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INTERGOVERNMENTAL COOPERATION: DOES THE 1970 ILLINOIS CONSTITUTION GIVE UNITS OF LOCAL GOVERNMENT THE GREEN LIGHT?

INTRODUCTION

The rapid growth in metropolitan¹ areas has created the problem of adapting the machinery of local government to society's fast changing needs and desires. "[N]umerous problems have arisen in rapidly growing areas which transcend political boundaries and are thus not within the capacity of single governments acting independently to solve"² These problems include not only coping with the ever-rising cost of providing basic services to the increased population, but also those problems which transcend traditional political boundaries, such as water supply, sewage disposal, transportation, and pollution control.

The results of this growth and the complex problems which have developed pursuant thereto "have been the fragmentation of urban governments and overlapping and duplication of functions in attempting to meet the demand for more and better municipal services."³ Metropolitan areas in the United States "suffer from an excess of governmental units⁴ and from a lack of machinery that is sufficiently flexible to keep up with the ever extending urban sprawl."⁵ The ultimate result is the unacceptable inefficiency of local government and the failure of local government to provide the quality of services needed.

The delegates to the 1970 Illinois Constitutional Convention recognized these problems. They sought a means by which governmental units could be reorganized to solve those problems which cross local boundaries and, at the same time, to minimize fragmentation and duplication of the services which local government provides. Although several reorganization proposals had

1. Unless otherwise stated "municipality" and "municipal corporation" are used interchangeably herein to mean a city, village, or incorporated town. "Units of local government" and "units of government" are used interchangeably herein to mean a municipality, the state, school districts, special districts, and all other political subdivisions of the state.

2. M. Rockwell, *Interlocal Cooperation: The State's Role*, in UNIVERSITY OF ILLINOIS BULLETIN, THE STATE AND ITS CITIES 71 (J. Andrews ed. 1966).

3. Comment, *Interlocal Cooperation: The Missouri Approach*, 33 MO. L. REV. 442 (1968).

4. "Illinois ranks first in the nation in a very dubious category, the number of local governmental units; it had over 6,000 at the last count." CHICAGO HOME RULE COMMISSION, REPORT AND RECOMMENDATIONS 59 (1972) [hereinafter cited as HOME RULE COMMISSION REPORT].

5. Crouch, *The Government of a Metropolitan Region*, 105 U. PA. L. REV. 474 (1957).

been suggested,⁶ the delegates chose intergovernmental cooperation to solve Illinois' problems. As a result they drafted article VII, section 10,⁷ authorizing intergovernmental cooperation between units of local government and cooperation between local government and private business.

Since intergovernmental cooperation in Illinois had been authorized by statutes for many years prior to 1970, it will be one purpose of this article to discuss the changes brought about by the elevation of intergovernmental cooperation to constitutional status. The intent of the Constitutional Convention delegates was to eliminate the application of Dillon's Rule to intergovernmental cooperation. Dillon's Rule provides that a unit of local government does not have a power unless expressly granted to it by the legislature. The application of Dillon's Rule to intergovernmental cooperation means that a unit must have an initial *grant of power* to perform an activity itself and must, additionally, have a *grant of authority* to exercise that power cooperatively. This article will concern itself solely with the reversal of Dillon's Rule with respect to the *grant of authority* to exercise powers cooperatively—that reversal being the intended purpose of section 10. It is apparent, however, from the one reported judicial decision⁸ and the eight opinions of the Attorney General,⁹ that this intent is not being carried out. This article will explain that section 10 permits cooperation among units of government only within the limitations of those powers which the units are capable of exercising individually.

6. The U.S. Advisory Commission on Intergovernmental Relations, 5 U.S.C. § 2371 (1964), was established in 1959. Its purpose is stated in 5 U.S.C. § 2372 (1964). The Commission has proposed ten reorganization plans which include: 1) extraterritorial powers, by which a city regulates activities outside its boundaries; 2) intergovernmental agreements and contracts; 3) voluntary metropolitan councils, which provide a forum for discussion to solve problems; 4) urban-county, transferring municipal and special district powers to the county; 5) transfer of functions to the state government; 6) metropolitan special districts, used to perform urban functions; 7) annexation and consolidation of territory; 8) city-county separation; 9) city-county consolidation; 10) federation. For a discussion of the nine proposals not dealt with in this article see ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, A COMMISSION REPORT, ALTERNATIVE APPROACHES TO GOVERNMENTAL REORGANIZATION IN METROPOLITAN AREAS (1962) (Government Printing Office Publication) [hereinafter cited as ACIR, ALTERNATIVE APPROACHES]; G. BREAK, INTERGOVERNMENTAL FISCAL RELATIONS IN THE UNITED STATES 181-92 (1967); B. FRIEDEN, METROPOLITAN AMERICA: CHALLENGE TO FEDERALISM. A STUDY SUBMITTED TO THE INTERGOVERNMENTAL RELATIONS SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS, 89th Cong., 2d Sess. 85-115 (Comm. Print 1966); Graham, *Change in Municipal Boundaries*, 1961 U. ILL. L.F. 452 (1961); Lineberry, *Reforming Metropolitan Governance: Requiem or Reality*, 58 GEO. L.J. 675, 681-85 (1970).

7. ILL. CONST. art. VII, § 10 (1970) [hereinafter referred to as section 10].

8. See text accompanying notes 75-93 *infra*.

9. See text accompanying notes 108-21 *infra*.

This article will also explore whether the constitution has in fact changed intergovernmental cooperation in Illinois. To discover the true intent of section 10 the article will discuss the intent as the framers saw it, the law as it stood in Illinois prior to the 1970 Constitution, and the law since 1970. The law in other jurisdictions providing for intergovernmental cooperation in their constitutions will be compared and contrasted to the Illinois provision.

Before a discussion of section 10 can commence, however, intergovernmental cooperation itself must be understood.

INTERGOVERNMENTAL COOPERATION: BACKGROUND

Defined

"Intergovernmental cooperation is an approach to problem solving—problems which cross the boundaries of local government."¹⁰ Intergovernmental cooperation may be defined generally as any device by which a unit of local government¹¹ undertakes to carry out one or more of its functions by contract, by association, or by agreement. It "is the voluntary participation of units of local government in joint undertakings."¹²

The means by which participating units work together may take one of three basic forms:

'(1) a single government performs a service or provides a facility for one or more other local units, (2) two or more local governments perform a function jointly or operate a facility on a joint basis, and (3) two or more local governments assist or supply mutual aid to one another in emergency situations'¹³

At the outset it is important to recognize that form (1) and form (2) are both types of intergovernmental cooperation. The court in *Connelly v. County of Clark*,¹⁴ failed to realize that form (1), contracts for service, is a type of cooperation and because of this failure held a contract between a county and townships void. Any distinction between forms (1) and (2) "is not based on any

10. REC. OF PROCEEDINGS, SIXTH ILL. CONSTITUTIONAL CONVENTION *Verbatim Transcripts*, vol. IV at 3421 (1969-70) [hereinafter cited as *Verbatim Transcripts*].

11. A unit of local government is defined by the Illinois Constitution as

counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts.

ILL. CONST. art. VII, § 1 (1970).

12. REC. OF PROCEEDINGS, SIXTH ILL. CONSTITUTIONAL CONVENTION *Committee Proposals, Member Proposals*, vol. VII at 1749 (1969-70) [hereinafter cited as *Committee Proposals*].

13. *Id.*

14. 16 Ill. App. 3d 947, 307 N.E.2d 128 (1973); see text accompanying notes 75-93 *infra*.

difference in the binding legal effect, but on the practical difference in the operation of the two."¹⁵

One of the oldest and most widely used forms of intergovernmental cooperation is form (1), the service contract, whereby one unit of local government contracts with another to provide one or more services at a stated price.¹⁶ Service contracts eliminate the need for the recipient party to provide any of the service itself. Service contracts may cover such subjects as providing police and fire protection; providing sewage and refuse disposal; providing water supply and gravel; and providing park, library, and tax collection services. Contracts for service are best suited for providing a commodity type of service such as water or a standardized technical service such as electronic data processing.¹⁷

Agreements providing for joint exercise of powers, form (2), are distinguished from the service contract in that responsibility for the performance of the function, operation or construction of a facility is shared by the participating units.¹⁸ In form (2) *each* contracting party performs a part of the service. Typically, joint agreements may include the joint use of scarce personnel or costly equipment; the joint construction, maintenance, and operation of airports, refuse disposal systems and recreational facilities; and the joint provision, under mutual aid agreements, for police or fire services. Joint agreements are best suited for providing services that require program development and policy decisions¹⁹ and that necessitate the combined efforts of two or more units of government.

The intergovernmental contract or agreement may be at any level of government—local, state or federal—or may be with an individual person, corporation or association. Contracts and agreements may be formal or informal, permanent or temporary.

