alliance%20report.pdf (noting that New York State has the eighth highest rate of municipal fragmentation in the country).
3. *See* Office of the New York State Comptroller, Outdated Municipal Structures: Cities, Towns and Villages—18th Century Designations for 21st Century Communities (2006), *available at* http://www.osc.state.ny.us/localgov/pubs/research/munistructures.pdf [hereinafter Outdated Municipal Structures].
4. *See* 2006 Annual Report, *supra* note 1, at 8. New York has the third highest state and local tax rates in the country. Tax Foundation, Tax Data: State and Local Tax Burdens Compared to Other U.S. States, 1970–2007, *available at* http://www.taxfoundation.org/taxdata/show/335.html.
5. *See* Governor Eliot Spitzer, 2007 State of the State Address, *available at* http://www.ny.gov/keydocs/NYS-SoS-2007.pdf; *see also* New York State Commission on Local Government Efficiency & Competitiveness, Local Initiatives by Type, http://www.nyslocalgov.org/local_initiatives_type.asp#cons.
6. City-county consolidation is not a new concept. The first such consolidation, between New Orleans and Orleans Parish, dates back to 1805, with the consolidations of Philadelphia, San Francisco, New York City, Boston, Denver and Honolulu all occurring before 1910. *See* National Association of Counties, *Successful City-County Consolidations*, http://www.naco.org/Content/ContentGroups/Publications1/County_News1/20035/6-2-03/Successful_City-County_Consolidations.htm. While interest in city-county consolidation decreased in the 1980s, the successful consolidation of Louisville and Jefferson County, Kentucky, in 2000 (and several smaller, preceding consolidations) has revived public interest in consolidation. *See* Jered B. Carr, *Perspectives on City-County Consolidations and Its Alternatives*, *in* CITY-COUNTY CONSOLIDATION AND ITS ALTERNATIVES 3, 4 (Jered B. Carr & Richard C. Feiock, eds., 2004).
7. City-county consolidations should be distinguished from independent cities (such as Baltimore), where the city is not located within any county, and from metropolitan or regional governments (such as the Portland Metro Council), where a separate governmental entity is set up to deal with regional concerns but does not displace the local governments that it serves. *See* U.S. Census Bureau, Appendix A.: Census 2000 Geographic Terms and Concepts A-12 to A-13, *available at* http://www.census.gov/geo/www/tiger/glossry2.pdf.
8. *See* Richard C. Feiock, *Do Consolidation Entrepreneurs Make a Deal with the Devil? in* CITY-COUNTY CONSOLIDATION AND ITS ALTERNATIVES 43, 43-44 (Jered B. Carr & Richard C. Feiock, eds., 2004).
9. *See generally* Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985 (2000).

10. *See* Rusk, *supra* note 2, at 14-18; *see also* David Rusk, *Cities Without Suburbs: A Census 2000 Update 5* (2003).

11. *See* Richard Briffault, *Localism and Regionalism*, 48 BUFFALO L. REV., 1 7-14; Cashin, *supra* note 9.

12. *See* Rusk, *supra* note 2, at 19-20.

13. One study of local governments in Kentucky that compared a consolidated city-county and a fragmented county found that citizens were more likely to be aware of and participate in local government matters in the consolidated city; the authors attributed this to the consolidated government being more understandable, and thus, more accessible to its constituents than the decentralized system. WILLIAM E. LYONS, DAVID LOWERY & RUTH HOOGLAND DEHOOG, THE POLITICS OF DISSATISFACTION: CITIZENS, SERVICES, AND URBAN INSTITUTIONS 98-105 (1992).

14. These criticisms are beyond the scope of this article, but the controversial nature of city-county consolidation should be acknowledged. The fact remains that, with fewer than thirty-five consolidated city-counties in the United States, the benefits and disadvantages of city-county consolidation are not thoroughly understood. Linda S. Johnson & Jered B. Carr, *Making the Case for (and Against) City-County Consolidation*, *in* CITY-COUNTY CONSOLIDATION AND ITS ALTERNATIVES 246 (Jered B. Carr & Richard C. Feiock, eds., 2004). For a general discussion of some of the potential drawbacks of city-county consolidation, see Feiock, *supra* note 8. For a general discussion about the nature of localism and regionalism, and the good and bad aspects of each, see Briffault, *supra* note 11.

15. Executive Order No. 11, *available at* http://www.nyslocalgov.org/pdf/Executiveorder.pdf; *see also* Governor Spitzer's 2007 State of the State Address, *available at* http://www.ny.gov/governor/keydocs/2007sos_speech.html.

16. City-county consolidations have entered the public debate in Syracuse/Onondaga County, Rochester/Monroe County, Binghamton/Broome County, and Nassau County. Erie County and the City of Buffalo, however, have been the only New York local governments to actually attempt city-county consolidation (since New York City's consolidation in the late nineteenth century). The consolidation effort failed, however, primarily due to concerns over the county's financial ability to oversee the city. See Craig R. Bucki, "Revisiting Regionalism to Streamline Governance in Buffalo and Erie County, New York," present issue.

17. New York Local Government Handbook Ch. 4, pp. 1-2; N.Y. CONST. art. VIII, § 3. The prohibition is not absolute, but only prevents the creation of new types of municipal corporations that have both the power to tax and to the ability to incur debts. It is unrealistic, however, to imagine that any functional city-county government could be created without these powers.

18. The preference for county status stems from the geographic and demographic attributes of most of the counties in New York, and from the fact that most city-county consolidations include only the major city and the county. *See* discussion, *infra*. In these cases, retention of the county government would be necessary to ensure the continuation of county services to unconsolidated municipalities. In the smaller counties, it is more imaginable that city-county consolidations might include all of their municipalities, which would allow the formation of either a "super county" or a "super city."

19. *See, e.g.*, KY. REV. STAT. § 81.310; KAN. STAT. ANN. § 12-345 (l)-(m).

20. *See* N.Y. CONST. art. XIII, § 4.

21. Such provisions have been enacted for towns and villages. *See* note 24, *infra*.

22. N.Y. CONST. art. IX, § 2(a).

23. *See generally* 1-5 ANTIEAU ON LOCAL GOVERNMENT LAW, Second Edition § 5.02.

24. N.Y. TOWN LAW §§ 79-a *et seq.*; N.Y. VILLAGE LAW §§ 18-1806, 19-900 *et seq.* Consolidation, merger and dissolution procedures also exist for fire districts, county and town special districts, and school districts. *See* New York State Commission on Local Government Efficiency & Competitiveness, Consolidation Procedures, *available at* http://www.nyslocalgov.org/pdf/Consolidation_Procedures.pdf.

25. *See, e.g.*, N.C. GEN. STAT. §§ 153A-401 to 153A-405.

26. In the United States, Indianapolis/Marion County, Indiana, is the only consolidated city in recent history to have been established in this manner. National Association of Counties, Questions and Answers on Consolidation, http://www.naco.org/Content/ContentGroups/Publications1/Research_Briefs1/Questions_and_Answers_on_Consolidation.htm [hereinafter Questions and Answers].

27. Raymond A. Rosenfeld & Laura A. Reese, *Local Government Amalgamation from the Top Down*, *in* CITY-COUNTY CONSOLIDATION AND ITS ALTERNATIVES 219 (Jered B. Carr & Richard C. Feiock, eds., 2004).

28. *Id.* at 222.

29. *See* Craig Schneider, *Cities Mull Cost-Cutting Mergers*, CFO.com, Feb. 23, 2005, *available at* http://www.cfo.com/article.cfm/3689399?f=search (noting that "[p]roponents also argue for the psychological benefits of mergers. Re-branding 'Greater Buffalo' as the tenth-largest city in the U.S. 'would show the world, and show ourselves that we are a world-class, progressive region,' says the Greater Buffalo Commission's Web site").

30. *See* Suzanne M. Leland & Gary A. Johnson, *Consolidation as a Local Government Reform: Why City-County Consolidation Is an Enduring Issue*, *in* CITY-COUNTY CONSOLIDATION AND ITS ALTERNATIVES 25, 31 (Jered B. Carr & Richard C. Feiock, eds., 2004).

31. *Id.* at 25 (noting that first-time consolidation proposals are passed in less than fifteen percent of referenda).

32. *See, e.g.*, *New York v. State*, 86 N.Y.2d 286 (1995) (holding that, without enabling legislation, the plaintiff city had no standing to sue the state).

33. *See* N.Y. MUN. HOME RULE LAW § 40.

34. N.Y. MUN. HOME RULE LAW § 33 (7)(b).

35. This approach was recommended by the Greater Buffalo Commission in its proposal to consolidate the governments of Buffalo and Erie County. Telephone interview with William Greiner, President Emeritus, University at Buffalo Law School, and chair of the Greater Buffalo Commission (Sep. 25, 2007).

36. N.Y. MUN. HOME RULE LAW § 33(h).

37. For example, because Articles 51 and 52 of the Education Law establish city school districts, it is unclear whether a city could transfer this function to its county. This complication would not arise in the case of an actual city-county consolidation, however, since Articles 51 and 52 apply only to "cities."

38. N.Y. MUN. HOME RULE LAW § 34(2)(d).

39. *See* Questions and Answers, *supra* note 26.

40. *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178-79 (1907).

41. *See, e.g.*, *New York v. Village of Lawrence*, 250 N.Y. 429, 436 (explaining that "[i]n the absence of express restrictions placed by the Constitution upon the exercise of its legislative powers, the Legislature may create or destroy, enlarge or restrict, combine or divide, municipal corporations").

42. Researchers of Canadian "amalgamations," which are often mandated from higher levels of government, have also noted that this approach may result in a more "radical restructuring of governmental arrangements because decision makers are less politically beholden to any particular interest group[.]" Rosenfeld & Reese, *supra* note 27, at 224. For the same reason, top-down consolidation may reduce the number of municipal employees more than other approaches to consolidation, thereby resulting in increased efficiency and cost savings. *Id.*

43. *See, e.g.*, David Rusk, Why City-County Consolidation Makes No Sense in "Little Boxes" Regions Like Buffalo-Erie County, *available at* http://www.gamaliel.org/DavidRusk/Why%20city-county%20merger%20makes%20no%20sense.pdf.

44. *See, e.g.*, Leland & Johnson, *supra* note 30, at 30–31.

45. N.Y. CONST. art. IX, § 2(b)(2).

46. This was the approach taken by Indiana in enacting he "Unigov" bill that established the consolidated city-county of Indianapolis/Marion County. Essentially, the consolidation mandate was phrased in general terms, but its population density requirements made it applicable only to Indianapolis and Marion County. In *Dortch v. Lugar*, 255 Ind. 545 (1971), the Supreme Court of Indiana explained that the act did not become a special law merely because it was enacted with Indianapolis and Marion County in mind; rather, the legislation retained its classification as a general law because it was applicable to any county in which the density requirements might eventually be met. The effect of this legal sleight of hand was to avoid nearly all of the home rule problems that will be discussed in this section.

47. *New York v. Village of Lawrence*, 250 N.Y. 429 (1929).

48. *Id.* at 440.

49. *Adler v. Deegan*, 251 N.Y. 467 (1929).

50. *Id.* at 489-91. Justice Cardozo's stance that any state concern is sufficient to trump home rule protection has been tempered over the years, with courts today generally requiring a sufficiently important state concern. *See, e.g., City of New York v. Patrolmen's Benevolent Ass'n*, 89 N.Y.2d 380, 390-91 (1996) (explaining that "where State concern is involved '*to a substantial degree, in depth or extent*,' the State may freely legislate notwithstanding the legislation's impact on local concerns" (quoting *Wambat Realty Corp. v. State*, 41 N.Y.2d 490, 494 (1977))).

51. *See, e.g.*, *Wambat Realty Corp. v. State*, 41 N.Y.2d 490 (1977); *Kelly v. McGee*, 57 N.Y.2d 522 (1982); *City of New York v. Patrolmen's Benevolent Ass'n*, 89 N.Y.2d 380 (1996); *City of New York v. State*, 94 N.Y.2d 577 (2000).

52. N.Y. CONST. art. IX (1)(d).

53. *See New York v. State*, 76 N.Y.2d 479, 490-92 (Hancock, J., dissenting); Richard Briffault, *Voting Rights, Home Rule, and Metropolitan Governance: The Secession of Staten Island as a Case Study in the Dilemmas of Local Self-Determination*, 92 COLUM. L.REV. 755, 812-814 (1992).

