

APPENDIX

“I”

THE FRAMEWORK OF EXISTING LAW AS IT PERTAINS TO CONSOLIDATION OF LOCAL GOVERNMENT UNITS, SERVICES AND FUNCTIONS

To understand the legal footing of efforts at consolidation, it is essential to understand how, and for what purpose the myriad units of local government and quasi-government in which we are enmeshed came into being.

First, all units of local government are creations of the state and their existence, power and authority are limited, and ceded to them by the state through the state Constitution and through enactments of the state legislature which become state law. What the state has the power to create, it also has the power to remove, and or to modify. So, assuming that by consolidation, governmental restructuring, modernization, or whatever else we call it, we mean combining or cooperatively using the structures and or powers of new or existing units of government, we must look to the state, and specifically to state law, for the authority to act, or we must look to the state legislature, acting within the parameters of the state's constitution, to grant new powers, create new governmental units and or reallocate existing powers among new or existing units of government.

For most people, most of the time, government is a part of the background. It is there, but goes unnoticed. We pay some attention when it effects our personal interests, or our pockets, but for the most part the actions of government seem remote to our daily routine and activities. At the same time we have the same kind of loyalty to our closest unit of government that we do to the members of our family. We see and eagerly point out all of their faults and shortcomings, but instinctively rise to their defense as soon as we perceive our local government's interests and prerogatives are being challenged or attacked by others.

Here is a brief rundown of the units of local government in New York which are all classified as municipal corporations.

- Counties - The entire state is divided into 62 counties to give the State a local presence for collecting taxes and enforcing laws. Counties were created as administrative arms of the State. Historically, County boundaries were a day's horseback ride from the administrative office, or County seat. Section 50 of the County Law provides that changes to County boundaries shall be pursuant to state legislative enactment. County services have become more numerous as the need to fund and provide relatively uniform levels of service over a wider area have grown.
- Towns - Each County is divided into Towns for the purpose of providing local government administration in areas of sparse population. Towns were therefore given minimal structure and minimal power. (Both characteristics which make them popular with today's tax/government adverse suburban residents.) State law provides mechanisms by which Towns may alter their boundaries, combine, in whole or in part with adjacent towns, or be dissolved (into one or more adjacent Towns), or become coterminous with a Village or City.
- Villages - As settlements arose they could apply to the state once their population reach 500 for incorporation as separate units of government. Under existing State law, Villages may expand to become coterminous with the Town they are in, merge with adjacent Villages, dissolve, or shed unimproved territory.
- Cities - May be formed or presumably dissolved only by act of the State legislature.
- Districts - A District is a single purpose municipal corporation created to limit the payment for a specific service to those in a particular geographic area who are eligible to receive it. The most

commonly known district is a school district, but numerically the most common are the sewer districts. There are also fire districts, trash collection districts, water districts, agricultural districts, etc. Districts regularly cross boundaries of other governmental units.

- Authorities - An Authority is a Countywide or multi-county, quasi-government created by the state legislature with the power to charge for its services and/or levy taxes in its service area. It is administered by an appointed Board rather than by elected officials. Prior to its formation at the request of the County or counties, its services were, or could have been provided by the County at general taxpayer expense. The state too, creates Authorities to fund and administer portions of its own responsibilities, such as the New York State Power Authority, and the New York State Thruway Authority.

With the exception of New York City, the system of municipal corporations which comprises local government can be thought of as a series of nested structures. Counties are the largest unit. Inside the County are the Towns, and inside the Towns are the Villages. Cities may be thought of as large villages or a number of merged or combined villages and towns which lose their separate legal status when incorporated into the city.

COMBINING UNITS OF LOCAL GOVERNMENT

If consolidation is defined as combining two or more units of local government into either a new unit, or a merged unit of government, then the procedure and requirements are set out in the Municipal Home Rule Law, the law applicable to the specific unit(s) of local government, i.e. the Town Law, Village Law, County Law, and General Cities Law. Generally speaking the process requires a petition by the legislative body of the government pursuing the change. This is followed by a public hearing and the passage of a resolution which then must be approved by majorities of those voting in each of the affected local governments.