Purpose and Advantages

As suggested by the Advisory Commission on Intergovernmental Relations, intergovernmental cooperation is "one basic method of broadening the geographical base for handling common governmental functions."²⁰ Cooperation in the form of agreements and contracts presents a flexible, yet predictable and

15. Comment, *supra* note 3, at 445.

16. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, AN INFORMATION REPORT. A HANDBOOK FOR INTERLOCAL AGREEMENTS AND CONTRACTS 53 (1967) (Government Printing Office Publication) [hereinafter cited as ACIR, HANDBOOK].

17. *Id.* at 14.

18. *Id.* at 54.

19. *Id.* at 14.

20. *Id.* at iii.

enforceable method of adaptation among governmental units.²¹ It makes possible economies of scale, provides for special services which would otherwise be unavailable to small governmental units, avoids unnecessary duplication of equipment and personnel, permits the joint purchase of equipment where each unit alone would not be able to afford it, and allows improvements in service to the public that can be achieved, in many instances, only through collaborative rather than unilateral action. Intergovernmental cooperation permits the providing of services where no one unit alone could provide them.²²

When compared to the other reorganization plans,²³ intergovernmental cooperation has distinct advantages. It constitutes "the most convenient instrument available to officials for making a complex and fragmented structure of local government more workable and responsive to public needs"²⁴ by reducing the need for special districts instead of increasing the need for them as some other reorganization plans require. This reorganization approach calls for contracting through boundaries rather than moving them as in consolidation or annexation of governmental units. Intergovernmental cooperation is also politically feasible because it requires a minimum of official and voter approval and involves a minimum of modification of the existing political structure.²⁵

LEGAL OBSTACLES TO INTERGOVERNMENTAL COOPERATION

Legislative and Judicial Dominance

Municipal institutions in the United States were not a creation of the early colonists.²⁶ English institutions as they existed before the United States colonial period became the model from which our system of law and government developed.²⁷ Early colonists came to America under grants and charters, which were in the nature of written constitutions. These charters either

21. *Id.* at 2.

22. *Verbatim Transcripts*, vol. IV at 3421.

23. See note 6 *supra*.

24. ACIR, HANDBOOK at 1.

25. For additional comparison between intergovernmental cooperation and the other nine reorganization proposals see ACIR, ALTERNATIVE APPROACHES at 29-32; and Kuyper, *Intergovernmental Cooperation: An Analysis of The Lakewood Plan*, 58 GEO. L.J. 777, 778 (1970).

26. 1 E. MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 1.08 at 9 (3d ed. J.H. Dray 1971).

27. For English historical background see ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, A COMMISSION REPORT. STATE CONSTITUTIONAL AND STATUTORY RESTRICTIONS UPON THE STRUCTURAL, FUNCTIONAL, AND PERSONNEL POWERS OF LOCAL GOVERNMENT 3-11 (1962) (Government Printing Office Publication) [hereinafter cited as ACIR, RESTRICTIONS]; MCQUILLIN, *supra* note 26, at §§ 1.08-1.46; IV W. HOLDSWORTH, HISTORY OF ENGLISH LAW 108-66 (1924); 1 F. POLLOCK & F. MATTLAND, THE HISTORY OF ENGLISH LAW 560-67, 610, 634, 660 (Lawyer's Literary Club 1959 ed.).

failed to mention local government, as in the charter of Rhode Island, or, as under Maryland's Charter, provided for the governor to "erect and incorporate towns into boroughs and boroughs into cities . . ." ²⁸ The spirit of localism was characteristic of the borough, or municipal corporation, of the 17th and 18th centuries, and the borough served as an administrative center.

The first state constitutions were similar to the charters they replaced. The Northwest Ordinance of 1787 provided for local government.²⁹ But it was clear that the states "assumed the prerogative of being the source of local governmental power, irrespective of whether there was express constitutional authority for local government."³⁰ By 1860 state commission management of municipal functions had appeared in several states, and special local legislation prevailed. Modern service functions such as education, streets and roads, and water and sewage systems developed as a value or purpose of local government. Then in 1868 the Dillon theory was announced.

The Iowa Supreme Court in *City of Clinton v. Cedar Rapids and Missouri River Railroad Co.*,³¹ Justice Dillon writing the opinion, stated:

The true view is this: Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature.³²

In 1875 this view was also expressed by the United States Supreme Court in *Barnes v. District of Columbia*³³ and had already been expressed by the Illinois Supreme Court as early as 1850 in *County of Richland v. County of Lawrence*.³⁴

The "creature concept" or Dillon's Rule has since become a basic constitutional doctrine in most jurisdictions.³⁵ Dillon later

28. ACIR, RESTRICTIONS at 5.

29. Ordinance of 1787 in section 7 authorized the governor to appoint such magistrates, and other civil officers, in each county or township, as he shall find necessary for the preservation of peace and good order . . . and section 9 directed that the assembly, upon being organized when the territory achieved 5,000 free male adult inhabitants, should provide for local government.

30. ACIR, RESTRICTIONS at 6.

31. 24 Iowa 455 (1868).

32. *Id.* at 475.

33. 91 U.S. 540 (1876); *City of Worcester v. Worcester Consol. St. Ry.*, 196 U.S. 539, 549 (1905); *Atkin v. Kansas*, 191 U.S. 207, 220-21 (1903); *United States v. Railroad Co.*, 84 U.S. (17 Wall.) 322, 329 (1873).

34. 12 Ill. 1, 7 (1850); *Ives v. City of Chicago*, 30 Ill. 2d 582, 584, 198 N.E.2d 518, 519 (1964); *People ex rel. Gutknecht v. City of Chicago*, 414 Ill. 600, 621-22, 111 N.E.2d 626, 638-39 (1953); *Arms v. City of Chicago*, 314 Ill. 316, 321, 145 N.E. 407, 409 (1924); and *Cook County v. Mc-Crea*, 93 Ill. 236, 238 (1879).

35. Lineberry, *supra* note 6, at 685 n.47.

expanded on his Rule in his treatise, *Commentaries on the Law of Municipal Corporations*:

It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in *express words*; second, those *necessarily or fairly implied* in or *incident* to the powers expressly granted; third, those *essential* to the declared objects and purpose of the corporation,—not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporations, and the power is denied.³⁶

Any concept of inherent powers or liberality in the construction of delegated powers was thus swept away by Dillon's Rule. To this day the Rule provides the major obstacle to intergovernmental cooperation.

Along with Dillon's Rule came the development of strict judicial statutory construction of local governmental powers.³⁷ The rule of exclusion, *expressio unius est exclusio alterius*, by which "a specific enumeration operates to exclude expressly other powers of the same kind which are not mentioned,"³⁸ was applied to legislative grants of power. Another rule of construction was that "the meaning of a word may be narrowed to harmonize with the immediately related matter,"³⁹ *noscitur a sociis*. So, it can be seen today that when "no constitutional provision alters the state-local balance of power the municipal corporation will be expected to operate within the restrictive framework of 'Dillon's Rule'."⁴⁰ Later in this article the question of whether section 10 does in fact alter Dillon's Rule will be explored.⁴¹

Constitutional Restrictions

The 1870 Illinois Constitution contained an assumption of debt provision,⁴² and the Constitution of the United States contains the Compact Clause; both of which, on their face, would present obstacles to intergovernmental cooperation.

The Illinois Constitution of 1870 like other state constitutions limited the state's extension of its credit for the use of any local government.

36. 1 J. DILLON, *COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS* § 89 at 145 (4th ed. 1890) (emphasis by Dillon).

37. See *Merrill v. City of Wheaton*, 379 Ill. 504, 41 N.E.2d 508 (1942); and *Arms v. City of Chicago*, 314 Ill. 316, 145 N.E. 407 (1924).

38. ACIR, *RESTRICTIONS* at 27.

39. *Id.*

40. Moore, *Local Government: Old Problems And A New Constitution*, 33 MONT. L. REV. 154, 156 (1971).

41. See text accompanying notes 75-93 *infra*.

42. G. BRADEN & R. COHN, *THE ILLINOIS CONSTITUTION: AN ANNOTATED AND COMPARATIVE ANALYSIS* 199 (1969). The authors recommended elimination of the section from the constitution.

The State shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan or extend its credit to, or in aid of any public or other corporation, association or individual.⁴³

This section appeared to limit state involvement in intergovernmental cooperation, but the Illinois courts had avoided literal interpretation of it. "[I]f the money is spent for a public purpose, the utilization of a public or other corporation is not likely to be forbidden through a rigid reading of Section 20."⁴⁴ The delegates, however, wanting to avoid any interpretation problems, chose to exclude this provision from the 1970 Illinois Constitution.⁴⁵

A further potential obstacle to intergovernmental contracting involves those contracts or agreements which cross state lines and take the form of compacts. The United States Constitution provides: "No State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State . . ." ⁴⁶ The Constitution refers to contracts between *states* but analogously would apply to any contract which crosses state lines and, therefore, would apply to units of local government contracting with other units of local government which lie across state lines.⁴⁷

This area, however, does not present a major problem. Although such contracts would take the form of interstate compacts, requiring congressional consent, "such consent would only be required for interlocal agreements in very unusual circumstances."⁴⁸ The United States Supreme Court has interpreted the Compact Clause of the Constitution to require congressional consent only when compacts affect the balance of the federal system or a power delegated to the national government.⁴⁹ Since powers exercised by local governments would usually lie within state jurisdiction, there should be no question of the balance of the federal system arising. Therefore, although the language of the Constitution would appear to present an obstacle to intergovernmental cooperation, the Supreme Court has interpreted the Compact Clause in such a way that it presents no major obstacle.

