

Spring 1989

County Home Rule: St. Clair, Dupage and Will Counties Have Opened the Door to Its Powers and Should Welcome Its Arrival, 22 J. Marshall L. Rev. 763 (1989)

Janet Northrop Petsche

Follow this and additional works at: <https://repository.law.uic.edu/lawreview>



Part of the [Land Use Law Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Janet Northrop Petsche, County Home Rule: St. Clair, Dupage and Will Counties Have Opened the Door to Its Powers and Should Welcome Its Arrival, 22 J. Marshall L. Rev. 763 (1989)

<https://repository.law.uic.edu/lawreview/vol22/iss3/12>

This Comments is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC Law Review by an authorized administrator of UIC Law Open Access Repository. For more information, please contact repository@jmls.edu.

COUNTY HOME RULE: ST. CLAIR, DUPAGE AND WILL COUNTIES HAVE OPENED THE DOOR TO ITS POWERS AND SHOULD WELCOME ITS ARRIVAL

Home rule is like sex—when it is good it is very, very, good, and when it's bad it's still pretty good.

John G. Woods, delegate, Illinois 1970 Constitutional Convention.¹

On November 8, 1988, Will County residents elected a chief executive officer called a County Executive.² However, despite the fact that the Illinois Constitution grants home rule powers to counties with an elected chief executive officer,³ the Will County Board has not exercised such powers. Moreover, in St. Clair and DuPage counties, there are county board chairmen who are elected at-large and who are performing the duties of chief executive officers,⁴ yet neither of those counties has exercised home rule powers. By exercising their home rule powers, these counties could provide their citizens with updated road systems, adequate waste disposal facilities, efficient administration of human services, effective law enforcement and other necessary services. Home rule powers allow counties to develop creative methods of financing and service delivery without being required to seek legislative approval.

This article will prove that the Illinois Constitution automatically grants home rule powers to counties which elect a chief executive officer. It will show that a county may elect a chief executive officer under either of two Illinois public acts. This article will argue

1. Anderson & Lousin, *From Bone Gap to Chicago: A History Of The Local Government Article of the 1970 Constitution*, 9 J. MARSHALL J. OF PRAC. & PROC. 697 (1976). The Sixth Illinois Constitutional Convention was made up of 495 delegates elected to membership in the Convention from across the state. *Id.* at 706. One of the delegates was John G. Woods, a former mayor of Arlington Heights. *Id.* at 745. As a member of the Convention's Local Government Committee, Wood's role was to present the committee's majority report on home rule constitutional provisions to the Convention. *Id.* Woods' remark is representative of the strong support that many delegates gave the concept of home rule. Banovetz & Kelty, *Home Rule in Illinois: Image and Reality*, 1987 monograph, Ill. Issues 4. More than 70 percent of the delegates to the Constitutional Convention signed proposals advocating home rule powers. *Id.*

2. Andreoli, *Government: Can "County Executive" Give Suburbs the Power to Manage Economic Growth?*, 3 CHI. ENTERPRISE 12 (Sept. 1988).

3. ILL. CONST. art. VII, § 6(a) (1970).

4. See *infra* App. A.

that the County Executive Act unconstitutionally allows voters to exclude home rule powers when choosing a chief executive officer. It will show that under this act, a county board chairman who is elected at-large can acquire the powers of a chief executive officer by county board ordinance. Finally, this article will suggest that, because Will, St. Clair and DuPage counties now have chief executive officers, the political leaders in each county should acknowledge that they have received an automatic grant of home rule powers. However, recognizing that the public equates home rule power with the power to raise taxes and that such a perception could have political repercussions, the article also cautions political leaders not to act precipitously. Rather, they should educate their citizens about the virtues of county home rule before exercising its powers.

The concept of home rule arrived in Illinois with the adoption of the 1970 constitution.⁵ The delegates to the Constitutional Convention (Con-Con) believed that local governments, facing increased demands for services due to the urbanization of society, should not need to seek state help to solve local problems, but instead should have the power to act through local legislation.⁶ Constitutional home rule powers achieve this by allowing local government to exercise any power that the state has not denied it.⁷ Without home rule, a local government cannot act unless the state has expressly granted it the power to act.⁸ The delegates to Con-Con also believed that gen-

5. MACK, *Home Rule Referenda in Illinois*, in HOME RULE IN ILLINOIS: FINAL REPORT, BACKGROUND PAPERS AND SPEECHES, ASSEMBLY ON HOME RULE IN ILLINOIS 61 (S. Cole & S. Gove eds. 1973).

6. COMM. ON LOCAL GOV'T, COMM. REPORT, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION 51 (1970) [hereinafter COMM. REPORT]. The committee noted that urban areas throughout the country were faced with demands for many public services including education, welfare, transportation and health. *Id.* (quoting Sperling, *Municipal Income Taxation and Home Rule*, 1 URBAN LAWYER 281 (1969)). The committee also noted that without home rule power, counties couldn't raise the revenue to meet these demands. *Id.*

7. Banovetz & Kelty, *supra* note 1, at 5. Illinois' home rule provisions follow the American Municipal Association model in which home rule units may exercise powers that state law does not specifically deny them. Cole, *Illinois Home Rule in Historical Perspective*, in HOME RULE IN ILLINOIS: FINAL REPORT, BACKGROUND PAPERS AND SPEECHES, *supra* note 5, at 15-16. Under this model, the state legislature must take specific action to prohibit local action. See *Mulligan v. Dunne*, 61 Ill.2d 544, 550, 338 N.E.2d 6, 11 (1975) (where no indication that state statute intended to limit or deny home rule powers there is no restrictive effect (quoting *Rozner v. Korshak*, 55 Ill. 2d 430, 435, 303 N.E.2d 389, 391 (1973))), *cert. denied*, 425 U.S. 916 (1976). The constitutional provision is a broad grant which allows home rule units to exercise any power and perform any function pertaining to its government and its affairs. ILL. CONST. art. VII, § 6(a) (1970).