54. Briffault, *supra* note 53.

55. *New York v. State*, 76 N.Y.2d 479 (1990).

56. Following this decision, the residents of Staten Island did in fact vote to create a charter commission, but when legislation was introduced to enable the secession, the Assembly Speaker refused to bring the bill up for consideration before a home rule request was filed by New York City. A lawsuit was filed against the Speaker, but it was dismissed by the trial court based on separation of powers principles. Joseph P. Viteritti, *Municipal Home Rule and the Conditions of Justifiable Secession*, 23 FORDHAM URB. L.J. 1, 4-5 (1995).

Amy Lavine is a Staff Attorney at the Government Law Center of Albany Law School. She wishes to thank William Greiner, Laurence Bousquet, and Kevin Gaughan for their kindly assistance in the preparation of this article.

Merging Local Governments—Consolidations, Dissolutions and Transfers of Functions

By Robert C. Batson

New York's Shared Municipal Services Incentive Program (SMSI) provides "technical assistance and competitive grants to two or more units of local government for the development of projects that will achieve savings and improve municipal efficiency through shared services, cooperative agreements, mergers, consolidations and dissolutions."[1] This article examines the legal authority for New York's cities, towns, villages and counties[2] to undertake mergers, consolidations and dissolutions, and to transfer functions to other local governments.

Local Government Mergers

Mergers of local governments can occur in two ways: by dissolution of a local government, thereby absorbing its territory into another local government, and by consolidation of two or more local governments. New York State law contains provisions for towns and villages to undertake dissolution and consolidation by local action.[3] There are no provisions in state law for cities and counties to merge with themselves or with towns and villages. The last two cities to merge in New York were New York City and Brooklyn in 1898.[4] There has never been a merger of counties in New York.[5]

Town and Village Dissolution[6]

Provided a town has no outstanding bonded debt, it may dissolve and become annexed to an adjoining town in the same county.[7] A proposition may be placed on the ballot on motion of the town board or on petition.[8] The petition must be signed by qualified voters of the town equal in number to five percent of the votes cast in the town for governor in the last statewide election.[9]

A proposition to dissolve a village, thereby annexing its territory into the town or towns[10] in which the village is located, may be placed on the ballot on motion of the Board of Trustees or by a petition of the electors of the village.[11] The petition must be signed by electors equal in number to one-third of the resident electors residing in the village at the time of the last general or special village election.

Both the dissolving town and the annexing town must place a proposition on the ballot at the same biennial town election to effect the dissolution and annexation. The proposition in the dissolving town must authorize the dissolution and annexation.[12] The proposition in the annexing town must authorize the annexation.[13] Each proposition must receive a majority of votes cast in the respective town.

A proposition to dissolve a village takes effect if approved by a majority of voters in the village. There is no parallel vote in the annexing town or towns.

The most significant difference between a town and village dissolution is that town dissolution requires the consent of voters in both the dissolving and annexing town, while a village may dissolve without the consent of the annexing town. A village may dissolve even if it has outstanding debt, which the annexing town or town assumes. The debt becomes a charge on the taxable real property within the limits of the dissolved village.[14]

While an annexing town does not have a role in the decision to dissolve a village within its territory, Article 19 of the Village Law contains some procedures that protect the interests of the town. Prior to approving a proposition for dissolution, the village board of trustees must form a study committee to issue a report that addresses all topics to be included in a plan for dissolution, and consider alternatives to dissolution. The report may propose a plan for dissolution for consideration by the village board of trustees. The study committee must include at least two representatives of each annexing town who reside outside the area of the village.[15]

The village board of trustees must adopt a plan for dissolution that addresses the following:

1. The disposition of property of the village.
2. The payment of outstanding obligations and the levy and collection of the necessary taxes and assessments therefor.
3. The transfer or elimination of public employees.
4. Any agreements entered into with the town or towns in which the village is situated in order to carry out the plan for dissolution.
5. Whether any local laws, ordinances, rules or regulations of the village in effect on the date of the dissolution of the village shall remain in effect for a period of time other than as provided by section 19-1910 of this article [2 years following dissolution].

6. The continuation of village functions or services by the town.

7. A fiscal analysis of the effect of dissolution on the village and the area of the town or towns outside of the village.

8. Any other matters desirable or necessary to carry out the dissolution.[16]

Prior to submitting the proposition to the voters, the village board of trustees must hold a public hearing, and in addition to publishing notice of the hearing, provide written notice to the supervisors of the annexing towns by certified or registered mail.[17]

Town and Village Consolidation[18]

Town Law defines consolidation as a "physical combination of two or more towns into a single town, in which each such town ceases to exist as a governmental entity and is replaced by the single town."[19] The towns seeking to consolidate must adjoin and be in the same county.[20] The town boards of the towns seeking to consolidate must submit simultaneous propositions at a general or special election, and the proposition must be approved by a majority of electors in each town.[21] The town boards are required to hold a joint public hearing prior to the election.[22]

Two or more adjoining villages may consolidate by the adoption of a proposition at an election in each village. The elections need not be held on the same day in each village, but they may not occur more than 20 days apart.[23] At least 15 days prior to the first election, the trustees of the villages must meet in joint session to determine the name of the consolidated village.[24] There is no requirement that the consolidating villages hold a public hearing.

All debt of consolidating towns becomes an obligation of the new town, unless the proposition provides otherwise.[25] All indebtedness incurred on behalf of special or improvement districts remains a charge on the real property in such district.[26] Consolidation of towns does not affect any village, fire district, or special or improvement district located wholly or partially in any town affected by the consolidation.[27]

All legislation of consolidating towns, including local laws, ordinances, rules and regulations, remains in effect and enforceable for two years from the effective date of the consolidation, or until amended or repealed by the new town board.[28]

The effect of village consolidation is to create a new village that is the successor to the consolidating villages. "Such new village shall possess all the powers, enjoy all the privileges, and be subject to all the liabilities, in all respects and for all purposes, as if it had been originally incorporated under [the Village Law]."[29] The new village becomes the owner of all property of the consolidating villages, and liable for all debt.[30] There is no mention of the continued effectiveness of legislation of the consolidating villages.

Transfer of Functions

The New York State Constitution was amended in 1935 to authorize "alternative forms of government" for counties.[31] The amendment included a provision authorizing the transfer of functions and duties between the county and those cities, towns, villages, districts and other units of government wholly contained within the county. The transfer of function authority was included in the legislation that authorized counties to adopt home rule charters.[32] The transfer could be accomplished by enacting a charter law to adopt or amend a provision of a county charter.[33] In 1970, counties were granted authority to transfer functions by the enactment of a local law.[34] Thus, counties may provide for the transfer of functions and duties without adopting a county charter.[35]

"Town Law defines consolidation as a 'physical combination of two or more towns into a single town, in which each such town ceases to exist as a governmental entity and is replaced by the single town.'"

A function can be transferred by a county enacting a charter law or local law without the consent of a local government impacted by the transfer. However, such a law must be approved at a referendum subject to a special majority requirement.[36]

Beyond receiving a majority of votes cast countywide, the proposition must receive a majority of votes cast in the area of the county outside of cities and in the area of the cities of the county considered as one unit.[37] This provision means that a new county charter will go into effect only if it is approved by separate majorities of voters who live in the cities within the county, and of voters who live outside of the cities. If a proposition fails to receive a majority of votes cast by city dwellers or non-city dwellers, it will not pass, even if it receives a majority of votes cast by all voters of the county.

In addition, if the proposed local law or charter law provides for the transfer of any function or duty to or from any village, or for the abolition of any office, department, agency, or unit of government of a village wholly contained in the county, it must also receive a majority of all the votes cast in all the villages so affected considered as one unit.[38] Thus, the proposal would need to be approved by a majority of votes cast by city dwellers,

non-city dwellers, and dwellers of all the villages affected by the proposal.

A 1973 opinion of the Counsel to the State Board of Equalization and Assessment (now the Office of Real Property Services) concluded that cities, towns and villages may not transfer their assessing functions to the county by their own act. To effect county assessment, it would be necessary to comply with the transfer of function procedures of the Municipal Home Rule Law.[39] This issue has not been litigated, and it is not clear that the grant of authority to counties to effect transfers of functions was intended to limit voluntary transfers of functions by local governments.

The Orange County Charter established a county health district that performed the public health functions of cities and towns in the county. The County sought to dissolve the health district pursuant to Public Health Law § 355. In an informal opinion, the Attorney General concluded that because the act of dissolving the public health district would effect a transfer of public health functions to cities, towns and villages, the County must comply with the referendum requirements of Municipal Home Rule Law § 33-a as well as the notice and hearing requirements of Public Health Law § 355.[40]

In 1973 the Attorney General issued an informal opinion that concluded that Oneida County may amend its charter to transfer the functions of the City of Utica's Board of Contract and Supply to the appropriate officers or bodies of the County.[41] The amendment would take effect when approved by separate majorities in the area of the county outside of cities and in the area of the cities of the county considered as one unit. There is no requirement that the proposal be approved by a majority of voters in the City of Utica, or that the government of the City of Utica consents to the transfer.

Counties may use the transfer of function procedure to transfer functions between cities, towns and villages within the county. They are not limited to transfers of function to and from the county itself. Section 1607 of the Nassau County Charter provides that villages incorporated after the effective date of the Charter may not enact zoning laws. The Village of Atlantic Beach in Nassau County was the only village in New York State that lacked the power to zone. A proposed amendment to § 1607 to grant Atlantic Beach the zoning power was held to be authorized as a transfer of function from a town to a village.[42]

Counties possess a powerful tool to effect mergers and consolidations of functions by transferring them to the county itself or among the cities, towns and villages in the county. Such transfers do not require the consent of the affected government, but can be put into effect with the consent of the voters in a referendum, provided the required double or triple majorities are obtained. This tool would be even more powerful if the Municipal Home Rule Law used the language in the New York State Constitution authorizing transfers of function.

The State Constitution provides that in adopting or amending an alternative form of government, a county "may transfer one or more functions or duties of the county or of the cities, towns, villages, districts or other units of government wholly contained in such county to each other or when authorized by the legislature to the state, or may abolish one or more offices, departments, *agencies or units of government*" (emphasis added).[43] The Municipal Home Rule Law reads: a county "may transfer functions or duties of the county or of the cities, towns, villages, districts or other units of government wholly contained in such county to each other, *or for the abolition of one or more offices, departments or agencies of such units of government when all their functions or duties are so transferred*" (emphasis added).[44] The language in the State Constitution suggests that counties could be authorized by the Legislature to not only transfer functions and duties of local governments within the county, but may actually abolish units of government, which the Optional County Government Law authorized.[45]

Article 7 of the Optional County Government Law authorized a county adopting one of the optional forms of government to separate villages from towns (§ 701), abolish all villages (§ 702), abolish all towns (§ 703), transfer control of improvement districts to the county (§ 704), consolidate the governments of all cities, towns villages, special districts and other units of government within the county, other than school districts, with the county government (§ 705), and combine towns (§ 706). The Optional County Government Law was repealed in 1952, except with respect to Monroe County or any other county in which its provisions were applicable, by Alternative County Government Law § 702.[46] It was repealed in its entirety in 1974.[47]

Article 12 of the Alternative County Government Law authorizes transfer of functions from units of local government, but is silent on the abolition of units of government. The County Charter Law, enacted in 1959 as Article 6-A of the County Law, provided that a county charter or charter law shall not contain provisions for the "creation, enlargement, diminution or abolition of any city, town, village or school district."[48] The provisions of Article 6-A of the County Law were transferred to Article 4 of the Municipal Home Rule Law.[49] Municipal Home Rule Law §34(2)(d) continues the restriction on charters containing provisions that restrict the creation, enlargement, diminution or abolition of units of government.

It is not clear why the State Legislature no longer authorizes counties to exercise the constitutional authority to abolish units of government. If counties had that power, they could effect mergers and consolidations of whole units of government as provided in the Optional

County Government Law. Using this power, a county would be able to transfer all the functions and duties of a troubled city to the county, and abolish the city. Similarly, a county would be able to enact local laws that merge towns, merge villages into towns, or merge towns and villages into cities. It would even be possible for a county to transfer all functions and duties of all local governments within the county to the county government, leaving a single municipal government in the county, a possibility anticipated in § 705 of the Optional County Government Law.

Of course, these mergers would have to be approved by the voters of a county in a referendum, but the decisions would be made by the county government and the voters, not the governments of the cities, towns and villages. It is not known whether voters would be comfortable so greatly altering local government, but under present law they do not have the opportunity to decide despite the clear language of the State Constitution.