43. ILL. CONST. art. IV, § 20 (1870).

44. G. BRADEN & R. COHN, *supra* note 42, at 198. See *People ex rel. Gutknecht v. Chicago Regional Port Dist.*, 4 Ill. 2d 363, 123 N.E.2d 92 (1954); *Cremer v. Peoria Housing Authority*, 399 Ill. 579, 78 N.E.2d 276 (1948); and *Boehm v. Hertz*, 182 Ill. 154, 54 N.E. 973 (1899).

45. *Committee Proposals*, vol. VII at 1762-64.

46. U.S. CONST. art. I, § 10.

47. See *Verbatim Transcripts*, vol. IV at 3424.

48. ACIR, *HANDBOOK* at 7.

49. *Virginia v. Tennessee*, 148 U.S. 503 (1893); *Bode v. Barrett*, 412 Ill. 204, 106 N.E.2d 521 (1952).

INTERGOVERNMENTAL COOPERATION IN ILLINOIS

*The Constitution—Article VII, Section 10:**The Development of Section 10*

The 1970 Illinois Constitution, article VII, section 10, provides:

(a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities.

(b) Officers and employees of units of local government and school districts may participate in intergovernmental activities authorized by their units of government without relinquishing their offices or positions.

(c) The State shall encourage intergovernmental cooperation and use its technical and financial resources to assist intergovernmental activities.⁵⁰

The Local Government Committee⁵¹ of the Constitutional Convention viewed the purpose of section 10 as being to "provide maximum flexibility to units of local government in working out solutions to common problems in concert with other units of government at all levels"⁵² The Committee found that a constitutional section was needed for two reasons. The first was the persistence of the psychology of Dillon's Rule among officials of local government in Illinois. Because of legislative actions and judicial interpretations, the belief persists that unless specific authorization can be found in the statutes, local units may not engage in any activity.⁵³

The second reason for the provision was the inhibiting influence of the then present statutory authorization to cooperate: "The authority for such cooperation is partial and badly fragmented."⁵⁴

50. ILL. CONST. art. VII, § 10 (1970).

51. The Local Government Committee [hereinafter referred to as the Committee] was composed of the following delegates: J.C. Parkhurst, Chairman; P.J. Carey, Vice Chairman; D.C. Baum, Staff Counsel; J.A. Anderson; T.A. Borek; M.L. Brown; R.L. Butler; R.M. Daley; R. Dunn; R. Johnsen; Mrs. T.A. Keegan; E.F. Peterson; D.E. Stahl; J.D. Wenum; J.G. Woods; D.D. Zeglis. *Committee Proposals*, vol. VII at 1590.

52. *Committee Proposals*, vol. VII at 1747.

53. *Id.* at 1751.

54. *Id.*

Delegate Stahl, member of the Committee, in his opening remarks before the full convention explained intergovernmental cooperation as

a workable alternative . . . to regional or metropolitan government. It permits smaller units of local government, by combining to perform specific services or functions, to develop economies of scale with resultant cast [sic] reductions.

We think, in the long run, that vigorous intergovernmental cooperation will reduce the need for special districts and will permit the provision of services which no single unit can provide.⁵⁵

He described the language of the section as self-executing in that cooperation may exist "in any manner not prohibited by general law."⁵⁶ He continued saying that "[t]his simply means that we are trying here to reverse the Dillon psychology"⁵⁷ The Committee in its proposal also stated: "It will not be necessary for local units to seek statutory enactments before beginning an intergovernmental activity."⁵⁸ It remains to be seen whether section 10 has succeeded in its purpose as espoused by the Committee.

Throughout the debates examples of cooperation were suggested, such as two towns purchasing a street sweeper which neither could afford individually, and a town and a school district purchasing a school building together.⁵⁹ The question was asked whether the Municipal Code and existing statutory grants would permit these agreements. Why is there a need for a constitutional section for intergovernmental cooperation? In response Delegate Wenum stated:

'These grants of statutory authority do not provide needed flexibility with respect to financing,' for one thing.

. . . .

Since there is a lack of implementing authority, local units in Illinois have found themselves very hard-pressed when they go into the substantive area, rather than simply the transfer of ministerial kinds of information.⁶⁰

Mr. Wenum, in response to a question suggesting that legislation could accomplish the type of cooperation referred to, stated:

There is no prohibition; . . . there is nothing that would prohibit the legislature from implementing this [cooperative statutory grants]

55. *Verbatim Transcripts*, vol. IV at 3421.

56. *Id.* This language was later amended to read "in any manner not prohibited by law or by ordinance." *Id.* at 3422.

57. *Id.* at 3421.

58. *Committee Proposals*, vol. VII at 1748; see S.H.A. CONST. art. 7, § 10 (Constitutional Commentary).

59. *Verbatim Transcripts*, vol. IV at 3423.

60. *Id.*

What we [the Committee] are suggesting, however . . . is that a constitutional grant—a clear grant of authority to do this—across areas on a general basis would be a very good first step in creating a climate [to cooperate].⁶¹

The Language of Section 10

The language of section 10 underwent revision by the convention through floor debates and by the Style, Drafting, and Submission Committee. The second sentence of section 10(a), which allows cooperation between units and individuals, associations, and corporations, was not proposed by the Committee but was added through the extensive floor debates.⁶² The apprehension expressed by some delegates was that government should not be performed by non-governmental bodies⁶³ and that public funds should not be transferred to private corporations.⁶⁴ The issue was finally resolved through the drafting of language to parallel that of the first sentence by ending the second with the words “in any manner not prohibited by law or by ordinance,”⁶⁵ thus giving the legislature sufficient control over non-mutual governmental cooperation.

Debate concerning subsections (b) and (c) was slight; it was suggested that both could be eliminated as being “hortatory or directional kinds of statements.”⁶⁶ Delegate Stahl answered saying that there was need for subsection (b) but agreed as to (c).⁶⁷

Notwithstanding the broad language of section 10 there are some problems which might arise in interpreting the section. A question as to where in the governmental unit the power or authority to cooperate resides can be raised under subsection (a). It would appear that the power is in the corporate authorities, city council or board of trustees, or “those in whom the policy-making power for the unit is vested”⁶⁸

Another question which might arise under subsection (a), as the word “contract” is already legally defined, is the meaning of the phrase “otherwise associate.” The Committee on Style, Drafting, and Submission felt it meant the power to agree and to cooperate, and these words were therefore eliminated from

61. *Id.* at 3424.

62. *Id.* at 3425-29, 4165, 4253, 4444-46.

63. *Id.* at 3426.

64. *Id.* at 3425.

65. *Id.* at 4444.

66. *Id.* at 3424-25.

67. *Id.* at 3425; concerning the hortatory nature of subsection (c), see S.H.A. CONST. art. 7, § 10 (Constitutional Commentary); and HOME RULE COMMISSION REPORT at 74.

68. HOME RULE COMMISSION REPORT at 72; see *Verbatim Transcripts*, vol. IV at 3421-22.

the proposed draft of section 10(a) as being unnecessary.⁶⁹

"A related question is whether a unit of local government can acquire by agreement with another unit of government a power it does not already have in its own right."⁷⁰ This issue would arise under subsection (a) where one unit did not have an initial grant of power, either from the legislature or from the constitution, to perform a service and attempted to jointly agree with a second unit which did have this power. It seems unlikely that the courts will find such authority stemming from this section even though the language reads "transfer any power or function."⁷¹

Finally, unlike the first sentence, the second sentence of subsection (a) does not include the language "to obtain or share services," and it remains to be seen if this omission broadens or limits the cooperative power with individuals, associations and corporations.⁷²

The initial draft of subsection (b) provided that "officers and employees . . . may participate in intergovernmental activities as authorized by their units . . .," which would indicate that actual participation would have to be authorized. The Style, Drafting, and Submission Committee deleted "as" with no explanation,⁷³ and now this question arises: Has the meaning been changed in such a way that the activity itself and not the participation, needs to be authorized?

Subsection (c), mainly a policy statement, may be read to authorize the state to guarantee local debt with its own debt powers.⁷⁴

Having discussed the development and language of section 10, its meaning will now be explored as interpreted by the court and viewed by the legislature and the Attorney General.