8. 1. J. DILLON, LAW OF MUNICIPAL CORPORATIONS § 237 (5th ed. 1911). Municipalities can exercise only those powers that the state expressly granted or those implied in, or incidental to, the powers expressly granted in words, or those essential to accomplishing the express purposes of the municipalities. *Id.* The Illinois courts, since 1970, still apply Dillon's Rule to non-home rule units of government and narrowly assess their powers; in fact, the Illinois Appellate Court, Fourth District, has

eral purpose governments (counties, cities and villages), rather than single purpose governments (park, library, mosquito abatement and similar districts), should be the basic service providers because the latter are duplicative, inefficient and costly to the taxpayer.⁹ To accomplish this goal, the delegates added to the constitution a provision granting home rule powers to municipalities with a population of more than 25,000 and to counties with a chief executive officer.¹⁰

Several municipalities met the population requirement and became home rule units when the constitution became effective in 1971.¹¹ Cook County was the only county in the state which had an elected chief executive officer in 1970 and, thus, became the only county home rule unit in the state.¹² Since that time, several municipalities, having reached the population requirement, have begun to exercise their home rule powers.¹³ The counties which have elected chief executive officers, however, have neither acknowledged nor used their home rule powers.

held in two instances that the 1970 constitution, in effect, codified Dillon's Rule. *In re Estate of Lake Fork Special Drainage Dist.*, 137 Ill. App. 3d 473, 478, 484 N.E.2d 507, 511 (1985); *Buffalo, Dawson, Mechanicsburg Sewer Comm'n. v. Boggs*, 128 Ill. App. 3d 688, 690, 470 N.E. 2d 649, 651 (1984), *aff'd* 109 Ill.2d 397, 488 N.E.2d 248 (1985).

9. COMM. REPORT, *supra* note 6, at 32.

10. ILL. CONST. art.VII, § 6(a) (1970).

11. COMM. REPORT, *supra* note 6, at App. G. More than 50 cities and villages had populations of more than 25,000 at the time the constitution was being considered by the delegates. *Id.* By January 1972, after the voters approved the constitution, close to 60 cities and villages were qualified. 11 ILLINOIS POLITICAL REP. 5 (R. T. Lockhart ed. 1972). In 1973, 66 municipalities met the population requirement and qualified for the automatic constitutional grant of home rule. Mack, *supra* note 5, at 61. Municipalities have assumed the automatic nature of the constitutional grant of home rule powers without question. L. ANCEL & S. DIAMOND, ILLINOIS MUNICIPAL HANDBOOK, (1988-1989 ed.)

12. *Record of Proceedings, Sixth Illinois Constitutional Convention, Verbatim Transcripts* 3303 (1970) [hereinafter *Transcripts*]. Much of the delegates' discussion at the Convention dealt with the particular problems of Cook County. *Id.* The delegates carefully dissected the county home rule provision to ensure that, as the largest county in the state, Cook county would be able to attain home rule powers without the need to change the status quo or to seek voter approval through referendum. *Id.* at 3230-3247. The delegates adopted a constitutional provision identifying the president of the Cook County board as the chief executive officer of the county. ILL. CONST. art. VII, § 4(b) (1970). The provision requires that the president be elected at-large, but gives authority to the board to determine by ordinance whether the president should also be elected as a member of the board. *Id.*

13. In June 1988, Illinois had 108 home rule municipalities. Telephone interview with Larry Frang, Director of Fiscal Programs, Illinois Municipal League (Oct. 18, 1988). Some of the municipalities qualified as home rule units by meeting the population requirement; others became home rule units through referendum. *Id.* The constitution allows municipalities which do not meet the population requirement to place home rule referenda before the voters. ILL. CONST. art. VII, § 6(a) (1970). Some communities which met the automatic population requirement also had to hold a referendum to retain home rule powers because of later population decreases. Telephone interview with Larry Frang, Director of Fiscal Programs, Illinois Municipal League (Oct. 18, 1988).

ANALYSIS OF THE HOME RULE GRANT AND THE SITUATION EXISTING
IN ST. CLAIR, DUPAGE AND WILL COUNTIES

An analysis of the constitution's home rule provision establishes that it makes an automatic grant of home rule powers whenever a county meets the requirement of an elected chief executive officer. Further analysis shows that election of a chief executive officer can occur through the use of the County Board Reapportionment Act¹⁴ ("County Board Act") or the County Executive Act,¹⁵ but that in either case home rule powers automatically accrue. An examination of the situation in St. Clair, DuPage and Will Counties shows that these three counties have met the requirement of electing a chief executive officer and are, therefore, automatically home rule units of government.