Endnotes

1. Department of State, Division of Local Government Services, Shared Municipal Services Incentive Program Home Page, http://www.dos.state.ny.us/lgss/smsi/index.html.
2. N.Y. CONST. art. IX, § 1(a). Counties wholly included within a city, i.e., the 5 boroughs of New York City, do not have home rule powers. Any discussion of the powers of counties in this article refers to the 57 counties outside New York City.
3. There are no provisions for the dissolution or consolidation of cities and counties.
4. L. 1897, c. 378, effective 1 January 1898. Brooklyn and several towns and counties were merged into New York City.
5. In 1874 the towns of Morrisania, West Farms and Kings Bridge in Westchester County were annexed to New York City and County. L. 1873, c. 613. The annexed area is now in Bronx County, which was carved out of New York County. L. 1912, c. 548.
6. N.Y. TOWN LAW §79-a; VILLAGE LAW, art. 19 (McKinney 2002).
7. N.Y. TOWN LAW § 79-a(1).
8. *Id.* § 81.
9. *Id.* § 81(4).
10. N.Y. Legis. Manual, at 1076 (1984-85 ed.) A village can be located within the boundaries of more than one town. For example, the Village of Saranac Lake is located within three towns and two counties.
11. N.Y. VILLAGE LAW § 19-1900.
12. N.Y. TOWN LAW § 79-a(1)(a).
13. *Id.* § 79-a(1)(b).
14. N.Y. VILLAGE LAW § 19-1912.
15. *Id.* § 19-1901.
16. *Id.* §§ 19-1900, 19-1903.
17. *Id.* § 19-1902.
18. N.Y. TOWN LAW art. 5-B, VILLAGE LAW art. 18.
19. N.Y. TOWN LAW § 79-b(1).
20. *Id.* § 79-c.
21. *Id.* § 79-d.
22. *Id.* § 79-g.
23. N.Y. VILLAGE LAW § 18-1806.
24. *Id.*
25. N.Y. TOWN LAW § 79-j(1).
26. *Id.* § 79-j(2).
27. *Id.* § 79-o.
28. *Id.* § 79-l.
29. N.Y. VILLAGE LAW § 18-1810.
30. *Id.*
31. N.Y. CONST. of 1894 art. III, § 26(2), amendment approved by voters 5 Nov. 1935, effective 1 Jan. 1936. This section was carried forward in the Constitution of 1938 in Article 9, § 1(h).
32. L.1959, c. 569.
33. N.Y. MUN. HOME RULE LAW § 33(4)(c), (7) ("MHRL").
34. L.1970, c 708, *enacting* MHRL § 33-a.
35. The language of State Constitution Article 9, § 1(h) could be interpreted to limit the transfer of function power to counties adopting or amending an "alternative form of government," i.e., a county charter. In enacting MHRL § 33-a, the Legislature clearly intended to extend the transfer of function authority to counties choosing not to adopt a charter.
36. N.Y. CONST. art. 9, § 1(h); MHRL §§ 33(7), 33-a(2).
37. *Id.* The U.S. Supreme Court held that the concurrent majority requirement does not violate the Equal Protection Clause of the Fourteenth Amendment. *Lockport v. Citizens for Cmty. Action at Local Level*, 430 U.S. 259, 97 (1977). Thus, the state could reasonably view the interests of voters within city limits and voters outside city limits as being different with respect to the adoption of a county charter.
38. N.Y. CONST. art. 9, § 1(h); MHRL §§ 33(7), 33-a.
39. 3 Op. Counsel SBEA No. 79 (1973).
40. Op. Att'y Gen. 187 (1971).
41. Op. Att'y Gen. 231 (1973).
42. *Mahler v. Gulotta*, 297 A.D.2d 712, 747 (2d Dep't 2002), *motion of leave to appeal denied*, 98 N.Y.2d 615 (2002).
43. N.Y. CONST. art. 9, § 1h(1).
44. N.Y. MHRL § 33(4)(c), (7).
45. L.1937, c. 862.
46. L. 1952, c. 834.
47. L. 1974, c. 28.
48. N.Y. COUNTY LAW § 324(2)(d) (repealed by MHRL § 58). The home rule amendment to the State Constitution approved by the votes at the general election of 1958 directed the State Legislature before July 1, 1959, to confer upon all counties outside New York City the power to prepare, adopt and amend alternative forms of county government, "subject to such limitations as the Legislature shall prescribe, including limits on powers specified in this section." N.Y. CONST. art. 9, § 2(b) (repeal approved by voters at General Election of 1963, authority to adopt, amend or repeal alternative forms of county government was included in the Bill of Rights for Local Governments at N.Y. CONST. art. 9, § 1(h)).
49. L. 1963, c. 843.

Robert C. Batson is Government Lawyer in Residence at the Government Law Center of Albany Law School and a member of the adjunct faculty. He served in various legal positions in New York State government between 1976 and 2003 where he specialized in municipal law, administrative law and government regulation.

Revisiting Regionalism to Streamline Governance in Buffalo and Erie County, New York

By Craig R. Bucki

I. Introduction

During the first half of the twentieth century, burgeoning grain transshipment trade and heavy manufacturing spurred the bustling economy of Buffalo, the eastern-most port on the shores of Lake Erie and the second-largest city in the State of New York.[1] Since 1959, however, the opening of the St. Lawrence Seaway has severely damaged Buffalo's grain trade,[2] and numerous manufacturing concerns have transferred their operations to southern states and foreign countries in search of lower taxes, less stringent environmental regulation, and a workforce that accepted lower wages. Although over 900,000 people still call Erie County home, the United States Census Bureau has estimated Buffalo's population, as of July 2004, at just 282,864—a decline of nearly 10,000 from the Bureau's official count in 2000.[3]

Recognizing this precipitous drop in population and the exodus of industry, a handful of politicians and community leaders in the mid-1990s publicly recommended merging the City of Buffalo into Erie County as an elixir. The parlance of Buffalonians has termed this effort to transform the governmental structure of Buffalo and Erie County as "regionalism." Support for regionalism gathered steam with the 1999 election of Republican County Executive Joel Giambra, a staunch advocate of consolidation to promote, in the words of a campaign slogan, "better, smarter, and cheaper" service delivery. Only six years later, however, the seemingly inexorable march toward regionalism had stalled. In 2005, a commission created to devise a plan for merging Buffalo into Erie County abruptly suspended its work, in the wake of a multi-million-dollar county budget deficit that voters blamed on County Executive Giambra and his administration's fiscal mismanagement. Since then, in Erie County, "regionalism"—along with the intermunicipal collaboration or consolidation that it can connote—has remained a "bad word," permanently associated with an unpopular elected official.[4]

As a new County Executive takes office in January 2008, however, Erie County has a fresh opportunity to reconsider regionalism as a means to eliminate unnecessary duplication in service delivery. Unlike during the Giambra era, such reconsideration should not derive exclusively from the persistent initiative of a small group of influential stakeholders. Rather, grassroots efforts—such as the creation of intergovernmental relations councils authorized by New York law—must devise cost-saving strategies upon which citizens can comment and reach consensus. Meanwhile, rather than concede a continued exodus of population and economic activity, the City of Buffalo, with support from Erie County, should implement tax-increment financing on a trial basis, as a means of increasing the City's property tax base.

II. Regionalism: Substantive and Procedural, Old and New

Writing in the aftermath of the post-World War II migration of Americans from cramped inner-city settings to the sprawling suburbia, the original advocates of regionalism have proposed rehabilitating urban property tax rolls by consolidating cities and their suburbs into general-purpose, metropolitan governments. For example, David Rusk, a former mayor of Albuquerque, New Mexico, has recommended "[making] the city a real city . . . through aggressive annexation or consolidation."[5] Similarly, noted syndicated columnist Neal Peirce has embraced intermunicipal consolidation as a means of recognizing the interdependence of a central city and its surrounding suburbs, which together comprise a "citistate" that "[functions] as a single zone for trade, commerce, and communication."[6]

In response to Rusk's and Peirce's consolidation proposals—which this article terms "old" regionalism—more recent commentators have "suggested that voluntary local measures and interlocal cooperation can be effective substitutes for centralized control."[7] Although they "embrace a wide range of divergent strategies," these "new" regionalists stand united in doubting the odds of public enthusiasm for replacing a familiar pattern of towns with a single regional authority.[8] Rusk and Peirce assume that such enthusiasm would arise among altruistic suburbanites, willing to dismantle their local system of government for the predicted benefit of their urban neighbors. Yet suburban residents may deeply value their communities' autonomy: consolidation would invalidate their choices to take advantage of better or different services available outside the central city. Given this reality, new regionalists seek to promote voluntary, cross-border regional collaboration "that [does] not completely supplant local governments,"[9] but strives to forge "multiple, overlapping webs of interlocal agreements" for service delivery.[10]

While "old" and "new" versions of regionalism differ in substance, the procedure for implementing regionalism may vary widely as well. For Rusk and Peirce, successful regionalism entails implementation of the consolidation plans that they have already devised. Yet strategies for

regional collaboration also may derive from deliberation among concerned citizens.[11] For example, in the mid-1990s, "Envision Utah" began as a movement to combat urban sprawl in greater Salt Lake City. As the *Harvard Law Review* has commented, Envision Utah "began with an ironclad rule [that] it had no agenda," and "involved as many people as possible in defining what the region's agenda should be."[12] At the inception of Envision Utah, business and government leaders gathered support among a diverse group of stakeholders, who included "both conservationists and developers."[13] Subsequently, Envision Utah conducted several high-profile public forums that invited all citizens "to place chips representing anticipated regional population growth on a map," and thereby indicate their "preferences regarding where and how the region should grow."[14] Relying upon the data collected at the public forums, the stakeholders utilized their professional and political expertise to translate citizens' preferences into a plan for regional action:

> Using the input from the workshops, Envision Utah involved its stakeholders in creating four alternate growth scenarios for the future of Utah . . . : a low-density scenario, a moderate-density scenario, a high-density scenario, and a baseline scenario demonstrating the future result of existing trends. . . . Working with professional planners and analysts—many from state and local governments—Envision Utah determined the consequences of each scenario . . . and then presented the scenarios to citizens through an extensive outreach campaign and asked them to select their preference. Survey results indicated that residents overwhelmingly favored strategies that increase relatively compact, transit-oriented development. . . . After adopting a regional vision, Envision Utah held more public and stakeholder meetings and workshops to develop a Quality Growth Strategy, which lists seven goals along with strategies for achieving them. Implementation has proceeded . . . [b]y educating the public and decisionmakers [to engender] remarkable success at promoting voluntary smart growth efforts that fit the New Regionalist model.[15]

Pursuant to its efforts to solicit preferences concerning future growth, and to educate the citizenry concerning how properly to achieve these goals, Envision Utah also convinced a very conservative electorate in 2000 to vote in favor of a sales tax increase to raise revenue to subsidize rapid transit expansion.[16] The conscious refusal of Envision Utah to impose upon the populace its own vision for intergovernmental consolidation or appropriate municipal growth, combined with its painstaking efforts to involve residents in drafting a plan for new development, encouraged citizens of a wide variety of political viewpoints to adopt the Quality Growth Strategy as their own, and to pursue the steps necessary to achieve its aims.

Despite the success of Envision Utah, promotion of regionalism in Erie County has exemplified an "old" model, whereby a small group of high-profile stakeholders have clamored for intermunicipal consolidation. As early as 1995, the *Buffalo News*—Western New York's most widely circulated daily newspaper—called for the "dissolution" of Erie County's towns and cities, as then-Buffalo Comptroller Joel Giambra had suggested.[17] Over the next ten years, the *News* consistently gave voice to the supporters of such dissolution, whether by publicizing the effort of the Buffalo Niagara Partnership, a local chamber of commerce, to conduct a public-relations campaign to convince skeptical residents of the benefits of intermunicipal consolidation;[18] by extensively covering conferences convened by local attorney Kevin Gaughan to achieve the same result;[19] or by using support for County Executive Joel Giambra as a litmus test for endorsing political candidates.[20] Although the efforts of the *News*, County Executive Giambra, the Buffalo Niagara Partnership, and Kevin Gaughan, among others, encouraged Erie County residents to evaluate intermunicipal consolidation, fewer than half of County residents had supported elimination of their municipalities in May 2004,[21] and County Executive Giambra had recognized the need for an advertising campaign to sway public opinion in favor of consolidation.[22] The viability of that prospect quickly disintegrated in the fall of 2004, when voters learned that the Giambra administration's fiscal policy had raided the County's fund balance, and had caused its credit rating to plummet.[23]

Had the impetus for regionalism and intermunicipal consolidation arisen from Erie County's citizenry at large, desire to implement such initiatives might have survived County Executive Giambra's rapid drop in popularity. Given this premise, the time is ripe to reinvent the concept of regionalism in Buffalo and Erie County, by encouraging residents to determine the future of their governance, and by reversing the erosion of the urban property tax base.