The Judiciary

In other states which have constitutional provisions involving intergovernmental cooperation, there have been only a few cases interpreting those provisions; Illinois is no exception. In the four years since the ratification of the constitution, only one case has specifically dealt with section 10, *Connelly v. County of Clark*.⁷⁵

In *Connelly*, the county purchased and operated a gravel pit

69. *Committee Proposals*, vol. VII at 1986-87.

70. HOME RULE COMMISSION REPORT at 73.

71. See text accompanying notes 99, 108, 116, & 118 *infra*.

72. HOME RULE COMMISSION REPORT at 73.

73. *Id.* at 74.

74. *Id.*

75. 16 Ill. App. 3d 947, 307 N.E.2d 128 (1973).

for the benefit of the county highway department in its construction and maintenance of county roads. It also sold gravel to other units of local government, in particular to townships, within the county on a computed price per unit. The county used its own employees and machinery to operate the pit, and the entire cost of the operation was paid for by the county out of an account from the highway fund. The plaintiff, an independent gravel pit operator in the county,⁷⁶ brought suit for an injunction and for declaratory judgment against the operation by Clark County of its gravel pit. The trial court held that

the County may operate a gravel pit for its own use, and that its use of motor fuel tax funds for such a purpose was statutorily authorized. It also found that the County was authorized to sell gravel from the pit to other governmental units.⁷⁷

The plaintiff appealed.

The Appellate Court for the Fourth District addressed the issue of whether the county could sell gravel to other local units of government by looking for a *statutory* grant of power to perform this service.⁷⁸ The court utilized the strict statutory construction approach, that is, that the powers of counties are to be strictly construed against them. It could find no power necessarily incident to or necessary to effectuate the county's express power of establishing a gravel pit to maintain county roads which would allow it to sell to other governmental units.⁷⁹

Curiously, the court then stated:

We do not mean to imply that the county has no authority to sell gravel from its legally owned pit to other governmental units on a pro-rated cost basis when such units enter into a joint or cooperative agreement or venture.⁸⁰

To reach this conclusion it cited the *Illinois Revised Statutes* chapter 121, section 1-102, which provides in part:

It is further declared that highway transportation system development requires the cooperation of State, county, township, and municipal highway agencies and coordination of their activities on a continuous and partnership basis and the legislature intends such cooperative relationships to accomplish this purpose.⁸¹

The court interpreted this statute to mean that the only way

76. Information received from Mr. O. Shawler, State's Attorney, Clark County, Marshall, Illinois, in a telephone conversation, July 29, 1974.

77. 16 Ill. App. 3d at 948, 307 N.E.2d at 129.

78. The issue of the county's right to operate the pit for its own use and the means used to fund the pit's operation was affirmed on appeal for the county and will not be discussed further.

79. 16 Ill. App. 3d at 949, 307 N.E.2d at 130.

80. *Id.* at 949-50, 307 N.E.2d at 130.

81. ILL. REV. STAT. ch. 121, § 1-102 (1973).

cooperation could take place would be on a continuous and partnership basis.⁸²

The court then went on to address section 10. Several paragraphs of the Committee Transcripts were quoted to support its position that joint operation was a prerequisite to cooperation.⁸³ The paragraphs the court selected are taken out of context and do not adequately present a correct picture of intergovernmental cooperation. For example, it quoted Delegate Wenum as saying:

'What is anticipated here is not so much that there would be a specific transfer of any funds to another entity as such, but that there would be a joint venture which would be on a—probably the most rational way would be on a per capita basis—a joint funding and administration of some operation'⁸⁴

This statement, by Delegate Wenum, was in response to a question concerning whether transfers of revenue among the cooperating units of local government were permitted.⁸⁵ His answer was to a narrow question of transfers of revenue, to which he said a joint venture is anticipated, and not to the question of whether intergovernmental cooperation was to be conducted only by joint venture.

The court also quoted from the Committee's definition of intergovernmental cooperation.⁸⁶ In support of its holding, it, conveniently, only stated that intergovernmental cooperation is two or more local governments performing a function jointly or operating a facility on a joint basis. However, the court omitted or neglected to mention that intergovernmental cooperation may also take place where a single government, here the county, performs a service, the sale of gravel, for one or more local units, here the townships.⁸⁷ The sale of gravel would appear to be a service contemplated by an intergovernmental service contract even though the contracts were made at the time a purchase of gravel occurred.

Inconsistent as it seems, the court realized that section 10 has abrogated Dillon's Rule, yet it applied strict statutory construction and looked for a legislative grant of power to cooperate just as if it were deciding the case prior to 1970. It held:

[W]e find no such joint venture here. The townships are under no contractual obligation to purchase *any* gravel from Clark County. They have not combined with the county to perform or share specific services or functions. There is no joint funding and administration of the gravel pit operation. There is no

82. See text accompanying notes 14 & 15 *supra*.

83. 16 Ill. App. 3d at 950-51, 307 N.E.2d at 131.

84. *Id.* at 950, 307 N.E.2d at 131.

85. *Verbatim Transcripts*, vol. IV at 3423.

86. See note 13 *supra* and accompanying text.

87. *Committee Proposals*, vol. VII at 1749.

agreement for the joint operation of the facility. There is no apportioning of the costs of any cooperative venture. Isolated purchases, from time to time, cannot be said to fall within the purview of section 10, Article VII of the 1970 Constitution or chapter 121, section 1-102.⁸⁸

The court therefore reversed and remanded. On remand the district court decreed:

That Clark County, Illinois, Defendant in this cause, be, and it is hereby enjoined to sell gravel from the gravel pit that it operates to other governmental units and that this injunction is a permanent injunction⁸⁹

This decision is clearly erroneous. As Presiding Justice Craven in his dissent properly concluded:

[T]he rules of construction employed by the majority have no validity following the adoption of the 1970 constitution.⁹⁰

. . . .

Inasmuch as the county has statutory authority to expend the funds for township roads and inasmuch as local governmental units, including townships and counties, are authorized to associate among themselves in order to effectuate their governmental function so long as such is not prohibited by law, it seems to me that Clark County should be able to sell gravel on a pro rata cost basis to a township. Dillon's rule of statutory construction was, I believe, intended to be permanently interred by the adoption of section 10 of article VII of the constitution and its resurrection is to be regretted.⁹¹

The majority lost sight of the fact or did not comprehend the effect of the abrogation of Dillon's Rule. The abrogation means that the courts must now look for a clear statutory *prohibition* which prevents units of local government *from* cooperating rather than looking for a *grant* of power which allows units of local government *to* cooperate. *Illinois Revised Statutes* chapter 121, section 1-102, is not such a prohibition against the sale of gravel by a county to other units of local government. The fact that cooperation may be achieved on a continuous basis, as stated in section 1-102 does not preclude cooperation on a sporadic or one-time basis. Nor does the fact that cooperation may be achieved on a partnership basis, as stated in section 1-102, preclude cooperation between a seller, the county, and a buyer, a township. Furthermore, a continuous basis was not even feasible since, as the county contended,

[i]t is not the nature of material from a gravel pit that it can provide an unlimited variation of grades, or unlimited mixes, to all municipal corporations to construct and maintain every

88. 16 Ill. App. 3d at 951, 307 N.E.2d at 131 (emphasis by the court).

89. Final Judgment Order Entered Pursuant to the Mandate of the Appellate Court, No. 71-E-2 (April 25, 1974).

90. 16 Ill. App. 3d at 953, 307 N.E.2d at 132-33.

91. *Id.* at 958, 307 N.E.2d at 136.

type of road. Thus, there could be no requirement that these other governmental units must obtain all of their gravel from this gravel pit.

It does not become an isolated purchase for the township to use this pit as its source of material; the limitation is not a part of the benefits which the township could expect from a gravel pit arrangement, for only gravel of the type produced is available.⁹²

It can only be hoped that this opinion does not establish any precedent that will limit the definition of cooperation to only that of joint venture. Such a limited approach would surely confine the benefit which section 10 could confer upon units of local government.⁹³

The Legislature

Although the intergovernmental section of the constitution was thought to be self-executing,⁹⁴ there was also the feeling that legislation would be needed to clarify and to "supplement and to render more effective"⁹⁵ the device of intergovernmental cooperation. It was also felt that legislative approval of the intergovernmental cooperation section of the constitution was needed to overcome the Dillon psychology.⁹⁶ The legislature responded with the Intergovernmental Cooperation Act which became effective October 1, 1973.⁹⁷

Section 743 of the Act answers a question raised earlier in this article as to the necessity of a unit having an initial grant of power before it can jointly exercise that power in an intergovernmental agreement. The section provides:

Any power or powers, privileges or authority exercised or which may be exercised by a public agency⁹⁸ of this State may be exercised and enjoyed jointly with any other public agency of this State and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States do not prohibit joint exercise or enjoyment.⁹⁹

92. Appellee's Petition for Rehearing at 3.

93. See *Everett v. County of Clinton*, 282 S.W.2d 30 (Mo. 1955), for a similar factual situation as *Connelly*, with holding for the defendant, county.

94. *Verbatim Transcripts*, vol. IV at 3421.