14. ILL. REV. STAT. ch. 34, § 831 (1987). The provisions of Illinois' County Board Reapportionment Act ("County Board Act") *Id.*, were written to comply with the "one man - one vote" decision of the United States Supreme Court in *Reynolds v. Sims*, 377 U.S. 533 (1964). Prior to this change, counties under the township system were governed by a board made up of the supervisors of each township in the county. 11 ILL. POLITICAL REP. 4 (January, 1972). The County Board Act requires each county having less than 3,000,000 in population and operating under the township form of government to reapportion the county every ten years to create districts each having an equal number of residents. ILL. REV. STAT. ch. 34, § 833 (1987). The County Board Act also allows voters to replace the selection of the county board chairman by the members of the county board with a county-wide election for a board chairman. *Id.*

15. ILL. REV. STAT. ch. 34, § 701 (1987). The County Executive Act outlines a form of government which can be adopted by any county in the state of Illinois except Cook County. *Id.* It provides for the establishment of the county executive form of government by vote of the electorate on a proposition placed on the ballot by the county board, or by petition signed by at least two percent of the voters in the county, or 500 individuals, whichever is less. *Id.* The Act also includes provisions for the nomination, term of office, qualifications, duties, powers and salary of a county chief executive officer. *Id.* It also states that a county should not elect a county board chairman after the new government becomes effective. *Id.*

A 1985 amendment to the County Executive Act allows a county to elect a county executive with an option to elect not to become a home rule unit. The amendment allows the county to vote on a proposition that states: "Shall the County of . . . adopt the county executive form of government and elect not to become a home rule unit?" *Id.* at § 705(b). Before it was amended, the County Executive Act automatically combined the adoption of the county executive form of government with the simultaneous grant of home rule. *Id.* at § 705(a). In 1972, DeKalb, DuPage, Fulton, Kane, Lake, Lee, Peoria, St. Clair and Winnebago counties attempted to change their form of government by presenting this proposition to the voters. In each instance the voters rejected the proposition. Banovetz & Kelty, *Home Rule in Illinois: Image and Reality*, 1987 monograph, ILL. ISSUES 9. In 1976, Winnebago and Lake counties again attempted to adopt the county executive form of government, but failed. *Id.* The vote against the proposition reflected the public's attitude that county home rule would result in increased taxes. Mack *supra* note 5, at 61. Other possible reasons for the failure of the referenda were a small voter turn-out, *Id.* at 67-69, general opposition to the broad powers accorded the county executive, *Id.*, see also Smith, *County Home Rule: Doesn't Anybody Want It?*, April 1976 ILL. ISSUES 16, and the opposition of professional groups who feared home rule licensing powers. Mack, *supra* note 5, at 45.

A. *The Constitutional Grant of County Home Rule is Automatic*

In analyzing the constitutional provision pertaining to county home rule, the following principles of construction are helpful in determining the intent of the drafters: the plain meaning doctrine;¹⁶ the legislative history;¹⁷ the interpretation of conflicting provisions;¹⁸ *noscitur a sociis*;¹⁹ and the meaningfulness of provisions.²⁰ The plain words of the constitution automatically grant home rule powers to municipalities and counties if they meet certain requirements. The two categories of governments, counties and municipalities, clearly and unambiguously "are home rule units" if they meet the constitution's specific qualifications: a population of more than 25,000 residents for municipalities, and a chief executive officer elected by the electors for counties.²¹ The plain meaning of the words of the constitution is that upon fulfillment of the single requirement that the county have an elected chief executive officer, the county becomes a home rule county.²²

In addition, the legislative history of the county home rule provision clearly identifies election of a chief executive officer as the triggering event for the grant of home rule powers to counties.²³ Mrs. Betty Keegan of Rockford, a member of the Local Government Committee, stated in the 1970 Con-Con debates that once a county elected a chief executive officer, the county could begin to exercise the powers of home rule.²⁴ The chairman of the committee also stated that what the committee intended was to have somebody elected county-wide who had executive powers before the constitution would grant home rule powers to a county.²⁵ Further, the report of the Local Government Committee to the convention stated that the powers granted by this section of the constitution are granted without action of either the General Assembly or the local govern-

16. E. CRAWFORD, *STATUTORY CONSTRUCTION: INTERPRETATION OF LAWS*, § 164 (1940). When the language clearly expresses the intent of the legislative body a statute should be interpreted literally. *Id.* Words should be given their plain meaning. *Id.*

17. W. ESKRIDGE, JR. & P. FRICKEY, *CASES & MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY* 698-760 (1988). Legislative history includes the statements of all people involved in the drafting of a statute. *Id.* Scholars and judges give great weight to statements by sponsors of the statute and committee reports because they view them as authoritative legislative history. *Id.* at 709, 735.

18. E. CRAWFORD, *supra* note 16, at § 166.

19. *Id.* at § 190.

20. W. ESKRIDGE, JR. & P. FRICKEY, *supra* note 17, at 576.

21. ILL. CONST. art. VII, § 6(a) (1970).

22. If the phrase "A [C]ounty which has a chief executive officer elected by the electors of the county . . ." is separated from the remainder of the constitutional provision, it becomes "A County which has a chief executive officer elected by the electors of the county [is] a home rule unit." ILL. CONST. art. VII, § 6(a) (1970).

23. *Transcripts*, *supra* note 12, at 3303.