III. Two Brief Proposals for Implementing "New" Regionalism in Buffalo and Erie County

In reaction to the failure of the campaign to sell a plan for intermunicipal merger to Erie County residents, this article proposes a new regionalist alternative. Procedurally, much like Envision Utah, it would wipe clean the slate of regional change and solicit input from government officials, business leaders, developers, clergy, neighborhood activists, and ordinary voters to derive practical reforms that can meet public approval. Substantively, rather than divest any municipality of its autonomy, it would encour-

age rehabilitation of Buffalo's population and tax base from within. To achieve these ends, Erie County's municipalities should form an intergovernmental relations council to glean public input on regionalism, and should test tax-increment financing to encourage residential and commercial development in inner-city Buffalo.

A. An Intergovernmental Relations Council: New Procedural Regionalism

Article 12-C of New York's General Municipal Law grants counties, towns, cities, and villages broad authority to screen opportunities for consolidation and cross-border collaboration under the auspices of "intergovernmental relations councils." Created by agreement among interested municipalities, governed by an adopted set of bylaws, and directed by a chairman elected by their membership,[24] such councils enjoy an extensive mandate "to strengthen local governments and to promote efficient and economical provision of local government services."[25] Specifically, they may undertake an array of initiatives, including surveys and research "to aid in the solution of local governmental problems,"[26] consultation with "appropriate state, municipal, and public or private agencies in matters affecting municipal government,"[27] consideration of "practical ways and means for obtaining better economy and efficiency in the planning and provision of municipal services,"[28] operation as a "purchasing consortium" authorized by participating municipalities "for the purpose of obtaining economies through joint bidding and purchasing,"[29] and overall promotion of participants' "general commercial, industrial and cultural welfare"[30] by means of "local and intercommunity planning."[31] By the generality of these prescriptions, which no reported case has ever interpreted or limited, New York has granted municipalities wide leeway to develop plans for regionalism upon soliciting input from residents and other key stakeholders.[32]

An intergovernmental relations council sponsored by all of Erie County's cities and towns would empower citizens to determine the destiny of their government. With respect to its membership, the council could consist of at least one representative selected by each participating municipality, in addition to a fixed number of appointments by the County Executive and the County Legislature. Ideally, the council would include representatives of key constituencies—such as business, residential and commercial developers, labor, racial and ethnic minorities, and the faith community—who share an interest in shaping the future of Erie County's governance. Not only should the council incorporate a broad range of talents, occupations, and economic interests, but it also should welcome a diversity of viewpoints concerning the proper direction for regional change.

Upon its creation, the council could conduct public hearings throughout Erie County. Such hearings would not presume the superiority of intermunicipal consolidation over cross-border collaboration. Rather, in advance, the council's members would assiduously research the numerous alternatives for regional governance—from mere intergovernmental contracting to full-blown city-county merger. At each council hearing, following a brief presentation of each option, members would invite audience commentary, which the council's secretary could record in the minutes of the meeting. The council could then permit meeting attendees to vote upon their preferred plans for regionalism, much as Envision Utah enabled concerned citizens to identify their favored plans for future growth. The resulting tallies would provide the council with hard data regarding regional steps that would meet the approval of Erie County residents.

Subsequent to this series of public hearings, the council would produce a conceptual plan for regionalism. Such a plan could call for the merger of Erie County's myriad special districts. It could promote the amalgamation of the Buffalo Police Department and the Erie County Sheriff's Department. It could encourage municipalities actively to seek opportunities for multilateral contracting and sharing of capital equipment. It could even seek intermunicipal consolidation. In short, this plan could recommend any strategy imaginable, from mergers to mere cooperation.

Most important, however, this plan would derive not from promotion by personalities buoyed by ephemeral popularity, *but rather from the will of the populace as expressed during the council's public hearings.* Of course, some citizens would criticize any regional plan authored by the council, regardless of any public input. Yet extensive public participation, combined with balanced and reasoned reporting of its fruits, would enable Erie County residents to claim true ownership in their government. A majority of residents would identify regionalism not as the platform of Joel Giambra, to be dispatched at the first sign of his political weakness, but rather as *their* platform that deserves implementation. Thus, the model of the intergovernmental relations council would immunize its regional plan well against unanticipated political crises that might otherwise threaten regional progress. Just as conservative voters in Utah approved a tax increase necessary to subsidize rapid transit expansion that would satisfy the regional plan created by their input, so would Erie County voters more likely support the means of implementing regionalism as filtered through a collaborative process.

Despite the harbinger of success that Envision Utah provides, the formation of an intergovernmental relations council does not automatically assure the eventual adoption of a blueprint for regional growth or intermunicipal cooperation in Erie County. Proponents of consolidation could fundraise among private-sector businesses (as they had planned in anticipation of a November 2005 referendum) to subsidize mass-media appeals before the intergovernmental relations council's public hearings. Whereas a clear majority of participants in the hearings

sponsored by Envision Utah favored a particular vision for dense growth, Erie County residents may not easily reach a similar consensus concerning a plan for regionalism, despite the best efforts of an intergovernmental relations council. Unfortunately, such an absence of consensus would fail to yield a popular strategy for regionalism, and would thereby maintain the status quo of municipal governance.

In Erie County, however, the potentially beneficial role of an intergovernmental relations council in devising a regional plan from public input far outweighs any risk of continued inertia that could result from its work. As *Buffalo News* columnist Donn Esmonde observed in 2006:

> Sales tax just went up another half-cent. City and county are shaky ships steered by financial control boards. [Erie County residents] pay more taxes than just about anywhere else [*sic*]. We're bleeding jobs and people. . . . He says it is absurd. He is right. There is one problem: His name is Joel Giambra. The county executive is political poison, an automatic rejection notice, a walking gag reflex, a sure-fire discussion-ender. This is what happens when a cause is connected to its champion. He goes down; it goes down with him. So it goes with Giambra and regionalism. The cause is just. Its crusader is battered and bloody. Two years ago, regionalism was the talk of the town. Now the word is seldom heard. Regionalism is the collateral damage of Giambra's budget-bungling fall.[33]

Thus, the cause of regionalism will not succeed until Erie County residents distinguish its merits from their overall disapproval of County Executive Giambra. Such dissociation shall take place only if Erie County resets the regionalism debate, so that residents may consider anew options from intermunicipal consolidation to cross-border collaboration. An intergovernmental relations council can furnish citizens this chance.

B. Tax-increment Financing: New Substantive Regionalism

Although David Rusk's conception of metropolitan government replenishes a city's property tax coffers by stretching its borders, it does not rejuvenate dilapidated urban neighborhoods. Whereas a new procedural regionalism would regulate the process of creating a regional plan, it should also seek substantive alternatives to intermunicipal consolidation that nonetheless can rehabilitate the urban core. The utilization of tax-increment financing can achieve this goal without curtailing the municipal autonomy of Erie County's suburban towns.

Tax-increment financing ("TIF"), permitted by statute in New York since 1984, "is an economic development tool that municipalities can use to stimulate private investment and development in targeted areas by capturing the increased tax revenue generated by the private development itself and using the tax revenues to pay for public improvements and infrastructure necessary to enable development."[34] In particular, TIF enables any municipality in New York to identify "blighted areas," defined as areas containing "a predominance of buildings and structures which are deteriorated or unfit or unsafe for use or occupancy" or "a predominance of economically unproductive lands, buildings or structures, the redevelopment of which is needed to prevent further deterioration which would jeopardize the economic well being of the people."[35] Pursuant to such identification, the municipality can issue a bond "backed by the [*ad valorem*] property tax revenues produced by the increase in the property values" that would surely result from redevelopment of the blighted areas.[36]

Before engaging in tax-increment financing, a municipality in New York must follow a precise roadmap that values the input of expert planners and concerned citizens. First, it must formally study the feasibility of any redevelopment and afford any "person, group, association, or corporation" an opportunity to request a focus on a particular blighted neighborhood.[37] After completion of the feasibility study, the municipality's legislative body must adopt "preliminary plans" identifying the boundaries of the TIF redevelopment area, and offering a general statement describing the purpose of revitalization, its conformity with the municipality's master plan, and any impact on surrounding neighborhoods.[38] Subsequently, the municipality must draft a detailed "redevelopment plan" which not only elaborates upon the general objectives noted by the preliminary plans, but also specifies logistics for achieving revitalization.[39] In particular, the redevelopment plan should provide: (i) for a method for financing improvements to the blighted areas,[40] most often by issuing bonds for which the municipality would not pledge its full faith and credit,[41] and which would not count toward the municipality's constitutional or statutory indebtedness limits;[42] (ii) for municipal authority to sell or lease properties within the revitalization area[43] and to acquire private properties via "gift, purchase, lease, or condemnation"[44] or eminent domain;[45] and (iii) for relocation of any citizens whom the plan's implementation might displace,[46] whereby "no person or family of low and moderate income shall be displaced unless and until there is suitable housing available and ready for occupancy . . . at rents comparable to those paid at the time of . . . displacement."[47] Upon the composition of the redevelopment plan, the municipality's legislative body must allow expert planners to review its provisions,[48] and must hold a public hearing on the plan's adoption.[49] Only after adhering to these procedures may the legislative body vote to commence redevelopment.

Despite the power of tax-increment financing as a tool for revitalization, and its widespread use in states such as California, Florida, and Illinois, few New York municipalities have established TIF redevelopment districts since 1984.[50] Thus, in delineating such districts, the City of Buffalo could not only serve as a trailblazer in economic revitalization, but also spur the residential and commercial redevelopment that it desperately needs to resuscitate its tax base. Once enacted, a redevelopment plan for targeted neighborhoods would permit the City to issue bonds in order to generate funding to acquire vacant, abandoned, and dilapidated residential properties, which it could subsequently sell to developers ready to build new working-class housing in their place. Such housing could attract not only neighborhood citizens, but also suburban residents who desire to reside in newly constructed homes at the heart of Erie County's urban core. Similarly, the City could obtain abandoned commercial properties, which developers could renovate as prime office space, rather than erect suburban "industrial parks" that only aggravate sprawl. With each new build, property values in the TIF redevelopment districts would inevitably rise, thereby enabling the City to collect greater property tax revenue. As required by statute, any increment of revenue in excess of what the City would have accumulated in the absence of redevelopment would subsidize repayment of the original bonds.[51]

Moreover, successful tax-increment financing could create new jobs for residents of Buffalo's TIF redevelopment districts. Pursuant to New York law, demolition, construction, and other property improvements commenced pursuant to a redevelopment plan "may give priority for such work to [neighborhood] residents . . . and to persons displaced . . . as a result of redevelopment activities."[52] "To the greatest extent feasible," such improvements must also offer employment opportunities to low-income persons who reside in the TIF redevelopment district.[53] Thus, TIF redevelopment could not only provide jobs for citizens of Buffalo's most economically challenged areas, but also enable them to claim greater ownership in the reconstruction of the neighborhoods that they call home.

Like any redevelopment proposal, tax-increment financing will not avoid criticism entirely. Most notably, some homeowners may object to government seizure of private property in the name of economic development, notwithstanding federal and New York case law permitting such seizure.[54] For example, in 2005, a private developer proposed to the Town of Cheektowaga a plan to seize the homes of thousands of residents in the working-class neighborhood of Cedargrove Heights via eminent domain, and to replace them with a mix of more upscale patio homes and retail outlets.[55] Although the developer vowed to compensate all homeowners for the full-market value of their properties, his proposal stalled in the face of staunch opposition from vocal neighborhood residents.[56]

Nonetheless, New York's tax-increment financing statute provides residents ample opportunity to express their concerns about eminent domain orally or in writing concerning a proposed redevelopment plan. In response to a neighborhood's overwhelming opposition to reconstruction, the Buffalo Common Council could exclude that neighborhood from TIF revitalization. New York does not require a municipality to utilize tax-increment financing throughout its borders. Rather, pursuant to a flexible statute, a municipality may target for revitalization a single neighborhood, a series of blocks, or abandoned properties alone.