95. *Id.* at 3424.

96. Telephone conversation with Representative J. Matijevich, 31 District, July 30, 1974; Representative Matijevich sponsored House Bill 1141 which became the Intergovernmental Cooperation Act.

97. ILL. REV. STAT. ch. 127, §§ 741-48 (1973).

98. *Id.* at § 742 defines public agency as any unit of local government as defined in the Illinois Constitution of 1970, any school district, the State of Illinois, any agency of the State government or of the United States, or of any other State and any political subdivision of another State.

99. *Id.* at § 743.

Therefore, a unit must possess an initial grant of power before it can exercise that power with another unit cooperatively.

With respect to intergovernmental contracts the Act states:

Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties.¹⁰⁰

In *Connelly*, the county was given the power by law to mine gravel. The above section would therefore allow the county to perform that governmental activity, the mining of gravel, for the townships by means of sales contracts. Although the Act was effective October 1, 1973, two months before *Connelly* was decided, the court failed to mention the Act in its decision.¹⁰¹

The legislature has also passed several other statutes since 1970 which grant units of local government the power to contract and cooperate. Such grants of power when viewed from the standpoint of the reversal of Dillon's Rule seem unnecessary. For example, both municipalities¹⁰² and counties¹⁰³ have been granted authority to contract with school boards¹⁰⁴ for the regulation of traffic in parking areas of property used for school purposes. In approving the measures, in 1971, Governor Ogilvie pointed out that "the measures were almost surely unnecessary because of the intergovernmental cooperation powers granted by the Constitution."¹⁰⁵ The legislature added an amendment that

100. *Id.* at § 745.

101. *Id.* at § 744 provides as follows:

Any public agency entering into an agreement pursuant to this Act may appropriate funds and may sell, lease, give, authorize the receipt of grants, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as may be within its legal power to furnish.

Id. at § 746 provides as follows:

An intergovernmental contract may, among other undertakings, authorize public agencies to jointly self-insure and authorize each public agency member of the contract to utilize its funds to protect, wholly or partially, any public agency member of the contract against liability or loss in the designated insurable area.

102. ILL. REV. STAT. ch. 24, § 1-1-7 (1973).

103. *Id.* ch. 34, § 421.1.

104. *Id.* ch. 122, §§ 10-22.42, 34-18.

105. HOME RULE COMMISSION REPORT at 67; Letter from Governor Richard B. Ogilvie to the House of Representatives, September 8, 1971, in *id.* at 565, n.23:

'In approving this bill, I am fully cognizant of the provisions of Article VII, Section 10, of the 1970 Illinois Constitution, which issues a broad grant of authority to any and all units of local government and school districts to contract and otherwise associate with each other and with individuals, associations or corporations in any manner not prohibited by law or ordinance. This Section from the new Constitution makes possible cooperation among units of govern-

stated: "This amendatory Act of 1972 is not a prohibition upon the contractual and associational powers granted by Article VII Section 10 of the Illinois Constitution"¹⁰⁶ and passed the legislation

apparently on the theory that if it did grant new authority, it was helpful, but that if it did not grant new authority, at least it would not limit the constitutional scope of intergovernmental authority.¹⁰⁷

The legislature should be reminded that in dealing with grants of intergovernmental power to units of local government, the legislature's role is now different. The constitution now relieves the legislature of the function of *granting* powers to cooperate to units of local government and impliedly gives it the function to draft legislation in those areas where it feels intergovernmental cooperation should be *prohibited*. Grants of power to cooperate by the legislature will only continue to reinforce Dillon's Rule, because the courts and the units of local government will continue to look for statutory grants of power to cooperate instead of relying upon the constitutional authority. Section 10 now *grants* the authority to cooperate; it is the legislature's role to *limit* that authority.

The Attorney General

Since 1970 at least eight opinions have been rendered by the Attorney General of Illinois concerning intergovernmental cooperation.¹⁰⁸ Some opinions have taken a strict statutory construction approach while others have advanced the cause of intergovernmental cooperation by recognizing that Dillon's Rule has been reversed.

From these opinions it can be seen that a two-step approach is involved before units of government can cooperate. First, each

ment and between government and private parties in ways not yet imagined. It is my hope, therefore, that framers of future legislation addressed to this subject will bear these four things in mind:

1. All units of local government in Illinois may work together with other governments and private parties in any manner not prohibited by law or ordinance;

2. Units of local government with home rule powers have sufficient authority under the new Constitution to take action without further provisions being made by statute;

3. Non-home rule units will need statutory permission to impose taxes or to reallocate funds from existing taxes to support intergovernmental activities;

4. Non-home rule units will need statutory permission to regulate private parties engaged in providing public services on a contractual basis.

106. ILL. REV. STAT. ch. 24, § 1-1-7 (1973).

107. HOME RULE COMMISSION REPORT at 67.

108. "All opinions of the Attorney General are advisory only and are not binding on the State of Illinois or the courts of this State." 70 ILL. OP. ATT'Y GEN. x (1971).

unit which is a party to an agreement or contract must individually have a grant of power before performing the function or rendering the service which is the object of the cooperation. Secondly, once having this power, the units need the authorization to cooperate. The legislature, in the case of non-home rule units, and the constitution, in the case of home rule units, provide the initial grants of power to the units; section 10 provides the grant of authority to cooperate. Therefore, units of local government can only cooperate in those areas in which they initially have the power to engage in such activities, whether granted by the constitution or by the legislature. Section 10 grants the authority to cooperate and is not a grant of power to engage in an activity in the first instance.

The earliest Attorney General opinion was given in response to a question raised by the State's Attorney of Du Page County.¹⁰⁹ He asked whether the counties could negotiate and enter into a contract with various taxing districts to defray the costs of collection and distribution of their taxes. The Attorney General stated that a contract of this type would be improper as contrary to the spirit and intent of article VII, section 9, of the constitution.¹¹⁰ Basically section 9 eliminates fee officers but does not eliminate the expense of collecting and distributing tax monies. In keeping with the spirit of section 10, the Attorney General should have decided that the contract was proper.

In January, 1972, the State's Attorney of Jasper County requested an opinion¹¹¹ on the applicability of statutory residence requirements to deputy sheriffs or special policemen participating in a twelve-county reciprocal mutual aid agreement. The Attorney General stated that the subject matter of the mutual aid agreement was proper because the power was granted by statute but that each officer involved in the program had to satisfy the residency requirements. The legislature, realizing that this requirement would create a great obstacle to any mutual aid agreement, amended the statute. The residency requirements are now waived in agreements to borrow deputy sheriffs in times of emergency.¹¹²

In July, 1972, the State's Attorney of St. Clair County inquired whether the county could contract with the federal gov-

109. *Id.* at 100.

110. *Id.* at 102; ILL. CONST. art. VII, § 9 (1970) provides in part:

(a) Compensation of officers and employees and the office expenses of units of local government shall not be paid from fees collected. Fees may be collected as provided by law and by ordinance and shall be deposited upon receipt with the treasurer of the unit. Fees shall not be based upon funds disbursed or collected, nor upon the levy or extension of taxes.

111. ILL. OP. ATT'Y GEN. S-391 (January 6, 1972).

112. ILL. REV. STAT. ch. 125, §§ 27, 27.1 (1973); section 27 was also amended to eliminate the 30 day county residency requirement.

ernment, Department of Housing and Urban Development, for the receipt of federal funds to develop strip mine ground, located in an unincorporated area of the county, which had been donated to the county by a coal company for use as a park.¹¹³ The reply was that article VII, section 10(a) expressly permitted such contracting power.

The acting Director of the Department of Public Health in June, 1973, sought an answer to the question of whether a public health district is authorized to contract with the Department of Public Health to establish and maintain a merit personnel system.¹¹⁴ The Attorney General concluded that the Department of Public Health had no such authority. Although a statutory grant existed for contracting in the areas of "purchase, sale or exchange of health service and products which may benefit the health of the people,"¹¹⁵ by application of the strict statutory principle of *expressio unius est exclusio alterius*, an enumeration operates to exclude other powers of the same kind not mentioned, a merit personnel system was therefore excluded. Since the legislature has not expressly prohibited the establishment and maintenance of a merit personnel system and since section 10 clearly permits such a contract, the Attorney General should have allowed the cooperation.

The State's Attorney of Brown County asked whether the county could make a donation to the Senior Citizens Council, a not-for-profit corporation, for the purchase and maintenance of a vehicle to be used to transport senior citizens and whether the county could contract with the Council to provide the transportation free of charge.¹¹⁶ The Attorney General stated that since there is no statute which grants power to a county to provide transportation for county residents who are over the age of 60 years, section 10 cannot authorize a contract to provide such services. Here Dillon's Rule was applied to the necessity for an initial grant of power, granted by the legislature to the county to provide this transportation service. Since the power to provide this transportation was not expressly granted by the legislature, the authority to cooperate in the area of transportation did not exist. Because Brown County did not have a grant of power to provide transportation to its senior citizens, the opinion of the Attorney General is correct; section 10 will not provide a substitute for grants of power to engage in an activity in the first instance.