24. *Id.*

25. *Id.* at 3243.

ments which receive the home rule powers.²⁶ Finally, the committee report specifically refers to the grant of home rule as "automatic".²⁷

The canon of *noscitur a sociis*²⁸ declares that associated words are to be considered of the same class and should be interpreted similarly. When the two elements of the home rule provision pertaining to municipalities and counties are considered together, they are mutually dependent upon the phrase "are home rule units".²⁹ They are associated words. "A County" and "any municipality" are of the same class and, therefore, both automatically become home rule units after meeting their respective qualifying requirement. Similarly, under the doctrine of conflicting provision,³⁰ two elements in the same provision should be construed to be harmonious and not in conflict. Counties and municipalities are linked together by the word "and" in the provision and no differentiation is made between the two elements.³¹ Because the provision pertaining to municipalities is properly interpreted to make an automatic grant of powers, the provision pertaining to counties should also be interpreted to mean an automatic grant of powers³² so that the two elements of this provision do not conflict.

Finally, it is also a canon of construction that legislative provisions are not to be interpreted to make the actions of the legislative body meaningless.³³ Because the Illinois Constitution does not provide any other method for counties to achieve home rule status except by the election of a chief executive officer,³⁴ if the grant is not automatic, a county with an elected chief executive officer but not home rule, would be left with no mechanism for ever obtaining home rule powers. Interpretation of the county home rule provision using these canons of construction clearly shows that any county which has an elected chief executive officer is a home rule unit.

26. COMM. REPORT, *supra* note 6, at 25.

27. *Id.* at 42. The committee explains the limitations on the automatic nature of the grant in terms of a municipality's population and a county's election of chief executive officer as policy determinations needed to ensure that governments which receive home rule would use the powers effectively. *Id.* at 54-63.

28. E. CRAWFORD, *supra* note 16, at § 190. Under the doctrine of *noscitur a sociis*, when words are associated by a connecting word, such as the word "and", they are to be presumed to be of the same class unless the contrary is indicted. *Id.*

29. ILL. CONST. art. VII, § 6(a) (1970).

30. E. CRAWFORD, *supra* note 16, at § 166. Each part of a statute should be reconciled to avoid conflict. No word should be made meaningless by an interpretation. *Id.*

31. ILL. CONST. art. VII, § 6(a) (1970).

32. L. ANCEL & S. DIAMOND, ILLINOIS MUNICIPAL HANDBOOK (1988-1989 ed.).

33. W. ESKRIDGE, JR. & P. FRICKEY, *supra* note 17, at 576.

34. ILL. CONST. art. VII, § 6(a) (1970). The provision, as it appears in the constitution, gives only municipalities the power to become home rule units by referendum. *Id.* There is no provision for counties to become home rule units other than by electing a chief executive officer. *Id.*

There is no need for either enabling legislation or voter approval. Once a county satisfies the only constitutional condition precedent to home rule status, the grant is automatic.

B. Election of a Chief Executive Officer Under Either the County Board Act or the County Executive Act Creates Home Rule Powers Automatically

Cook County received an automatic grant of home rule powers because its county board president is elected in an at-large, county-wide election, and is Cook County's chief executive officer.³⁵ Other counties can meet this same criteria by electing a chief executive officer at-large under the County Board Act,³⁶ and granting that officer executive powers by rule and ordinance.³⁷ The Local Government Committee report expressly recognized that the County Board Act could lead to county home rule when it noted that eighty-three counties would be able to elect a board chairman at-large after the new constitution became effective in 1971.³⁸

Counties may also use the County Executive Act to elect a chief executive officer.³⁹ A vote rejecting the county executive form of government under this Act, however, does not prohibit a county from attaining home rule status by electing a county board chairman at-large and granting executive powers to the office. In passing the County Executive Act as enabling legislation for counties to elect chief executive officers, the legislature created the mistaken impression that a county must seek referendum approval to become a home rule unit.⁴⁰ There is no such requirement in the constitution. The legislature next compounded its error by unconstitutionally amending the County Executive Act to allow voters to elect a chief executive officer and, at the same time, to deny the county home rule powers.⁴¹ This amendment directly contradicts the automatic

35. *Transcripts, supra* note 12, at 3303.

36. ILL. REV. STAT. ch. 34, ¶ 837 (1987).

37. See *supra* App. A for a description of the powers and duties which are held by chief executive officers by statute and the powers and duties which are accorded by rule and ordinance to county board chairmen elected at-large. See *infra* note 48 for cases in which the duties of a chief executive officer were found in resolution or ordinance.

38. COMM. REPORT, *supra* note 6, at 60-61.

39. ILL. REV. STAT. ch. 34, ¶ 705(a) (1987). The wording of the referendum with the words "Shall the County of . . . become a Home Rule County . . ." preceding the words "and establish the county executive form of government?", *Id.*, falsely implies that the voter is electing to choose home rule. In reality the voter is choosing a form of government which supplies the county with a chief executive officer thereby qualifying the county for the automatic grant of home rule powers. ILL. CONST. art. VII § 6(a) (1970).

40. ILL. REV. STAT. ch. 34, ¶ 702 (1987).

41. ILL. REV. STAT. ch. 34 ¶ 705(b) (1987).

grant provision of the constitution and is, therefore, unconstitutional. To examine how the automatic constitutional grant of home rule powers works, it is helpful to examine the current situation in St. Clair, DuPage and Will counties.