Detractors of tax-increment financing could also criticize issuance of additional debt by the City of Buffalo for the sake of economic development, even in the absence of a pledge of full faith and credit. Yet this concern should not discourage Buffalo from pursuing tax-increment financing on a trial basis. At the threshold of redevelopment, the Common Council could establish a TIF redevelopment district within a single area of a few blocks. Successful enhancement of the tax base in this experimental district, combined with subsequent repayment of the bonds that funded the improvements there, would justify the creation of additional districts, and rejuvenation of Buffalo's tax base from within, rather than via loss of its autonomy.

IV. Conclusion

Despite the advocacy of the *Buffalo News*, along with key politicians, business leaders, and activists in favor of city-county consolidation, Erie County's 2004 fiscal crisis and Joel Giambra's unpopularity have stymied its prospect for implementation. Buffalo and Erie County cannot wait idly for a revival in support for such a wholesale overhaul of local governance. Rather, citizens must devise strategies to bring about a new kind of regionalism in western New York. These strategies may be procedural, as in creating an intergovernmental relations council, or substantive, as in implementing tax-increment financing. Through the perseverance of Buffalo and Erie County and their residents, such endeavors can reinvigorate regionalism by fostering intermunicipal cooperation, and encouraging new development at the urban center.

Endnotes

1. *See* Richard C. Brown & Bob Watson, Buffalo Lake City in Niagara Land: An Illustrated History 221-22 (1981).
2. *Id.* at 222.
3. G. Scott Thomas, *Buffalo's Population Decline Gathers Speed*, Business First of Buff., July 4, 2005, at 1.
4. Editorial, *Revive Consolidation*, Buff. News, Sept. 27, 2007, at A8, *available at* 2007 WLNR 18973604.
5. Gene Marlowe, Editorial, *U.S. Pays for Suburban Dream by Having an Urban Nightmare*, Buff. News, Dec. 20, 1992, at Viewpoints 9, *available at* 1992 WLNR 895093 (quoting David Rusk). *See also* David Rusk, Cities Without Suburbs (1993) (advancing Rusk's proposals for intergovernmental consolidation).

6. What's a Citistate? http://www.citistates.com/whatis/.
7. Notes, *Old Regionalism, New Regionalism, and Envision Utah Making Regionalism Work*, 118 Harv. L. Rev. 2291, 2292 (2005) [hereinafter "*Old Regionalism*"].
8. Laurie Reynolds, *Intergovernmental Cooperation, Metropolitan Equity, and the New Regionalism*, 78 Wash. L. Rev. 93, 112 (2003). *See also* Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 Colum. L. Rev. 346, 453-54 (1990) (acknowledging the difficulty of convincing voters to support formal consolidation of general-purpose governments).
9. Sheryll D. Cashin, *Localism, Self-interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 Geo. L.J. 1985, 2034 (2000).
10. H.V. Savitch & Ronald K. Vogel, *Paths to New Regionalism*, 32 St. & Loc. Gov't Rev. 160, 164 (2000).
11. For a theoretical discussion of how such deliberation might take place, *see* James S. Fishkin, Democracy and Deliberation: New Directions for Democratic Reform (1991).
12. *Old Regionalism*, *supra* note 7, at 2293.
13. *Id.* at 2299.
14. *Id.*
15. *Id.* at 2299-300, 2303, 2310-11.
16. *Id.* at 2311.
17. Donn Esmonde, Editorial, *Suburbs in No Hurry to Aid City*, Buff. News, May 6, 1995, at Local 1.
18. Susan Schulman, *Business Group Maps Push for Regional Government*, Buff. News, Apr. 20, 1997, at C1, *available at* 1997 WLNR 1226651.
19. *See, e.g.*, Phil Fairbanks, *Regionalism Forum Is Heading for the Suburbs*, Buff. News, Mar. 4, 2004, at B3, *available at* 2004 WLNR 1616100 (discussing Kevin Gaughan's "Buffalo Conversation" series); Susan Schulman, *Chautauqua Plans Conference on Regional Governance*, Buff. News, Apr. 22, 1997, at B4, *available at* 1997 WLNR 1217199 (describing a conference on regionalism at the Chautauqua Institution).
20. Editorial, *County Legislature Races*, Buff. News, Sept. 3, 2001, at B6, *available at* 2001 WLNR 1169530.
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37. N.Y. Gen. Mun. Law § 970-d (McKinney 1999).
38. *Id.* § 970-e. To implement tax-increment financing, the City of Buffalo also would likely need the approval of the Buffalo Fiscal Stability Authority, a State-appointed control board that must approve the City's contractual obligations. *See* N.Y. Pub. Auth. Law § 3858(2)(h) (McKinney 1999).
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Craig R. Bucki is an associate with Phillips Lytle LLP, Buffalo, New York. J.D., Columbia Law School, 2006; B.A., Yale University, magna cum laude, Phi Beta Kappa, 2003. I wish to thank Richard Briffault (Joseph Chamberlain Professor of Legislation, Columbia Law School) for his editorial comments and suggestions, and his unceasing guidance and encouragement; and the *Albany Law Review*, for publishing a more detailed version of this article in its December 2007 issue.

BOCES: A Model for Municipal Reform?

By Robert B. Ward

In making his case for local-government restructuring this year, Governor Spitzer echoed a common theme among observers of government in New York: we simply have too many units of local government. With more than 3,200 taxing authorities, the point is hard to dispute.

Yet one of the most promising ideas for municipal reform could involve creation of yet another layer of local government. Just as the drive to consolidate school districts and their services in the 20th century led to creation of regional educational entities known as boards of cooperative educational services ("BOCES"), a new type of regional entity to provide shared municipal services may merit consideration in the latest push for reform.

This article explores the potential for creation of new, regional governmental entities on the BOCES model to give counties, cities, towns, villages, fire and special districts the same flexible opportunities to share services that school districts enjoy now. A related option would be to use BOCES themselves to serve municipal entities as they now serve school districts.

First, some background on BOCES, the regional approach to educational services that may serve as a model for broader reform.

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Why Do We Have BOCES?

A century ago, New York State was home to some 10,625 local school districts.[1] The typical district consisted of a one- or two-room school. Starting in 1914, state funding incentives and pressure from both state and local leaders produced a half-century of consolidation into larger districts. By the mid-1960s, fewer than 800 districts remained. Today, the number is slightly below 700, with one or two new consolidations occurring in a typical year.

As part of the decades-long drive to make local education more streamlined and effective, a 1948 law authorized creation of BOCES organizations through which local school districts could share services. Besides encouraging cost savings, the new regional entities were intended to allow small districts that could not afford certain programs to pool resources—thus allowing provision of services that otherwise might not be offered at all.

For nearly six decades now, BOCES have been considered essential players in the state's educational efforts. Virtually every school district outside New York City purchases significant levels of service from its regional BOCES.[2] They are particularly well known for specialized services such as education of disabled children and vocational training. But BOCES play important roles in a wide variety of academic and business areas. In every region outside New York City, they provide information technology, staff development, business-office and other key services.[3]

In 2004–05, the 38 BOCES statewide spent $2.2 billion, roughly 7 percent of all expenditures by school districts outside New York City. For purposes of comparison, that was slightly more than overall spending by the state's 554 villages, and more than half as much as all cities outside the Big Apple spent the same year.

Applying the BOCES Model to Municipalities

For nearly two decades now, state leaders have actively preached the value of local-government restructuring. Such discussions often focused on consolidation of municipal entities. In 1990, for example, Governor Cuomo created a Blue Ribbon Commission on Consolidation of Local Government. Business groups in many areas of the state echoed the call over the years, hoping to limit growth in municipal costs and property taxes.

Such ideas have found little support in the Legislature, however. Small wonder—voters themselves don't seem to like the idea, either. When given the opportunity to consolidate school districts, highway departments or other entities, they tend to choose the status quo even when presented with credible evidence of substantial tax savings to come. The New York State Constitution raises hurdles to consolidation of municipalities, such as a triple referendum requirement for transfer of functions from villages to counties.[4] And New York's public-employee unions—influential players in Albany—are often antagonistic to structural reforms that might trim payrolls.

With that backdrop, creative approaches to sharing services among municipalities and school districts assume

a more important role than ever. Such steps could bring many of the long-sought benefits of consolidation—while, potentially, setting the stage for outright elimination of governmental units at some point in the future.

A new form of regional entity—similar to BOCES in some ways, while very different in others—was conceived as part of a broad study of municipal reform in the early 1990s. A Local Government Restructuring Project organized by the State Academy for Public Administration and the Nelson A. Rockefeller Institute of Government developed nine model laws. One such proposal, which was introduced in the Legislature but not enacted, would have amended New York's General Municipal Law to allow establishment of regional, multipurpose special districts known as metropolitan municipal corporations.[5]

"The provision of a method by which regional multipurpose special districts can be established, and later assume greater responsibilities, could be an effective means of capturing the benefits of regionalization without requiring residents to give up their traditional political institutions," the Local Government Restructuring Project task force declared.[6]

Under the proposal, voters in any one or more counties would have been empowered to create such regional governments. Powers that could be transferred to the metropolitan organization would have included comprehensive land-use planning, water treatment, public transportation, garbage disposal, and creation and maintenance of parks.

Unlike BOCES, which have no taxing power, the proposed municipal councils would have been empowered to levy property taxes with voter approval. Such a provision would make the new entities more like traditional governments.

A handful of states—including California, Oregon, Colorado and Washington—allow creation of such multipurpose regional councils, although few regions have chosen to do so. Some other proposals for regional government in New York have emerged over the years. More recently, though, most experts have come to consider new regional entities that have the full powers of existing municipalities politically impossible—and, perhaps, not the best option from the perspective of effective governance.

"Measures to create regional entities and institutional mechanisms do not provide permanent solutions to the structural problems of local governments," according to Gerald Benjamin and Richard P. Nathan. "When it comes to changes in the role, boundaries, and structure of local governments, one generation's answers can produce the next generation's problems. Governments created to encompass large regions . . . become ossified."[7]

Many educational leaders in New York would say that such warnings illustrate the value of BOCES' flexible, voluntary nature. Individual school districts have full authority to choose which services they will purchase from the regional organization, and to change such choices annually. BOCES leaders like to say that they are entrepreneurial and customer-focused, and there's good reason for that. Operating in something of a market environment, they have little choice.[8]

If the regional service-sharing model is to work for municipal governments, the flexibility and self-selection inherent in BOCES may be essential. Such flexibility would follow in the tradition of regional service-sharing arrangements that have been successful in the recent past. In such cases, the impetus has often come from local officials willing to push hard to overcome the inertia inherent in any large organization (such as the collective layers of local government in every region of New York) as well as the particular obstacles to municipal reform that are created by the state's Constitution and political landscape.

In the Capital Region, for instance, four counties—Albany, Rensselaer, Saratoga and Schenectady—began envisioning a regional detention center for young offenders in the early 1970s. Criminal suspects under the age of 16 could not be held in county jails, so judges and county sheriffs had to send them to one of the state-approved centers for youthful offenders many miles away, at significant expense. After the four counties agreed in principle on building a regional detention center, bringing the project to reality required more than a decade of often discouraging work. Hurdles emerged from existing laws, bureaucratic opposition or inertia on the part of state agencies whose action was essential, and the desire of local elected officials to avoid political risk. Now, a decade after opening, the Capital District Youth Center ("CDYC") can be considered a success story of cost efficiency and service enhancement. During the developmental stages, however, such an outcome often seemed a long shot.[9]

The CDYC is somewhat like a BOCES in that it sells services to "non-members." The four originating counties appoint board members who oversee the corporation. Other counties contract for services just as school districts that are not members of a BOCES purchase services from them.

A broader approach to regional service-sharing could occur within a new entity similar in some ways to the cooperative CDYC. Under such an approach, local leaders in a number of municipalities and/or counties could seek legislation creating a municipal or public benefit corporation with legal power to provide services at the request of two or more localities. (For reasons related to the bond financing required for construction, CDYC is structured as a nonprofit public corporation under Internal Revenue Service rules.) Such services would be funded through

annual or multi-year contracts between the localities and the new, regional entity. As envisioned in earlier proposals, the new entities might provide infrastructure-related services such as highway maintenance and water treatment, while adding business services such as property assessment, tax collection, information technology and payroll.