113. ILL. OP. ATT'Y GEN. S-493 (July 24, 1972).

114. *Id.* S-601 (June 27, 1973).

115. ILL. REV. STAT. ch. 127, § 55.12 (1973).

116. ILL. OP. ATT'Y GEN. NP-637 (October 17, 1973).

The Director of the Illinois Law Enforcement Commission in January, 1974, asked for the Attorney General's opinion relating to a police protection contract whereby the Village of Barrington would provide police service to six municipalities.¹¹⁷ Portions of Barrington Hills, one of the six municipalities, were located in McHenry and Kane Counties, while the Village of Barrington was located in Lake and Cook Counties. The question was whether a Barrington police officer could legally provide police services and effect arrests in those portions of Barrington Hills located outside the municipal boundaries of Barrington. The Attorney General answered by stating that this contract was a transfer of a function of the six municipalities to one, Barrington, which was permitted under section 10. The Barrington police would have the power to perform police services in any of the contracting municipalities without regard to which of the four counties the municipality was located. Prior to the 1970 Constitution this type of cooperation was authorized on a police assistance basis between municipalities¹¹⁸ but not for the contracting of police protection. A police assistance agreement is a type of cooperation in which municipalities each maintain their own police force and cooperate by aiding each other in times of emergency. A police protection contract is one in which a municipality provides the police protection and service function for another unit, the latter unit not having a police force of its own. Therefore, since Barrington had the initial statutory power, through legislative grant, as did the other six municipalities, to provide police protection, they could, under section 10, contract with each other to allow Barrington to provide the police protection. Since there was no statute expressly authorizing such cooperation, one sees a true instance of the abrogation of Dillon's Rule.

The next opinion to be considered is that which was in response to a question by the State's Attorney of Peoria County.¹¹⁹ The county owned a tract of real estate on which a building in need of costly repairs was located. Instead of incurring these costs, the county sought to lease the building for a nominal rent, not related to the fair rental value, to a federal agency which desired it as a United States Naval Marine Corp Reserve Training Center. The Attorney General stated that although the constitution authorizes a unit of local government to contract with the federal government, it does not authorize a county to make a gift of its real property, and, therefore, such a contract would

117. *Id.* S-684 (January 30, 1974).

118. ILL. REV. STAT. ch. 24, § 11-1-2.1 (1973).

119. ILL. OP. ATT'Y GEN. S-691 (January 30, 1974).

be invalid. As in the Brown County opinion, the intergovernmental cooperation provision will not substitute for an initial grant of power to the unit of government to perform the activity.

In the most recent opinion, February, 1974, the Director of the Illinois Law Enforcement Commission again questioned the Attorney General.¹²⁰ The agreement involved the city of Vandalia providing police service to smaller municipalities in Fayette County. Whether these municipalities could bind themselves to reimburse Vandalia for possible future claims for disability and retirement pension of the police officers was raised. Under the Intergovernmental Cooperation Act, authorized by section 10, the Attorney General concluded that such smaller municipalities could contract to reimburse Vandalia for retirement and disability pension benefits.¹²¹

From these few opinions it can be seen that a unit of local government must have an initial grant of power to perform the subject matter of the cooperation before it can contract with another unit to exercise that power cooperatively. Whether it has or does not have that power will be controlled by statutory grants, the application of Dillon's Rule, and the article VII home rule provisions, but not section 10. Intergovernmental cooperation has been permitted in three of the eight opinions discussed, although it should have applied in at least two others.

STATUTORY GRANTS PERMITTING COOPERATION IN ILLINOIS

Intergovernmental cooperation is not new to Illinois. In at least twenty chapters¹²² and over 100 sections of the *Illinois Revised Statutes* the legislature has granted the power to cooperate to units of local government. It would serve no purpose here to describe all of these grants; however, a look at the major ones will present a picture of the types of cooperation authorized in Illinois before the 1970 Constitution. From this picture the pre-1970 types of cooperation can be compared with those the constitution now permits. It is also important to note these statutes, because they have not been repealed by the ratification of the 1970 Constitution. If courts, as in *Connelly*, continue to rely on these statutory grants of power which permit cooperation, these statutes will take on increased importance, at the expense of sec-

120. *Id.* S-696 (February 13, 1974).

121. *See* note 101 *supra*.

122. The chapters include: ILL. REV. STAT. chs. 15½ Aviation; 21 Cemeteries; 24 Cities and Villages; 34 Counties; 38 Criminal Law and Procedure; 42 Drainage; 56½ Food and Drugs; 67½ Housing and Redevelopment; 81 Libraries; 85 Local Government; 91½ Mental Health; 105 Parks; 111½ Public Health; 111½ Public Utilities; 121 Roads and Bridges; 122 Schools; 127 State Government; 127½ State Fire Marshal; 139 Township Organization; and 144 Universities, Colleges (1973).

tion 10, as more units enter into cooperative activities.

Basic Contractual Powers

The basic power to contract is granted to cities in section 2-2-12 and to villages in section 2-3-8 of the Illinois Municipal Code which permits these units to "sue and be sued, contract and be contracted with" ¹²³ The specific power for municipalities to cooperate intergovernmentally is found in section 1-1-5 of the Code:

The corporate authorities of each municipality may exercise jointly, with one or more other municipal corporations or governmental subdivisions or districts, all of the powers set forth in this Code unless expressly provided otherwise. In this section 'municipal corporations or governmental subdivisions or districts' includes, but is not limited to, municipalities, townships, counties, school districts, park districts, sanitary districts, and fire protection districts. ¹²⁴

The Department of Local Governmental Affairs ¹²⁵ may contract with municipalities to perform municipal functions. ¹²⁶ And in the areas of purchase, "[a]ny governmental unit may purchase personal property, supplies and services jointly with one or more other governmental units." ¹²⁷

Fire and Police: Assistance and Protection

Municipalities "may enter into contracts or agreements with other municipalities and fire protection districts for mutual aid consisting of furnishing equipment and man power" ¹²⁸ In addition, municipalities may contract with fire protection districts ¹²⁹ "adjacent to the municipality, for the furnishing of fire protection service for property located within the district but outside the limits of the municipality" ¹³⁰ Townships may contract with municipalities and counties to acquire fire protection. ¹³¹ Ambulance service may also be contracted for by municipalities and counties. ¹³²

123. ILL. REV. STAT. ch. 24, §§ 2-2-12 cities, 2-3-8 villages (1973).

124. *Id.* § 1-1-5.

125. *Id.* ch. 127, §§ 63b14-15.

126. *Id.* § 63b14.15.

127. *Id.* ch. 85, § 1602.

128. *Id.* ch. 24, § 11-6-1.

129. *Id.* ch. 127½ § 21 *et seq.*; fire protection district's power to contract is contained in *id.* §§ 31a-31d.

130. *Id.* ch. 24, § 11-6-2; *see id.* § 11-6-3 fire protection service contracts with state colleges and universities; *id.* § 11-6-4 fire protection service contracts with junior college districts.

131. *Id.* ch. 139, § 39.32.

132. *Id.* ch. 24, § 11-5-7 for municipalities, contracting authority; *id.* ch. 34, § 419.1 where counties are authorized to contract for and contract to provide service to other units of government; *id.* ch. 127½, § 38.5

Contracting sections authorizing cooperation between units of government for police service are similar to those concerning fire service. Municipalities may request assistance from other "police departments to suppress mob action, riot or civil disturbance."¹³³ Police protection service contracts are also authorized between municipalities, counties and townships to furnish protection to unincorporated areas of the township or county.¹³⁴ There are also statutory authorizations for joint radio broadcasting¹³⁵ and the training of police.¹³⁶

Education

Under the Interstate Compact on Public School Administration¹³⁷ interstate public school districts, for the operation of elementary and secondary schools, may be created with those states bordering Illinois. The Compact also provides for the allocation of cost and aid among the participating states.¹³⁸ The Compact for Education¹³⁹ is an interstate compact to further public education, to collect data on education needs and resources, and to provide instructional methods. Within the state, many joint educational programs are possible between school districts.¹⁴⁰ In the area of transportation, provisions for contracting with non-public schools as well as for inter-district contracting are provided.¹⁴¹

Water, Sewerage, and Public Works

Municipalities may contract with "any person, corporation, municipal corporation, political subdivision, public water district or any other agency for a supply of water."¹⁴² Municipalities

where fire protection districts are authorized to "combine with other units of government for the purpose of providing ambulance service

133. *Id.* ch. 24, § 1-4-8; municipalities of population of less than 500,000 "may enter into agreements with any other such municipality or municipalities to furnish police assistance on request." *Id.* § 11-1-2.1.

134. *Id.* § 11-1-7 municipality grant; *id.* ch. 139, §§ 39.29, 39.30 township grant.

135. *Id.* ch. 34, § 416. Counties may join to operate a radio station for police and fire protection.