C. St. Clair and DuPage Counties

In the early 1980s, both St. Clair and DuPage counties used the County Board Act to elect non-county board members as chairmen of their county boards in at-large, county-wide elections.⁴² The county boards of each county gave their powers and duties by either rule or ordinance.⁴³ The powers extended to the board created chairmen with executive authority who are chief executive officers within the meaning of the constitution.

The Illinois legislature's definition of a chief executive officer is found in the list of powers and duties the statutes accord to three designated chief executive officers: the mayor of a city;⁴⁴ the president of the Cook County board;⁴⁵ and the county executive described in the County Executive Act.⁴⁶ Appendix A compares the duties and powers of these statutory chief executive officers to the

42. In 1974, St. Clair county elected a county board member as its county board chairman in an at-large election. Telephone interview with Cathy Haas, St. Clair County Board Secretary (Aug 16, 1988). In 1978, DuPage County also held a county-wide election and elected a county board member as its county board chairman. Interview with Barbra Dragstrem, Secretary to DuPage County Board Chairman Jack T. Knuepfer, in Wheaton, IL (Oct 13, 1988). When the County Board Act was amended to allow it, both counties elected non-board member county board chairman in at-large elections. *Id.* In 1972, both counties had unsuccessfully attempted to adopt the county executive form of government under the County Executive Act through voter referenda. BANOVETZ & KELTY, *supra* note 1, at 9.

43. See *infra* App. A for a listing of the powers and duties given to the county board chairmen of St. Clair and DuPage Counties.

44. ILL. REV. STAT. ch. 24, ¶¶ 3-4-4 (1987). The listed functions and duties of a mayor include the removal of officers, release of prisoners, examination of records, calling out inhabitants and militia, designation of persons to sign instruments, delivery of messages to the city council, voting to break a tie, vetoing actions of the city council and, in cities with a population of 500,000 or over, supervising the preparation of a budget. *Id.* at ¶¶ 3-11-1, 3-11-8.

45. ILL. REV. STAT. ch. 34, ¶ 906 (1987). The powers and duties of the Cook County president, who was acknowledged as a chief executive officer by the constitution, ILL. CONST. art. VII, § 4(b), also help define the term. The president of the Cook County Board has statutory power to make appointments to many government offices, to supervise the administration of the government, to preside over board meetings, to veto actions of the board, to prepare a budget and to vote as a board member. ILL. REV. STAT. ch. 34, ¶ 906 (1987).

46. ILL. REV. STAT. ch. 34, ¶ 709 (1987). The duties of a county executive elected under the County Executive Act include the power to see that all orders, resolutions and regulations of the board are faithfully executed, to make appointments with advise and consent of the board, to co-ordinate and direct all the administrative and management functions of the government, to prepare the county's budget, to preside at board meetings, to approve or veto ordinances, to appoint legal counsel, to enter into intergovernmental agreements and to call special meetings of the board. *Id.*

duties and powers of the county board chairmen of St. Clair and DuPage counties as determined by county board ordinances and rules.

As Appendix A indicates, the duties and powers which the statutory chief executive officers have in common are appointment powers, veto powers, and the duty to preside over meetings of the county board or the city council. Mayors of cities with 500,000 or more in population also share with elected county executives, and the president of the Cook County board, the duty to prepare and administer the annual governmental budget. Although the county board chairmen of both DuPage and St. Clair counties have broad appointment powers, preside over the meetings of the county board, have budget responsibilities, and share other duties which are held by statutory chief executive officers, neither have veto power. The DuPage and St. Clair County board chairmen have therefore acquired all of the aspects of a chief executive officer except the power to veto actions of the board.

The Illinois courts' view of the definition of a chief executive officer is outlined in several cases which discuss a chief executive's appointment powers, his responsibility for financial management, his duty to implement board policies, and his responsibility for oversight and management of the operations of the private corporation or unit of government which he leads.⁴⁷ In none of the cases has the court mentioned veto power as a characteristic of a chief executive officer.⁴⁸ The St. Clair and DuPage county board chairmen thus have all the powers and duties which the courts attribute to chief executive officers.⁴⁹ The courts also hold that the powers and duties

47. *Village of Round Lake Beach v. Brenner*, 107 Ill. App. 3d 1, 436 N.E.2d 1058 (1982) (court recognized that duties of police chief acting as chief executive officer include implementation of village board policies); *Cronin v. Lindberg*, 66 Ill. 2d 47, 360 N.E.2d 360 (1976) (duties of state school superintendent include overseeing state school aid funding matters); *Dumke v. Anderson*, 44 Ill. App. 3d 626, 358 N.E.2d 344 (1976) (village president has appointive powers which include power to remove appointee from office at his pleasure). In *Gidwitz v. Lanzit Corrugated Box Co.*, 20 Ill. 2d 209, 170 N.E.2d 131 (1960) the court listed the duties and powers of a chief executive officer in private industry as the duty to preside over meetings of the board of directors, the power of appointment and removal of employees, the duty to manage and control the business of the corporation, the duty to see that the policies of the Board are carried into effect, and the duty to supervise the direction of the other officers of the corporation.