Alternatively, the state could allow BOCES to provide municipalities some of the management and administrative services the regional entities already offer school districts—computer and telecommunication network services, payroll processing, benefits administration and others. With growing interaction between schools and local governments' social services agencies, BOCES might take on some human-service roles now assigned to counties.

"Besides cost, accountability issues are worth considering in development of regional service organizations."

Which approach makes more sense—new regional organizations for general-purpose local governments, or additional missions for the existing BOCES? The latter may be easier to accomplish politically, and could make sense as an initial step. In the long run, new regional municipal service organizations may be a better choice. Many observers believe public education already is pulled in too many directions. Asking BOCES to meet the highly demanding mission of educating children, and simultaneously performing a variety of functions that require completely different expertise, could easily result in many important jobs being performed poorly.

Cost Savings, Enhanced Services, or Both?

BOCES and school district leaders say they rely on the regional cooperatives to improve both *cost-efficiency* and *program quality*. The twin goals are important to keep in mind at a time when local government reform is most commonly championed as a way to reduce costs and thus control property taxes.

There is no question that regional service-sharing creates cost savings for school districts in some areas. Schools must provide special education programming, for example. For the small minority of students with significant disabilities, BOCES reduces school districts' costs by creating economies of scale. Each individual district might have only a handful of children with a given set of needs, but when a dozen or more districts join together, providing adequate numbers of appropriately trained staff becomes practical and affordable.

But it's also true that many BOCES services—and their costs—simply would not exist if individual districts had to provide such programming on their own. For instance, two neighboring BOCES—Capital Region and Questar—joined to create a high school focused on math, science and technology. Opened in September 2007, the school brings together students from 48 school districts. Almost certainly, no district would have created such a school independently. Similarly, if individual school districts had to hire their own staff for career / technical education classes, programming would inevitably be much more limited than it is with BOCES.

Giving local officials new opportunities to share services will likely produce an unpredictable mixture of results: some steps to make existing operations more cost-effective, and other efforts to create entirely new (in some cases long-needed) programs. Both outcomes are desirable, of course. Still, it's important for policymakers and taxpayers to recognize that not all—and perhaps not most—service-sharing efforts will reduce costs.

If and when state leaders consider creating BOCES-style entities for general-purpose local governments, careful consideration of financial incentives will be essential. From the earliest days of BOCES, state funding formulas have encouraged school districts to purchase services through the regional cooperative. Today, some larger school districts that could provide certain services in cost-effective ways on their own choose instead to purchase those services from BOCES simply because doing so generates additional state aid. The result: shifting of costs, rather than overall savings for taxpayers.

Development of new local government entities would bring the potential of cost savings in at least one major area, that of employee compensation. New accounting rules are revealing that many, if not most, municipalities and school districts in New York have accumulated significant long-term liabilities for retiree health coverage. Given the state's public-employment laws and practices, regional municipal service organizations would likely be unionized. When such organizations and unions negotiate employee contracts, though, they would be starting with a blank slate rather than continuing a status quo that originated when health coverage was much less expensive. (In many cases, municipalities and school districts provide retiree coverage as a matter of practice, rather than contract; the new entities would have no particular past practice to follow or break.)

Besides cost, accountability issues are worth considering in development of regional service organizations. The BOCES model leaves ultimate authority with the individual school districts—as customers who can take their "business" elsewhere, as board members of the regional entity, and as fiscal decision-makers who must approve the entity's annual budgets. Similarly, a service-sharing effort in Chemung County, the Municipal Highway Services Board, is entirely voluntary and leaves policymak-

ing authority among participating municipalities. (The staff person for the board carries the title of "coordinator," rather than "commissioner" or "superintendent.")[10] Such an approach leaves voters with a clear understanding of which local elected officials are responsible for the quality and cost of public services.

A Bridge to Future Consolidation?

In the middle of the 20th century, the Legislature took two steps to encourage school consolidation. It established BOCES, which grew into major educational institutions across the state. Lawmakers also created another form of educational entity, intermediate school districts, that were intended to augment or eventually replace smaller, local districts. Voters and local leaders ignored the intermediate school district option, and none were established anywhere—not an auspicious precedent for larger regional governmental approaches.

Still, the political zeitgeist today may lead to continued, long-term pressure for restructuring. After decades of losing population and jobs to other states, many New Yorkers feel a sense of urgency about reforming government and reducing its costs. Governor Spitzer is using the most powerful chief executive office in the 50 states to trumpet the need for change. The Governor's strong rhetoric, his Commission on Local Government Efficiency and Competitiveness, the Shared Municipal Services Incentive program, and efforts under way in various regions of New York, are encouraging local leaders, the media, and voters to talk more seriously about municipal restructuring than at any time in recent memory.

Absent the unlikely event of major legislative action forcing restructuring on localities, truly major reform in New York's centuries-old structure of local government will require decades of ongoing change analogous to the consolidation of school districts through much of the 20th century. Major progress in sharing of services—through BOCES-style cooperative efforts, or other approaches—would constitute a significant step in that direction by blurring voters' perceptions of municipal boundaries over time. Outright consolidation, and thus elimination of many of those thousands of taxing jurisdictions, could eventually become much easier as a result.

Endnotes

1. James D. Folts, *History of the University of the State of New York and the State Education Department, 1784-1996* (1996); *available at* http://www.nysl.nysed.gov/edocs/education/sedhist.htm.
2. All but nine districts are members of BOCES, giving them voting power over the organizations' budgets and policies. State law does not permit New York City, Buffalo, Rochester, Syracuse or Yonkers to join BOCES. Four other districts remain non-members by choice, but each relies on its local BOCES for special education and other services.
3. Each BOCES is headed by a district superintendent, who also serves as the regional representative of the state Education Commissioner. That function includes helping local districts select school superintendents and implement state academic standards. The district superintendent's role as regional representative is not addressed in this article.
4. *See* Richard Briffault, *Local Government and the State Constitution: A Framework for Analysis*, *in* DECISION 1997: CONSTITUTIONAL CHANGE IN NEW YORK (Gerald Benjamin & Henrik N. Dullea, eds., 1997).
5. A.9805, establishing the "Metropolitan Municipal Corporations Act," was introduced in 1994. Text of the bill is available from the author of this article.
6. *Report on the Local Government Restructuring Project of the Nelson A. Rockefeller Institute of Government*, 1992. Members of the task force were Victor J. Riley Jr., Robert D. McEvoy and Richard P. Nathan; the project director was Frank J. Mauro.
7. GERALD BENJAMIN & RICHARD P. NATHAN, REGIONALISM AND REALISM: A STUDY OF GOVERNMENTS IN THE NEW YORK METROPOLITAN AREA (2001).
8. The marketplace metaphor is inexact. Rather than the large number of choices available to a private purchaser of goods or services, school districts often have only three when considering BOCES services: purchasing the service from BOCES, performing it in-house, or not offering the service at all. Still, that gives districts one more choice than would be available otherwise.
9. A forthcoming case study on the Capital District Youth Center, by the Nelson A. Rockefeller Institute of Government, will provide additional history and analysis.
10. Michael Hattery, *Chemung County: Improving Inter-municipal Sharing in Highway Services*, Case Study Report for the Government Law Center, SMSI Technical Assistance Project, March 2007.

Robert B. Ward is Deputy Director of the Nelson A. Rockefeller Institute of Government.

Lessons on Sharing Services from the First Two Years of the SMSI Program: The Highlights*

By Gerald Benjamin, Michael Hattery and Rachel John

Gerald Benjamin

Michael Hattery

Rachel John

Local governance in New York State has long been criticized for being far too complex, with this complexity being an important driver of ever increasing property taxes. The number of layered local governments, their overlapping jurisdictions, the variety in their type and character and their often duplicative functions led, it was argued, to higher costs and lower efficiency in service delivery.

In response to this concern the Shared Municipal Services Incentive Program ("SMSI") was launched within the Department of State in the 2005-2006 state fiscal year. A total of $2.55 million was provided for a competitive grant program, with applications invited from counties, cities, towns, villages, and school districts for funds to support shared service delivery, cooperative agreements, mergers, or consolidations between and among local governments, and also possible local government dissolutions. More than one application per municipality was permitted. Total support for any single project was limited to $100,000 per participating municipality. A 10% local match in cash was required. Money could be used for legal and consulting services, feasibility studies, implementation plans or capital improvements, and direct grant-connected personnel and non-salary costs; but money could not be used for indirect costs, salaries of local elected officials or in-kind costs incurred in connection with volunteer services.

This program was continued in the 2006-2007 fiscal year. Total funding was increased to $13.7 million. Applications were now invited in four different categories: shared municipal service incentive awards ($4.5 million available), shared highway service incentive awards ($3.85 million available), countywide shared service awards ($1 million available), and local health insurance incentive awards ($4.35 million available). In the shared municipal services category, eligibility to apply was extended to include special improvement districts, fire districts, fire alarm districts, and fire protection districts. For the first three categories, the explicitly stated goal was "to fund a diverse group of projects, concentrating on the reduction of duplicative layers of government and the improvement of service delivery."

The Government Law Center of the Albany Law School was contracted by the Department of State Shared Municipal Services Incentive Program to help draw out answers from past and ongoing efforts at consolidation and collaboration, both successful and not, to support further success across the state. The Center selected twelve cases for study (see Appendix A). Most of the case study work has been conducted by members of a network of educational institutions in the state that has been nurtured by the Government Law Center.

A summary of the insights from these twelve selected cases, and some observations drawn from an overall statistical analysis of the 264 applications in the program's first year, and 246 in its second are offered to help those working for further collaborative efforts. Collaborations reported in the case studies involved all types of general purpose governments in New York State, including counties, cities, towns and villages, and two types of special purpose governments—school districts and special districts. While most jurisdictions were rural villages or towns that numbered their residents in the thousands rather than the tens of thousands, several cases are decidedly urban and/or suburban. Governments whose activities are reported in the case studies range in size of

population served from a county of 200,635 to a village of 456. The cases reflect similar contrasts in fiscal resources.

It is important to remember that the number of cases under study is very small relative to the number of collaborations that we know occur between or among New York local governments. Moreover, these cases were not selected in a manner that assures that they are representative of collaborative efforts by local governments generally across the state. Also, there may be significant differences in actions taken by localities when a substantial incentive is offered, as is the case for the SMSI program, and in the absence of such an incentive.

The Problem

The underlying problem in all cases is the need to deliver governmental services on a limited revenue base, largely reliant on the property tax. Though they vary greatly across the state, real property taxes are generally regarded as burdensome throughout New York. Avoidance or limitation of increases in real property taxes while maintaining service levels is therefore a primary goal for most elected local government officials in the state. In a more limited number of cases external factors like growth, grantor conditions, and mandates have stimulated local units to pursue consolidation. In some cases, the presumption that the layering of local units in New York State is the source of increased overhead costs generated efforts for collaboration or consolidation. In some cases, specific local circumstances, like the close geographic proximity of two town offices, appear to have been an important factor in achieving consolidation.

The Process

Local Leadership. The SMSI cases affirm the importance of local elected and appointed leadership. Previous efforts have demonstrated that local government elected officials and administrative staff generally take the initiative in identifying opportunities and pursuing alternatives for inter-local cooperation. Without this initiative and action, opportunities remain unexplored. Previous studies have also shown the importance of a shared, mutually respectful involvement of elected and staff leadership in successful collaborations.

Encouraging Engagement. Proponents must foster an environment in which the need for change is embraced by, and ideas for change are rooted in, the community / communities that are considering collaboration or consolidation. In most instances the community will have the final say, either sooner (referenda) or later (future elections of local leaders). This engagement can help local leaders link proposed action to the underlying problems of service delivery, cost, and taxation for community members. Engagement can also help to address the common responses from citizens that local leaders are "presenting a solution where there is not a problem" or that "cost savings are overestimated" or that "they will yield unacceptable changes in the services delivered."

Create a Venue Where Collaboration Is a Core Focus. The venue may be a regular meeting of officials from several governments to discuss common problems and seek shared solutions or the formation of a formal organization—a Council of Governments or collaboration council. Even when there are not immediate collaboration opportunities, such a venue provides the opportunity to build relationships and understand the needs and capabilities of potential local partners. These kinds of linkages, and regular communication over time, make it possible to take advantage of opportunities that may arise from possibilities such as a key retirement plan or a joint need for new equipment or facilities.