136. *Id.* ch. 85, §§ 501-12 Police Training Act.

137. *Id.* ch. 122, §§ 739-41.

138. *Id.* § 739 art. III.

139. *Id.* §§ 100-1 to 100-4.

140. *Id.* § 10-22.31 joint agreements to provide for special education facilities; *id.* § 10-22.31a joint agreements pertaining to any educational program which each district could establish individually; *id.* § 10-22.31b joint building programs; *id.* § 10-22.30 joint contracts for procuring television and radio broadcasts.

141. *Id.* § 29-3.2 non-public school agreements with public schools; *id.* § 29-6 inter-district contracts for transportation.

142. *Id.* ch. 24, § 11-124-1; *id.* ch. 111½, § 213 provides for the creation of water service districts, and *id.* § 220 grants power for districts to contract with cities, villages and incorporated towns to provide supply of water.

may join to acquire and operate water supply and waterworks¹⁴³ and sewerage systems.¹⁴⁴ Adjacent municipalities, drainage districts, and sanitary districts may contract with each other for disposal and treatment of sewage.¹⁴⁵ Joint construction and operation of sewerage plants between Illinois municipalities and those in adjacent states are also authorized.¹⁴⁶

Cooperation in the area of solid waste disposal is allowed on the municipal¹⁴⁷ and county level.¹⁴⁸ Joint contracts with townships for the construction of public improvements are also authorized,¹⁴⁹ and municipalities may jointly acquire, construct on, and operate real estate.¹⁵⁰ In the area of street construction and maintenance, contracting is authorized among all governmental units at the state, county, township, and other political subdivision levels.¹⁵¹

Additional Grants of Power

Statutes also allow intergovernmental cooperation in the areas of parks and recreation,¹⁵² health and welfare,¹⁵³ library services,¹⁵⁴ transportation,¹⁵⁵ and corrections.¹⁵⁶

INTERGOVERNMENTAL COOPERATION CONSTITUTIONAL PROVISIONS IN OTHER STATES

There are at least nine states in addition to Illinois which

143. *Id.* ch. 24, § 11-135-1.

144. *Id.* § 11-136-1.

145. *Id.* §§ 11-147-1, 11-147-3; *id.* ch. 42, § 326d.

146. *Id.* ch. 24, § 11-148-1.

147. *Id.* §§ 11-19-1, 11-19-6.

148. *Id.* ch. 34, § 418.

149. *Id.* ch. 24, § 11-85-2.

150. *Id.* § 11-69-1.

151. *Id.* ch. 121, §§ 1-102, 4-201.4, 4-406, 9-101; *id.* ch. 24, § 11-85-1.

152. *Id.* ch. 24, § 11-95-4 permits school and park boards to join with a municipality in conducting and maintaining a recreational system; *id.* ch. 105, § 8-10.2 joint park district programs for the handicapped; *id.* ch. 105, § 8-1(f) park district and city, village or town joint ownership of property.

153. *Id.* ch. 111½, § 1004n where the Environmental Protection Agency may develop plans with units of local governments; *id.* ch. 67½, § 32b permits agreements between municipal corporations and housing authorities; *id.* ch. 34, § 421.2 for air contamination control agreements; *id.* ch. 56½, § 715 for agreements for research on cannabis.

154. *Id.* ch. 81, § 101, the Interstate Library Compact; *id.* § 4-7(9) where library boards may join to maintain common libraries; *id.* §§ 111-25 provides for a network of public libraries.

155. *Id.* ch. 15½, § 251 *et seq.* for interstate airport authorities; *id.* ch. 24, §§ 11-103-1 to 11-103-10 for joint operation of airports by municipalities; *id.* ch. 111½, § 351 *et seq.* where local mass transportation districts can contract with other districts, municipalities or private corporations to provide transportation; *id.* ch. 24, § 11-122.1 for municipal contracts for the operation of privately owned, local passenger transportation systems.

156. *Id.* ch. 38, § 1003-4-4 Interstate Corrections Compact; *id.* ch. 24, § 11-4-8 where counties can mutually agree to receive and keep persons.

have constitutional provisions dealing with intergovernmental cooperation. The provisions may be categorized into 1) those, like Illinois, which have as their purpose to overturn Dillon's Rule as compared to those which preserve the Rule, and 2) those provisions which allow intergovernmental cooperation only in certain subject areas.

The constitutions of Alaska,¹⁵⁷ Montana,¹⁵⁸ and Pennsylvania,¹⁵⁹ reverse Dillon's Rule by obviating a legislative grant of power to cooperate. For example, the Montana Constitution provides in part:

(1) Unless prohibited by law or charter, a local government unit may

(a) cooperate in the exercise of any function, power, or responsibility with,

(b) share the services of any officer or facilities with,

(c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.¹⁶⁰

The legislature prohibits areas of intergovernmental cooperation rather than making grants of this power.

The intergovernmental constitutional provisions of six states preserve Dillon's Rule. For example, the Michigan Constitution preserves Dillon's Rule in that intergovernmental agreements are "[s]ubject to provisions of general law . . ."¹⁶¹ It is unique in that it allows cooperation with Canada and its political subdivisions. These constitutions which only restate Dillon's Rule do not further the cause of intergovernmental cooperation to any great extent since they impede and restrict intergovernmental cooperation to statutory grants only. However, they do establish a constitutional directive to cooperate and encourage the use of statutory grants of cooperative powers among units of local government.

In the second area in which these constitutional provisions can be classified, subject matter, it can be seen that four states, Michigan, New York, Pennsylvania, and Montana, do not place

157. ALASKA CONST. art. X, § 13.

158. MONT. CONST. art. XI, § 7.

159. PA. CONST. art. 9, § 5.

160. MONT. CONST. art. XI, § 7 para. (1).

161. MICH. CONST. art. III, § 5. The other five states which preserve Dillon's Rule are Georgia, Missouri, Hawaii, New York and California. Georgia's constitution limits cooperation to "such activities and transactions as such subdivisions are by law authorized to undertake." GA. CONST. art. VII, § 2-5901. The constitution of Missouri provides for contract and cooperation "in the manner provided by law." Mo. CONST. art. 6, § 16. Hawaii's constitution states that: "The legislature may provide for cooperation . . ." HAWAII CONST. art. XIV, § 6. The constitution of New York states that: "Local governments should have power to agree, as authorized by act of the legislature . . ." N.Y. CONST. art.

substantial limitations upon the subject area of cooperation. For example, the Pennsylvania Constitution provides:

A municipality by act of its governing body may, or upon being required by initiative and referendum in the area affected shall, cooperate or agree in the exercise of any function, power or responsibility with, or delegate or transfer any function, power or responsibility to, one or more other governmental units including other municipalities or districts, the Federal government, any other state or its governmental units, or any newly created governmental unit.¹⁶²

On the other hand, five states' constitutional provisions limit the subject matter of cooperation. For example, Georgia limits cooperation to within the state and to facilities or services of the units of local government.¹⁶³ In *Mulkey v. Quillian*¹⁶⁴ the Georgia Supreme Court held that loaning of money by the highway department to political subdivisions for the purpose of removing and relocating gas mains was not a facility or service of the state or its agencies, and, therefore, the court prohibited such cooperation. The Georgia Supreme Court held in *State v. Blasingame*¹⁶⁵ that the constitution and statutes did not authorize a contract between the state highway department and a Florida authority for the construction and operation of a toll road between the two states. Georgia has, however, permitted the following: cooperation between the state highway department and a city in selection of the route and construction of a highway;¹⁶⁶ a contract whereby equipment of a county police department was to be transferred to a city to be used in servicing the unincorporated area of the county;¹⁶⁷ and contracts among the boards of education of three counties for education of elementary and high school children.¹⁶⁸

9, § 1(c). "The Legislature may provide that counties perform municipal functions . . ." is provided for in California's constitution. CA. CONST. art. 11, § 8.

162. PA. CONST. art. 9, § 5.

163. GA. CONST. art. VII, § 2-5901. The other four state constitutions which limit the subject matter of the cooperation are Hawaii, Missouri, California and Alaska. Hawaii's constitution provides for cooperation only in "matters affecting the public health, safety and general welfare . . ." HAWAII CONST. art. XIV, § 6. The constitution of Missouri provides for cooperation in the areas of "planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service . . ." MO. CONST. art. 6, § 16. The constitution of California only provides for cooperation where "counties perform municipal functions at the request of cities within them." CA. CONST. art. 11, § 8. The Alaska Constitution limits cooperation in that "[n]o debt shall be contracted by any political subdivision of the State, unless authorized for capital improvement . . ." ALASKA CONST. art. IX, § 9.

164. 213 Ga. 507, 100 S.E.2d 268 (1957).

165. 212 Ga. 222, 91 S.E.2d 341 (1956).

166. *City of Carrollton v. Walker*, 215 Ga. 505, 111 S.E.2d 79 (1959).