48. *Id.* But see *American Surety Co. v. Jones*, 384 Ill. 222, 51 N.E.2d 122 (1943) (powers of issuing certificates and licenses by the director of the State Department of Insurance, who is an executive officer, were final and not reviewable by the courts). But concluding that veto power is a necessary ingredient in the definition of a chief executive officer by an analogy to the insurance officer's licensing decisions is strained reasoning, at best.

49. See *infra* App. A, which shows that the St. Clair and DuPage county board chairmen have appointive powers, responsibility for financial management, the duty to implement board policies, and the responsibility for oversight and management of

of a chief executive officer are conferred by statute, ordinance or board action.⁵⁰ St. Clair and DuPage counties have county board chairman with executive powers bestowed by ordinances and board action; therefore, the two board chairman are chief executive officers.

In addition to the chairmen's lack of veto power, one could also argue that the St. Clair and DuPage chairmen are not chief executive officers because the establishment of chief executive officers by county board rule or ordinance conflicts with the 1970 constitution's requirement that counties and municipalities "adopt, alter or repeal" their forms of government only by referendum.⁵¹ However, while it is true that courts will not uphold changes in the form of county government without referendum,⁵² St. Clair and DuPage counties have retained their status as counties under the township form of government.⁵³ They have not changed their form of govern-

their unit of government.

50. *Gidwitz v. Lanzit Corrugated Box Co.*, 20 Ill. 2d 209, 170 N.E.2d 131 (1960) (executive powers found in resolution of board of directors); *City of East St. Louis v. Giblin*, 3 Ill. App. 219 (1878) (executive powers found in statute or ordinance).

51. ILL. CONST. art. VII, §§ 6(f), 7(2) (1970).

52. *Dunne v. County of Cook*, 123 Ill. App. 3d 468, 462 N.E. 2d 970 (1984) *aff'd* 108 Ill.2d 161, 483 N.E.2d 13 (1985). The court held that an attempt made by the Cook County Board to change the majority vote required to override the chief executive officer's veto, amounted to a change in the form of government because it changed the historic relationship between the chief executive officer and the legislative branch of government. *Id.* at 475, 462 N.E.2d at 975. Relying on prior case law, the court determined that an attempt by the legislative body to diminish the powers of the executive was a change in the form of government. *Id.* The court referred to an interference with the "balance of historic tensions connecting the legislative and executive branches of county government," as the determining factor in whether a change in the form of government was proposed. *Id.*

This case is not analogous to the situation in St. Clair and DuPage counties because in granting executive powers to their elected at-large county board chairmen, the St. Clair and DuPage county boards did not change the historic and traditional relationship between the two powers. *Id.* Although a clear separation of powers exists in federal and state government, most counties in Illinois have not had such a division. Elfstrom and Smith, *County Government in transition*, ILL. ISSUES 306 (Oct. 1975). The county board in township counties, administers the offices under its control (such as planning, zoning, public works, animal control and human services), by directly supervising departments through county board committees; in addition, the county board sets policy for these offices. *Id.* at 307. The board also supervises the budgets of elected officials such as the sheriff, clerk, coroner, treasurer, state's attorney, etc., who serve in executive capacities in their own offices. *Id.* This control of the purse strings impacts upon the setting of policy and the administration of these offices. *Id.* Therefore, for offices both under its direct control and for other county offices, the same body, the county board, carries out both the policy-making, or legislative, function of the government and the administrative, or executive, function. *Id.*

53. In Illinois, counties operate under either the township or the commission form of government. ILL. REV. STAT. ch 34, ¶¶ 302, 801-806, 851-857 (1987). The statutes allow for the corporate powers of a county not organized under the township form of government to be exercised by a board of county commissioners commissioned by the governor of the state. *Id.* at 302. Until 1972 the county board in township counties was made up of the supervisors of each township. In 1972 the County Board Act required reapportionment under the "one man-one vote" rule and each

ment; DuPage and St. Clair Counties have merely allotted duties to their county board chairmen in the traditionally recognized pattern of separation of powers.

D. Will County

In Will County, the voters have changed their form of government by referendum.⁵⁴ This gives rise to the issue of whether it is constitutional to elect a chief executive officer while denying the county home rule powers. Because the constitutional grant of home rule powers is automatic, Will County voters created a situation that violates the state constitution when they elected a chief executive officer while denying the county home rule powers.⁵⁵ When the election was challenged, the circuit court found the phrasing of the ballot question to be constitutional; however, that decision was not appealed.⁵⁶

The amendment, nevertheless, is clearly unconstitutional be-

county had to be divided into the districts from which county board members are now elected. ILL. REV. STAT. ch. 34, ¶ 833 (1987).

54. The Naperville Sun, Sept. 26, 1988, 7A. The proposition was approved by 722 votes out of 49,000 cast. Andreoli, *supra* note 2, at 12.