Experts. Third party experts are important in pursuing intergovernmental collaboration. Properly used, consultants may disarm the argument that one or another of the officials involved in seeking change is pursuing a personal agenda (or vendetta). A key potential role of the outsider in these efforts, and one that has been less recognized, is as a neutral stipulator of facts. In contrast, it is also important to insist that consultants report in a manner that is not pre-emptive of local choice.

"The underlying problem in all cases is the need to deliver governmental services on a limited revenue base, largely reliant on the property tax."

It's About Collaboration, Not Control. Larger jurisdictions have the resources to lead. In several cases, school districts and counties were far bigger in budget size and staff than the localities with which they sought to collaborate. But disparities in size and capacity may raise fears about being subordinated. Larger governments must be mindful that successful collaborations can only result if the process is neither actually nor apparently controlled by the larger partners. In several cases larger partners were willing—as an act of enlightened self-interest—to spend their own resources to help create and launch a collaborative structure. Whether larger or smaller, a jurisdiction's failure to consult and gain agreement can be a fatal blow for working together, even when action is urgent. It is important for those interested in change to make time their friend—use it to prepare, plan, act incrementally and mitigate potential opposition to change from those most affected.

Constituencies for Change. Collaboration can be legitimized through the support of key community players. Chambers of Commerce and local media, for example, are usually enthusiasts of consolidation or collaboration

because of what they regard as its self-evident economic logic. There are no examples of media opposition to consolidation or cooperation in the SMSI cases reviewed. The positive effects of a collaboration may reach far beyond the jurisdictions actually entering into a formal agreement, e.g., other county or state units that will benefit from using a new joint fueling facility. Consider who those other beneficiaries might be and draw them into a supportive role.

Pick Low Hanging Fruit. Look for win-win opportunities that minimize change and conflict, and have a demonstrable impact or benefit. Use successes in these areas to build trust and understanding for bigger and more difficult-to-achieve opportunities in the future.

Get Started: Avoid Veto Situations. Requiring that all potential partners sign on before collaboration begins gives any single municipality a veto. If the most committed jurisdictions get started, others may join later. As we will see below, two-party agreements are most common; multiparty actions are most difficult.

Barriers and Overcoming Them

Behave Ethically. Self-interested behavior by decision makers, or even its appearance, will likely sink collaborative efforts.

Requirements in State Constitution or Law. A variety of state requirements can serve as a barrier to local collaboration. For example, state law requires a referendum to shift a particular office from elective to appointed. In a number of instances this has frustrated town and village attempts to share or jointly appoint municipal officials.

Co-terminality of Local Boundaries. School district boundaries are often not co-terminous with those of general purpose governments. Village boundaries may cross county or town lines. A collaboration with a few municipalities within a school district might be seen as undertaken without benefiting other parts of the district, but calling upon them to share costs. In such instances, it is important to make the anticipated costs and benefits of collaborative efforts clear and fair. Communicating them early and clearly to all affected parties is also essential.

Those Potentially Disadvantaged Will Resist. In the cases under study, the most vigorous resistance came from leaders and employees who feared the loss of their jobs—and organizations that represented them (e.g., employee unions). This opposition must be anticipated, and a plan developed to address concerns and minimize the often short-term costs of change to achieve the longer-term benefits. (See the above discussion of *It's About Collaboration, Not Control*). In particular, remember that local employees find protections in Civil Service law and collective bargaining agreements.

Local History and Experience Counts Heavily. Proposals for collaboration or consolidation occur in historic context; they do not arise in a vacuum. Many local leaders are long serving, and from families that have been in their communities for generations. They know local history; many have made it. Moreover, local experience is the experience most important to them.

Respect the Community and the Idea of Community. Governance structures whose overt purpose is to deliver public service also may be at the center of the social and cultural life of a place; for many residents these structures are at the core of community identity. Faced with the economy / community trade-off, people will rarely opt for the former over the latter. That is why proponents for change are wise to clearly distinguish an idea of collaborating on delivery of a service or consolidating a single function from a threat to the continued existence of a general purpose government or school district, and—most often—to disavow the latter.

How Many Governments Are Involved and How Are They Connected?

Previous research in the downstate New York metropolitan area by Gerald Benjamin and Richard Nathan[1] showed that most reported collaborations were between two or three municipalities, with the difficulty of mounting intergovernmental collaborative efforts growing as the number of involved governments increased. Most collaborations proposed during the first two years of the SMSI program also involved relatively few governments.

Benjamin and Nathan also found that reported collaborations were most common where governments were layered (or nested) geographically, that is, where some of the people served by the jurisdictions seeking to collaborate were citizens (and could vote) in two or more of them. These points are confirmed from secondary assessment of research done at the Regional Institute of the University of Buffalo, the Intergovernmental Studies Program of the University at Albany and the Monroe County Council of Governments.[2] Interestingly, the SMSI program encouraged proposals by side-by-side governments to work together. (Table I).

An additional interesting outcome of the SMSI program was the encouragement of collaborations between school districts and general purpose local governments. Overcoming barriers purposely built into the structure of local governments, the SMSI program was successful in encouraging applications that were led by or which included school districts. There were 88 of these in 2005–2006 and 60 in 2006–2007. Of this total, 68 in the first year and 32 in the second were between or among school districts and general purpose local governments.

What Kinds of Service Collaborations?

Previous research also showed that collaborations are most successful for services consumed collectively

(e.g., parks), or accessed impersonally without direct citizen contact with a government worker (e.g., highway maintenance), or those for which the government itself is the customer (e.g., equipment maintenance, specialized infrastructure). They are less frequently successfully launched for services that are directly delivered to citizens and consumed individually (e.g., police protection, education). A total of 73.29% of the SMSI applications received in 2005–2006, and 74.69% in 2006–2007, were for projects concerning public works, water and sewer systems, parks and recreation, and general government. Those involving fire and emergency services grew when fire districts gained the ability to apply for support under this program in 2006–2007; still, these applications focused on equipment needs. (Table II).

Lead Applicants

Recently published research by the State Comptroller's office argued that there was little distinction in actual functions performed by governments of different types, and suggested the value of a reclassification using a cluster analysis based upon twelve financial, demographic, and structural variables.[3]

As a result of this effort, New York's cities, towns, and villages were sorted into five categories: Major Urban Centers, Small Upstate Urban Centers, Small Downstate Urban Centers, Suburbs and Rural Governments.[4] For the purposes of this analysis of SMSI lead applicants we added two categories to these five: Counties and Municipalities with fewer than 1,000 residents (both excluded from the Comptroller's study). We then compared the proportion that the number in each category comprised, to the total number of general purpose governments categorized, to the proportion they made up of SMSI applicants.

As is clear from Table III, Counties, Major Urban Centers, Small Upstate Urban Centers, and Suburbs are overrepresented as SMSI lead applicants. Downstate Urban Centers are roughly proportionally represented. In contrast, rural governments are underrepresented and governments with populations under 1,000 are severely underrepresented. This confirms the idea that the program draws participation disproportionately from governments with the greatest capacity to manage the specifics of the application process.

Together with the participation by school districts, not included in the table, these results demonstrate that larger, more complex governments are disproportionately likely to respond to state consolidation and collaboration incentives. One might speculate that these governments are more likely to have the capacity to make grant applications without outside assistance, or more willing to assume the cost and risk involved in a competitive application process. The program's bar against paying consultant fees for application preparation from grant proceeds is almost certainly a greater disincentive to program participation for smaller governments than for larger ones.

Endnotes

1. Gerald Benjamin & Richard Nathan, Regionalism and Realism (2001).
2. *See* http://www.regional-institute.buffalo.edu/; http://www.albany.edu/igsp; http://www.monroecounty.gov/planning-planning.php#COG. But data from the Broome County shared service report do not show this result. *See* http://www.gobroomecounty.com/index2.php.
3. Office of the New York State Comptroller. Division of Local Government Services and Economic Development. *Outdated Municipal Structures: Cities, Towns and Villages: 18th Century Designations for 21st Century Communities* (2006).
4. The Comptroller did not include counties or school districts in the analysis. He also excluded governments in jurisdictions with fewer than 1,000 people. There were 32 jurisdictions that were outliers; they did not fit into any of the five identified clusters.

Gerald Benjamin is the Dean, College of Liberal Arts and Sciences at SUNY New Paltz. Michael Hattery is a Senior Research Associate, Department of Public Administration, College of Community and Public Affairs at Binghamton University. Rachel John is a Research Assistant, Office of the Dean, College of Liberal Arts and Sciences at SUNY New Paltz.

***This summary was condensed in part from a longer paper by Gerald Benjamin, "Intergovernmental Collaboration in Context: Lessons from a Reading of Thirteen Case Studies." A Report Prepared for the Albany Law School, Shared Municipal Services Technical Assistance Project, April 13, 2007. http://www.nyslocalgov.org/reports.asp#shared. Additionally a portion of this paper was taken from a draft report for the SMSI Technical Assistance Project by Gerald Benjamin and Rachel John entitled, "The SMSI Program: A Summary Analysis of the Program's First Two Years."**

Appendix A
Case Study Sources*

General Shared Services

Chemung County Shared Highway Services

Binghamton University, College of Community and Public Affairs
Highlights efforts to identify and implement opportunities to increase intermunicipal road maintenance services in Chemung County, NY. [PDF, 188 KB]

Morristown Shared Services Case Study

SUNY Potsdam, Potsdam Institute for Applied Research
This study examines what services could be shared between the Town and Village of Morristown and the local school system. This study outlines the application process and project planning that resulted in receiving $54,000 to study the problems of small municipalities trying to deliver services to taxpayers in the most economical ways. [PDF, 150 KB]

Town of Portland and Village of Brocton

SUNY College at Fredonia Rural Services Institute
An analysis of municipal services in the Town of Portland and Village of Brocton to determine if any opportunities exist for delivering current services in a more cost efficient manner without jeopardizing effectiveness of these services. [PDF, 242 KB]

Town and Village of Rhinebeck, Rhinebeck School District—Cooperative Services

University at Albany, Rockefeller College of Public Affairs & Policy
Examines two separate initiatives in which municipalities in the Town and Village of Rhinebeck, NY sought to identify and implement cooperative cost savings strategies by improving coordination among the jurisdictions. [PDF, 426 KB]

Joint Municipal Facilities

Arkport Central School District Bus Garage Shared Facility

Binghamton University, College of Community and Public Affairs
Summarizes efforts to build a new bus garage facility with town and village cooperation that would serve the needs of multiple town, village, county, and state government service providers. [PDF, 131 KB]

Indian River School District Shared Fuel Facility Case Study

SUNY Potsdam, Potsdam Institute for Applied Research
This is an example of a shared service project in operation since 1999 which has exceeded the expectations of all parties. After receiving a $16,000 grant from the NYS Education Department to conduct a feasibility study of shared services options, Indian River Schools built a new transportation center complete with a fuel depot. This facility is shared by the school district and the town of Philadelphia, who in turn shares its part with other entities such as local fire and rescue units, Department of Transportation, and NY State Troopers. The school provides a state of the art maintenance facility and fuel depot and the town provides in-kind services to the school district. [PDF, 174 KB]

Dissolutions and Consolidations

Broome County Police Services Consolidation Case Study

Syracuse University, Maxwell School of Citizenship and Public Affairs
This case study is about consolidation and is one way to understand what activities have been pursued; the (study's) successes, failures, and insights into what may improve future efforts for the County to consolidate. This study provides background information on the community and documents the progress made in attempting to consolidate as of the study's publication date. [PDF, 2.945 MB]

Town of Lancaster and Villages of Lancaster and Depew

University at Buffalo, Regional Institute
Outlines the range of municipal cooperative arrangements between three governments in Erie County from approximately the mid-1990s to the present and profiles the consolidation of the police departments of the Village of Lancaster and the Town of Lancaster that was accomplished in 2003. [PDF, 249 KB]

Town and Village of Liberty Consolidation Study

Pattern for Progress, SUNY New Paltz
A study of the potential consolidation of services between the Town and Village of Liberty in Sullivan County, NY. [PDF, 174 KB]

Town of Moriah Fire Departments

SUNY Plattsburgh
The Town of Moriah is located in the eastern part of Essex County, New York. The town has a population of around 5,000 people, spread out across four hamlets located between two and five miles. The town is served by three fire volunteer fire companies, Moriah, Mineville-Witherbee and Port Henry. With more than 16 percent of the town budget devoted to fire protection services, Moriah's town supervisor in 2006 invited the mayor of the Village of Port Henry, its village board of trustees, and officials of the three fire companies to participate in a study of consolidating fire services within the town. [PDF, 164 KB]

North Elba—Lake Placid Consolidation Study

SUNY Plattsburgh
The town of North Elba and the Village of Lake Placid currently share the cost of fire protection, building department staff, the assessor's office and have developed a joint land use code overseen by a joint review board. Lake Placid's new mayor had hoped to continue this process by developing a Shared Services Memorandum of Understanding in 2006 ("MOU"). The proposed MOU recognized that their actions affect "one community" and outlined some of the potential areas on which to focus cooperative efforts and where costs might be equalized for town and village residents such as possible consolidation of highway departments. [PDF, 151 KB]

Towns of Shelby and Ridgeway Unified Court

SUNY College at Fredonia Rural Services Institute
This study examines the consolidation of the Town of Shelby and the Town of Ridgeway courts, as permitted by the Uniform Justice Court Act, Section 106-A. [PDF, 1.262 MB]

Town of Waterford Police Department Dissolution

University at Albany, Rockefeller College of Public Affairs & Policy
Examines a proposal to dissolve the Town of Waterford Police Department and contract for public safety services with the Saratoga County Sheriff's Office. [PDF, 391 KB]

Environmental Infrastructure

Long Island Sound Watershed Intermunicipal Council (PDF)

Pace University
Twelve municipalities on the Sound Shore of Westchester County have joined together to coordinate storm water management on a regional basis and to comply with the New York State Department of Environmental Conservation's Phase II Municipal Separate Storm Sewer System (MS4) regulations. This case study examines the formation and goals of the Long Island Sound Watershed Intermunicipal Council ("LISWIC") formed by those communities. LISWIC's activities to address illegal connections to the sanitary sewer systems in its municipalities; and to investigate the creation of a regional storm water utility district, are also detailed.