167. *Barge v. Camp*, 209 Ga. 38, 70 S.E.2d 360 (1952).

168. *Walker v. McKenzie*, 209 Ga. 653, 74 S.E.2d 870 (1953). Addi-

The Missouri provision and the statutes implementing it have been expansive enough to permit such contracting as in *School District of Kansas City, Mo. v. Kansas City, Mo.*¹⁶⁹ in which a cooperative agreement for the erection of a library building by the school district on a public parkway owned by the city and under control of its Park Commissioners was upheld. The Missouri Supreme Court stated that the

purpose of the constitutional provision is to enable municipalities and political subdivisions to effect economies and facilitate the performance of their related public functions although actual consolidation of the governmental agencies is not feasible.¹⁷⁰

Under the Alaska Constitution,¹⁷¹ a bond issue by the City of Juneau to purchase land which would have been conveyed to the state for expansion of the state capitol located within the city was held unlawful, because it was not for a capital improvement.¹⁷²

Therefore, it can be seen that the majority of the other jurisdictions' constitutional provisions do not allow intergovernmental cooperation freely between units of local government. In six of the nine states Dillon's Rule is maintained, and in five of the nine states the subject area of cooperation is restricted. The Illinois intergovernmental cooperation constitutional section, therefore, appears to be one of the broadest when compared to those states, because its language reverses Dillon's Rule, does not limit the subject of the cooperative activities, and the provision allows for cooperative activity outside the intergovernmental area.

THE PRESENT AND FUTURE STATUS OF INTERGOVERNMENTAL COOPERATION IN ILLINOIS

Has intergovernmental cooperation substantially changed since the ratification of the 1970 Illinois Constitution? This question is difficult to answer. Dillon's Rule, although abrogated by the language of section 10, is, in some application, still present

tional areas of cooperation were between a city and a county to extend and construct water works and sewerage systems. *Reed v. City of Smyrna*, 201 Ga. 228, 39 S.E.2d 668 (1946). A rental contract between county and state school boards for school buildings was also permitted. *Sheffield v. State School Bldg. Authority*, 208 Ga. 575, 68 S.E.2d 590 (1952).

169. 382 S.W.2d 688 (Mo. 1964); for a discussion of this case see Comment, *supra* note 3, at 447-51.

170. 382 S.W.2d at 692; another Missouri case exhibiting intergovernmental cooperation is *St. Louis Housing Authority v. City of St. Louis*, 361 Mo. 1170, 239 S.W.2d 289 (1951), involving an agreement between the Housing Authority and city which provided for the construction, operation and maintenance of low-rent dwelling units.

171. ALASKA CONST. art. IX, § 9.

172. *City of Juneau v. Hixson*, 373 P.2d 743 (Alaska 1962).

in Illinois with respect to intergovernmental cooperation. Statutory grants have continued to be legislated, adding to the already myriad number of fragmented grants of power to cooperate, and strict statutory construction principles are still being applied. Even with these obstacles lingering, the number of intergovernmental contracts has been increasing. Again, there is probably no single reason for this increase. The increase may be due to the need for units of government to find ways to economize. The increase may also be due to the fact that the 1970 Illinois Constitution has placed intergovernmental cooperation on a constitutional level rather than a statutory one, thus giving it more importance, even though the courts and the Attorney General do not think so. The Northeastern Illinois Planning Commission¹⁷³ inventory of interlocal governmental cooperative efforts in the six county northeastern Illinois area, compiled in September, 1973, lists approximately 600 contracts or agreements among 250 different units of local government.¹⁷⁴ Intergovernmental cooperation is in fact being used, although the vast majority of these contracts would have been permissible prior to the 1970 Constitution. For example, at the time the above inventory was taken the Village of Skokie had approximately 18 agreements and contracts, all of which were authorized by statutory grants.¹⁷⁵

There is yet another obstacle to consider—the political one. It appears that some municipalities are reluctant to cooperate when they can individually perform the functions of government and provide the services to their citizenry. Cooperation is not carried out on a day to day basis but usually occurs when mutual problems arise in which a municipality cannot itself reach a solution. There is an element of independence among some municipalities as they would prefer to provide services themselves at any cost, rather than to cooperate in achieving a more efficient cost ratio.¹⁷⁶

Intergovernmental cooperation in the future should be exploited in the areas of sharing or jointly providing for supportive

173. Established by ILL. REV. STAT. ch. 85, § 1104 (1973); see the Northeastern Illinois Planning Act, *id.* §§ 1101-37.

174. Northeastern Illinois Planning Commission & Cook County Council of Government, an inventory of interlocal governmental cooperation in northeastern Illinois, Sept. 28, 1973.

For land development agreements see, the Techny Area Joint Planning Commission Agreement between the Villages of Northbrook, Northfield and Glenview and their park districts which is a plan to develop unincorporated land between these villages; and the Aurora-Naperville Agreement, Northeastern Illinois Planning Commission, an introduction to Inter-Governmental Agreements 2, March 1974.

175. Interview with Mr. H. Schwartz, Corporate Counsel of the Village of Skokie, in Skokie, August 5, 1974.

176. *Id.*

staff and administrative functions, contracting for selected public services, facilitating the assignment and exchange of personnel among local units, and providing a strong forum for dealing with area-wide problems.¹⁷⁷

In the future, cooperation should not wait until the problem develops, since earlier cooperation might have prevented the problem from ever occurring. The types of intergovernmental contracts and agreements seem limited only by the imagination of the corporate counsel who serve municipalities, provided, of course, that the municipality has the initial grant of power. Section 10 should allow local governments to do almost anything.¹⁷⁸ The section was clearly "intended to be an expansive grant of authority to governments so that they are able to work with one another for the best interests of each entity."¹⁷⁹

CONCLUSION

Intergovernmental contracts and agreements afford a formal yet flexible and adaptable method for all levels of government to cooperate and to share responsibilities in order to provide services and perform governmental functions.¹⁸⁰ "[T]hey stress consolidation of services, rather than consolidation of governments."¹⁸¹

Interlocal cooperation can provide efficient solutions to many urban problems that are beyond the individual ability of local entities. The consolidation of services will result not only in economy, but in the ability of local governments to meet the demands for such service while still maintaining a maximum of home rule prerogative and local control.¹⁸²

Intergovernmental cooperation is not a panacea, but a "means by which local units . . . may work together in seeking a common goal: the desired level of service to their citizens at the lowest possible unit cost."¹⁸³

The Northeastern Illinois Planning Commission hails the 1970 Constitution, article VII, section 10, as providing "vast new authority for units of local government to team up through cooperative agreements."¹⁸⁴ The author has not seen such ad-

177. HOME RULE COMMISSION REPORT at 79.

178. Parkhurst, *Art. VII—Local Government*, 52 CHI. B. REC. 94, 97 (1970).

179. Biebel, *Home Rule in Illinois After Two Years: An Uncertain Beginning*, 6 J. MAR. J. 253, 301 (1973); see also Vitullo, *Local Government: Recent Developments In Local Government Law In Illinois*, 22 DE PAUL L. REV. 85, 93 (1972).

180. ACIR, HANDBOOK at 18.

181. *Id.*

182. Comment, *supra* note 3, at 460.

183. *Committee Proposals*, vol. VII at 1752.

184. Northeastern Illinois Planning Commission, an introduction to *Inter-Governmental Agreements 1*, March 1974.

vancements in intergovernmental cooperation; however, it is too soon to make a final determination of the effect of section 10. Four years may be too short a time to break the shackles of Dillon's Rule which so rigidly controlled the conduct of local government for over 100 years.

Although contracting has increased, it is due in part to the constitutional importance now attached to intergovernmental cooperation. The economic condition of our country may be forcing units of government to cooperate where before they were content and financially able to perform their own functions and to provide the services to their citizenry independently of other units.

To advance the use of intergovernmental cooperation in Illinois the courts will have to learn how to separate the question of the authority to cooperate from the procedure or vehicle through which cooperation is accomplished. They must be reminded of the effect of the reversal of Dillon's Rule. The legislature in drafting legislation will have to remember that its function is to prohibit grants in those areas where it feels intergovernmental cooperation is improper, and *not* to draft legislation where it is proper—the opposite of the procedure under Dillon's Rule. Further, units of local government will have to explore the tool which the Constitutional Convention Delegates so wisely drafted into the constitution as a new expanded means to carry out their governmental functions and to provide the high quality of services their citizens demand. Their constant use of intergovernmental contracts and agreements will expose the courts to intergovernmental cooperation. This exposure will educate the courts to give such contracts and agreements a liberal reading in view of the statutes and the constitution and to permit a wide range of intergovernmental cooperation.

In conclusion, the Illinois Constitution article VII, section 10, has given intergovernmental cooperation the green light in Illinois. But those responsible for its interpretation have imposed a "proceed with caution" sign. However, units of local government must not yield, for it is only through their increased use of intergovernmental cooperation, which the constitution has now granted to them, that section 10's full impact can be realized.

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