55. See Andreoli, *supra* note 2, at 12. On Nov. 8, 1988, Will County voters chose Democrat Charles Adelman as the first county executive in Illinois. *Id.* The Democrats hoping to elect a Democratic county executive in the wake of corruption charges against the Republican dominated county government supported the change in the form of government. *Id.*

56. Bingle & Cleary v. Will County, Chicago Tribune, July 19, 1988 at 1, col. 2 (12th Cir. June 4, 1988) (No. 88-283). The proposition which was presented to the voters asked, "Shall the County of Will adopt the county executive form of government and elect not to become a home rule unit?" *Id.* The trial court concluded that the proposition was phrased legally. *Id.* The plaintiffs, a Republican township assessor and the publisher of a local newspaper, maintained that voters who supported home rule but opposed the county executive form of government were disenfranchised because of the phrasing of the ballot question. Plaintiff's Complaint at 3, Bingle & Cleary v. Will County, Chicago Tribune, July 19, 1988, at 2, col. 2 (12th Cir. June 4, 1988) (No. 88-283). The plaintiffs claimed that the voters were presented with two separate, independent and unrelated questions combined in one proposition. *Id.* They further asserted that this action was unconstitutional. *Id.* The court held that the legislature intended to give counties the opportunity to choose the county executive form of government without becoming home rule units. Bingle & Cleary v. Will County, Chicago Tribune, July 19, 1988, at 2, col. 2. Judge Herman Haase declared that should the issues in the proposition be separated, counties which wanted to choose a county executive form of government, but which did not wish to have home rule powers, would have to hold a separate referendum after the executive had taken office to rid themselves of home rule. *Id.* Judge Haase explained that allowing a county to have home rule authority granted by referendum for a short time and then rescinding it by referendum would create chaos in government. *Id.* This ruling is incorrect because the constitution automatically grants home rule status to counties when they meet the stated qualifications. See *supra* notes 22-45 and accompanying text. The constitution allows the rescision of home rule powers only when they are attained by referendum. ILL. CONST. art. VII, § 6(b) (1970). There is no provision in the constitution permitting counties to obtain home rule powers by referendum. See *supra* note 34 and accompanying text.

cause if it were not, Will County could never achieve home rule status. There is simply no provision in the constitution which allows a county to adopt home rule by referendum. Only the election of a chief executive officer triggers this grant. If Will County has an elected chief executive officer, but does not automatically have home rule powers, there is no way in which the county can obtain those powers. The plain meaning, and the legislative history of the constitutional provision, demonstrate that the county home rule grant is automatic. The amendment to the County Executive Act frustrates the purpose of this constitutional provision and therefore is unconstitutional.

CONCLUSION

St. Clair, DuPage and Will counties have automatic constitutional home rule powers because they have elected chief executive officers. When the voters of the entire state adopted the 1970 constitution, they adopted a provision with an automatic grant of home rule powers. Local voter rejection cannot change that constitutional grant. St. Clair and DuPage Counties therefore have these powers even though their voters once rejected a proposition asking if the county should become a home rule county and adopt a county executive form of government.⁵⁷ Will County has these powers even though its voters attempted to adopt the county executive form of government without home rule powers.⁵⁸ This creates an opportunity for these and other counties to both solve their regional problems and to finance the solutions.⁵⁹ Therefore, in the interests of their constituents, political leaders in these counties should work

57. Banovetz & Kelty, *supra* note 1, at 9 and *supra* note 21 and accompanying text.

58. Chicago Tribune, July 19, 1988 at 1, col. 2.

59. Illinois counties continue to be looked upon as the logical general purpose governments to assume the role of provider of urban services to their residents. Elfstrom & Smith, *supra* note 52, at 306. Whether the demands involve human services for the residents of East St. Louis, in St. Clair county, or Joliet, in Will county, or for solutions to solid waste disposal in the more affluent DuPage county, there is a need both for home-grown solutions and for a source of revenue to fund the solutions. Elfstrom & Smith, *supra* note 52, at 306. See also Andreoli, *supra* note 2, at 12. Although the demographics of the St. Clair, DuPage and Will counties are different, all three are facing these demands.

St. Clair - DuPage - Will

Population: 267,531 658,858 324,460

Median Household Income: \$16,119 \$27,509 \$23,329

% of Population Below Poverty Level: 17.03% 3.03% 6.26%

% of Population to Complete Four Years of College: 11.5% 29.0% 14.3%

St. Clair County Intergovernmental Grants Dept., Demographic Information (1980); Will County Development Dept., Will County Demographic Profile (1980); DuPage County Development Dept., Profile: DuPage County Statistical Handbook (1980). Telephone interview with Bonnie Moore, Southwestern Illinois Planning Commission (Nov. 3, 1988).

hard to educate their residents about the wisdom of county home rule. If properly done, this would enable these counties to exercise their constitutionally granted powers for the benefit of their citizens with minimal political repercussions to courageous county leaders.

Janet Northrop Petsche

(APPENDIX A)