*Posted at http://www.dos.state.ny.us/lgss/smsi/smsicasestudiespage.html (last visited on October 12, 2007).

Table I - Frequency of Collaboration between or among Local Governments; Layered v. Side-by-side & Combination

Data Source	Total	Layered		Side-by-Side		Combination		Unspecified Reports*	
		No.	Percent	No.	Percent	No.	Percent	No.	Percent
University of Buffalo Survey	227	131	57.89%	50	21.93%	30	13.16%	16	7.02%
Broome County	91	27	29.67%	49	53.85%	15	16.48%	NA	NA
University of Albany Data I	43	26	60.47%	14	32.56%	2	4.65%	1	2.33%
University of Albany Data II	32	25	78.12%	2	6.25%	4	12.50%	1	3.12%
Monroe County CoG Data	349	248	71.06%	92	26.36%	9	2.58%	0	0.00%
SMSI Applicatioins 2005-2006	264	96	36.36%	125	47.35%	43	16.29%	0	0.00%
SMSI Applicatioins 2006-2007*	246	91	36.99%	124	50.41%	26	10.57%	5	2.03%
R&R New York**	299	161	53.85%	138	46.15%	NA	NA	NA	NA
Total	**1551**	**805**		**594**		**129**		**23**	

* Data included 5 additional applications where no collaborator was identified. Three of these were "Counywide" applications, which did not require reporitng collaborators.

**Supplied in summary form in Regionalism and Realism.

Table II - Instances of Intergovernmental Collaboration by Functional Areas

	University of Buffalo Data		Broome County Data		U. Albany Data I		U. Albany Data II		Monroe County COG Data		SMSI Apps 05-06		SMSI Apps 06-07		R&R New York	
Function	No.	Percent	No.	Percent	No.		No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent
General Government	45	19.82%	24	26.37%	11	25.58%	12	37.50%	116	33.24%	45	17.18%	32	13.06%	18	8.41%
Public Works	47	20.70%	17	18.68%	8	18.60%	1	3.13%	64	18.34%	88	33.59%	100	40.82%	2	0.93%
Fire, Emergency Services	31	13.66%	15	16.48%	3	6.98%	1	3.13%	39	11.17%	20	7.63%	23	9.39%	3	1.40%
Parks/Recreation	23	10.13%	6	6.59%	2	4.65%	1	3.13%	37	10.60%	26	9.92%	15	6.12%	89	41.59%
Police	17	7.49%	4	4.40%	6	13.95%	7	21.88%	21	6.02%	9	3.44%	5	2.04%	6	2.80%
Water, Sewer	22	9.69%	16	17.58%	4	9.30%	6	18.75%	6	1.72%	33	12.60%	36	14.69%	28	13.08%
Health, Social Services	14	6.17%	3	3.30%	0	0.00%	0	0.00%	11	3.15%	6	2.29%	11	4.49%	35	16.36%
Transportation	2	0.88%	1	1.10%	2	4.65%	0	0.00%	22	6.30%	9	3.44%	11	4.49%	4	1.87%
Land Use	7	3.08%	0	0.00%	2	4.65%	0	0.00%	8	2.29%	2	0.76%	2	0.82%	NA**	…
Solid Waste	7	3.08%	1	1.10%	3	6.98%	2	6.25%	1	0.29%	7	2.67%	3	1.22%	14	6.54%
Education	0	0.00%	0	0.00%	1	2.33%	0	0.00%	13	3.72%	6	2.29%	1	0.41%	…*	…
Economic Development	5	2.20%	0	0.00%	0	0.00%	1	3.13%	7	2.01%	5	1.91%	3	1.22%	3	1.40%
Courts, Corrections	0	0.00%	3	3.30%	1	2.33%	1	3.13%	4	1.15%	2	0.76%	2	0.82%	0	0.00%
Environmental Protection	7	3.08%	1	1.10%	0	0.00%	0	0.00%	0	0.00%	4	1.53%	1	0.41%	12	5.61%
Total Agreements	227	100.00%	91	100.00%	43	100.00%	32	100.00%	349	100.00%	262	100.00%	245	100.00%	214	100.00%

* See Regionalism and Realism.

** Land Use was not a category in the Regionalism and Realism data.

Table III - Lead Applicants Within Categories Produced by NYS Comptroller's Cluster Analysis*

	Total NYS		SMSI 05-06		SMSI 06-07	
	#	%	#	%	#	%
Mjr Urb	19	1.19%	13	6.02%	5	2.36%
Sm. Urb Upstate	240	14.97%	43	19.91%	43	20.28%
Sm. Urb Downstate	107	6.67%	20	9.26%	10	4.72%
Suburbs	246	15.35%	42	19.44%	41	19.34%
Rural	616	38.43%	55	25.46%	60	28.30%
Counties	57	3.56%	31	14.35%	43	20.28%
>1000 Pop	286	17.84%	10	4.63%	8	3.77%
Outlier/Miss/Inc Data	32	2.00%	2	0.93%	2	0.94%
Total GP Gov't**	**1603**		**216**		**212**	

* NYS Comptroller. Division of Local Government Services and Economic Development. *Outdated Municipal Structures: Cities, Towns and Villages – 18th Century Designations for 21st Century Communities* (Albany: Office of the Comptroller, 2006))

** GP = General Purpose. NYC is excluded as unique.

NYSBA Committee on Attorneys in Public Service

Patricia E. Salkin
Chair
Government Law Center
Albany Law School
80 New Scotland Avenue
Albany, NY 12208
psalk@albanylaw.edu

Members

Brooks T. Baker
Steuben Cty. DA's Office
3 East Pulteney Sq.
Bath, NY 14810
Brooks@co.steuben.ny.us

Michael K. Barrett
Division of Criminal Justice Services
4 Tower Place
Albany, NY 12203
Michael.Barrett@dcjs.state.ny.us

Catherine M. Bennett
NYS Division of Tax Appeals
500 Federal Street
Troy, NY 12180
CBennett@nysdta.org

Mary A. Berry
9 Rose Court
Delmar, NY 12054
maryb424@aol.com

Luke J. Bierman
Office of State Comptroller
Division of Legal Services
110 State Street
Albany, NY 12236
lbier@albanylaw.edu

Jane B. Bura-Drago
NYC Housing Authority
250 Broadway, 9th Floor
New York, NY 10007
jane.bura-drago@nycha.nyc.gov

Anthony T. Cartusciello
NYS Commission of Investigation
59 Maiden Lane, 31st Floor
New York, NY 10038
anthony.cartusciello@sic.state.ny.us

Donna J. Case
U.S. District Court
10 Broad Street, Room 300
Utica, NY 13501
djcase@nynd.uscourts.gov

J. Stephen Casscles
308 Rt 385
Catskill, NY 12414
cassclesjs@yahoo.com

Carl D. Copps
NYS Workers' Compensation Board
20 Park Street
Albany, NY 12207
carl.copps@wcb.state.ny.us

Harley D. Diamond
NYC Housing Authority
250 Broadway, Room 7088
New York, NY 10007
harley.diamond@nycha.nyc.gov

Spencer Fisher
NYC Law Dept. Div. of Legal Counsel
100 Church Street, 6th Floor
New York, NY 10007
sfisher@law.nyc.gov

Robert J. Freeman
NYS Comm. on Open Government
Dept. of State
41 State St
Albany, NY 12231
freeman@dos.state.ny.us

Donna Ciaccio Giliberto
7 Mallard Road
Glenmont, NY 12077
dgiliber@nycap.rr.com

Mara Ginsberg
AmeriChoice & United Healthcare Government Programs
284 State St
Albany, NY 12210
mara_b_ginsberg@uhc.com

Jackie L. Gross
Nassau County Planning Commission
400 County Seat Drive
Mineola, NY 11501
jlgross@nassaucountyny.gov

Ira J. Goldstein
NYC Taxi & Limousine Commission
40 Rector Street, 5th Floor
New York, NY 10006
ira.goldstein@gmail.com

James F. Horan
NYS Health Department
433 River Street
5th Floor, Suite 330
Troy, NY 12180
jfh01@health.state.ny.us

Martha Krisel
Office of the County Attorney
One West Street
Mineola, NY 11501
mkrisel@nassaucountyny.gov

Elizabeth H. Liebschutz
Office of Hearings and Alternative Dispute Resolution
NYS Department of Public Service
Three Empire State Plaza
Albany, NY 12223
elizabeth_liebschutz@dps.state.ny.us

Peter S. Loomis
NYS Dept. of Transportation
50 Wolf Road
Albany, NY 12232
ploomis@dot.state.ny.us

Benjamin J. Mantell
Queens County District Attorney
125-01 Queens Boulevard
Kew Gardens, NY 11415
bmantell@verizon.net

David E. Markus
NYS Office of Court Administration
25 Beaver Street, 11th Floor
New York, NY 10004
dmarkus@courts.state.ny.us

Patricia Martinelli
Office of Mental Retardation
Development
44 Holland Avenue
Albany, NY 12229
patricia.martinelli@omr.state.ny.us

James T. McClymonds
NYS Dept. of Environmental
Conservation
625 Broadway, 1st Floor
Albany, NY 12233
jtmcclym@gw.dec.state.ny.us

Lori A. Mithen-DeMasi
Association of Towns
150 State Street, Suite 201
Albany, NY 12207
lmithen@nytowns.org

Steven H. Richman
NYC Board of Elections
32 Broadway, 7th Floor
New York, NY 10004
srichman@boe.nyc.ny.us

Christina L. Roberts
352 State St.
Albany, NY 12210
chrissyleann@yahoo.com

William A. Shapiro
81 Lenox Avenue
Albany, NY 12203
billshapiro@nycap.rr.com

Barbara F. Smith
Lawyer Assistance Trust
54 State Street, Suite 802
Albany, NY 12207
bfsmith@courts.state.ny.us

Donna Marie Sikora Snyder
NYS Insurance Fund
1 Watervliet Avenue Ext.
Albany, NY 12206
dsnyder@nysif.com

Ramin J. Taheri
NYC Human Resources
Administration
180 Water Street, 17th Floor
New York, NY 10038
taherir@hra.nyc.gov

Linda J. Valenti
NYS Division of Probation
80 Wolf Road, Suite 501
Albany, NY 12205
linda.valenti@dpca.state.ny.us

Lai-Sun Yee
Executive Chamber
Office of the Governor
State Capitol
Albany, NY 12222
laisun.yee@chamber.state.ny.us

Hon. Rachel Kretser
Exec. Comm. Liaison
Albany City Court—Criminal
1 Morton Avenue
Albany, NY 12202
rkretser@court.state.ny.us

Patricia K. Wood
Staff Liaison
New York State Bar Association
One Elk Street
Albany, NY 12207
pwood@nysba.org

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