STATUTORY DUTIES AND POWERS OF: ELECTED COUNTY EXECUTIVE**	PRES. COOK COUNTY BD.**	MAYOR OF CITY**	ORDINANCE OR RULE DUTIES AND POWERS OF: BD. CHAIRMAN DUPAGE**	BD. CHAIRMAN ST. CLAIR**
<p><u>Power of Appointment</u> Appoint, with the advice and consent of the board, persons to serve on various special districts within the county except where appointment to serve on such districts is otherwise provided by law.</p> <p>Appoint, with the advice and consent of the board, persons to serve on various boards and commissions to which appointments are provided by law to be made by the board.</p> <p>Appoint, with the advice and consent of the board, such subordinate deputies for general administration of county affairs as considered necessary, except those deputies, employees and appointees in the office of an elected county officer.</p> <p>Remove or suspend in his discretion, after due notice and hearing, anyone whom he has the power to appoint</p>	<p>Appoints all officers and employees whose selection is not otherwise provided for.</p> <p>Selects the three members of the Civil Service Commission.</p> <p>Appoints the head of the Cook County Bureau of Administration with approval of the board.</p> <p>Appoints the county auditor.</p> <p>Can remove or suspend the Superintendent of Public Service.</p> <p>Appoints County Purchasing Agent with consent of the board.</p> <p>Is a member or can appoint a representative to the Board of Standardization.</p> <p>Appoints Director of Dept. of Data Processing with consent of board.</p> <p>Appoints Director of Budget with consent of board.</p> <p>Appoints staff of consulting physicians and surgeons to Cook County Hospital.</p>	<p>May remove any officer he has appointed with board approval.</p>	<p>Shall prepare a list of the status of appointments to be filled annually.</p> <p>Shall consult with board members from each district on applications to boards and commissions prior to presenting his recommendations to the executive committee.</p> <p>Shall appoint a vice chairman of the board with the consent of the board.</p> <p>Shall appoint an executive secretary with the advice and consent of the board to assist in handling the affairs of the board</p> <p>Appoints a county administrator.</p> <p>Appoints a manager of purchasing department, county budget officer, a detention home physician, coordinator of emergency and disaster services, animal control manager, intergovernmental grants director, microfilming manager, manager of the zoning department, manager of the mapping and planning department, manager of data processing, and a park superintendent all with the advice and consent of the county board.</p>	<p>Shall appoint chairman, vice-chairman and members of all committees.</p> <p>May appoint a parliamentary officer to serve as chairman when chairman is absent.</p> <p>May remove any person appointed with the advice and consent of the board.</p> <p>Shall appoint an executive secretary with the advice and consent of the board to assist in handling the affairs of the board</p> <p>Appoints a county administrator.</p> <p>Appoints a manager of purchasing department, county budget officer, a detention home physician, coordinator of emergency and disaster services, animal control manager, intergovernmental grants director, microfilming manager, manager of the zoning department, manager of the mapping and planning department, manager of data processing, and a park superintendent all with the advice and consent of the county board.</p>

ELECTED COUNTY EXECUTIVE	PRES. COOK COUNTY BD.	MAYOR OF CITY	BD. CHAIRMAN DUPAGE	BD. CHAIRMAN ST. CLAIR
<p><u>Power of Appointment</u> Cont'd At his discretion, appoint a person to serve as legal counsel at an amount no greater than the annual salary of the state's attorney of the county.</p>	<p>Appoints chief administrative officer with board approval.</p>	<p>Perform all duties prescribed by law and city ordinance. Shall take care that all laws and ordinances are faithfully executed.</p>	<p>Supervise and implement policies and programs of the county board.</p>	<p>Implementation of county board policies under county administrator who works under the supervision of the board chairman. Administrator makes recommendations for policy changes.</p>
<p><u>Implementation of Programs</u> See that all of the orders, resolutions and regulations of the board are faithfully executed.</p>	<p>Implementation of board policies and laws under chief administrative officer who serves at the pleasure of the president of the board.</p>	<p>Presides at all meetings of the council.</p>	<p>Presides at all meetings of the county board.</p>	<p>Shall preside at all meetings of the county board.</p>
<p><u>Presides over meetings</u> Presides over board meetings.</p>	<p>Presides over board meetings.</p>	<p>Has responsibility for the preparation and administration of the annual budget in cities over 500,000 population.</p>	<p>Prepare the proposed annual budget including committee recommendations for submission to the finance committee.</p>	<p>Appoints County Budget Officer.</p>
<p><u>Budget Responsibility</u> Prepare and submit to the board for its approval the annual budget for the county.</p>	<p>Supervises preparation of the executive budget by the Director of Budget Department.</p>	<p>Has veto powers and may not vote except to break a tie vote.</p>	<p>Shall not veto any action taken by the county board and shall not vote except to break a tie.</p>	<p>N/A</p>
<p><u>Veto and voting power</u> Approve or veto ordinances or resolutions. May vote to break a tie vote.</p>	<p>Has veto powers and votes as a member of the board.</p>			

ELECTED COUNTY EXECUTIVE	PRES. COOK COUNTY BD.	MAYOR OF CITY	BD. CHAIRMAN DUPAGE	BD. CHAIRMAN ST. CLAIR
<p><u>Calls Special Meetings</u> Call a special meeting of the county board, by a written executive order signed by him and upon 24 hours notice by delivery of a copy of such order to the residence of each board member.</p>	<p>Calls special board meetings.</p>	<p>N/A</p>	<p>N/A</p>	<p>May call special meetings of the county board.</p>
<p><u>Administers all Departments</u> Co-ordinate and direct by executive order or otherwise all administrative and management functions of the county government except the offices of elected officers.</p>	<p>N/A</p>	<p>N/A</p>	<p>Examine performance of each department of county.</p>	<p>N/A</p>
<p><u>Prepare Reports</u> Make an annual report to the board on the affairs of the county, on such date and at such time as the board shall designate, and keep the board fully advised as to the financial condition of the county and its future financial needs.</p>	<p>Compares and analyzes Comptroller's report with county officers.</p>	<p>Annually give the council information about affairs of the city and may recommend measures he believes expedient.</p>	<p>Make written report on the performance of department to the board with recommendations.</p>	<p>N/A</p>