GROWING A UNIT OF LOCAL GOVERNMENT

If consolidation is defined as expanding a unit of government to incorporate all or part of one or more other units of local government, i.e., annexation, the process is governed by the Home Rule Law and Section 700, et.seq. of the General Municipal Law which became law in 1963 and is known as the Municipal Annexation Law. The law applies to adding territory to a town, village, city or county, and to the consolidation of two or more cities, two or more towns, two or more villages, or two or more counties. The process requires: * **

- a) At least 20% of the residents qualified to vote in the area to be annexed, or the owners of at least 50% of the total assessed valuation of the area to be annexed must sign a petition (Note: the area to be annexed must physically abut the municipality to which it is to be annexed.)
- b) The governing boards of the target and acquiring jurisdictions have to publish and mail notice of a public hearing on the petition and on whether the annexation is in the "overall public interest." The hearing notice must also be sent to affected fire, school, improvement and other districts.
- c) Conduct a joint public hearing on the public benefit of the annexation, the legality/permissibility, and the propriety of the signatures on the petition and the validity of the procedures used.

- d) If after public hearing the governing board(s) determine the annexation is in the over-all public interest they approve resolutions calling for a special election.
 - i) if all governing boards disapprove the proposition is defeated and the decision may not be reviewed.
 - ii) if some boards approve and others do not the resolution may be filed with the County Clerk and the matter proceeds with respect to the approving jurisdictions.
- e) The findings of the resolutions may be challenged though a proceeding brought under Article 78 of the General Municipal Law.
- f) Within 90 days of the filing of a judgment in the Article 78 proceeding, or the governing board's filing approved resolutions with the County Clerk, each territory shall call a special election where the resolutions calling for the annexation must be approved by majority of those voting in each of the local government units affected.
- g) If approved, annexation is accomplished by passage of a local law by the governing board.

* This is a general description. Other restrictions and provisions apply. Consult Article 7 of the New York State General Municipal Law for a full description.

** The procedure follows the provisions of Article IX, Section 1 (d) of the New York State Constitution.

COOPERATION AMONG UNITS OF LOCAL GOVERNMENT

If consolidation is defined as cooperative agreements among units of local government to share, or merge services, the applicable law is Article 5G, Section 119-o of the New York State General Municipal Law. This law provides broad opportunities for all levels of local government to work together cooperatively by contract.

Virtually anything within the power and authority of one unit of government can be provided to all like or different units of government that administratively choose to participate. No petition is necessary, no public hearing, no special election, no act of the state legislature. The law authorizes municipal corporations and districts to adopt "mutual sharing plans" and local governments that have done so can essentially create actual or virtual departments and/or facilities to serve multiple governments. In essence any or all of the governments in Onondaga County and beyond can establish regional structures by contract through "mutual sharing plans" for the provision of a broad variety of government services and facilities.

In addition to the little used provisions of the General Municipal Law, the state has legislatively created agencies to facilitate the provision of joint and cooperative services among school districts. The Board Of Cooperative Educational Services (B.O.C.E.S.) Legislation, Section 1950 et. seq. of the New York State Education Law, provides an independent structure through which school districts may procure and provide services collectively and cooperatively. As encouragement the state provides subsidies for projects and procurements undertaken through a B.O.C.E.S.

CONCLUSIONS

- The formation, modification, combination and dissolution of units of local government is strictly a province of the state constitution and state law, as is the list of powers and authorities assigned to each unit of government.
- State law provides mechanisms for a variety of changes in local government's configurations, but does not include provisions for the dissolution of a City, or for the chartering of a new City. Any such action would therefore require place-specific state authorizing legislation and procedures.
- The mechanisms for changing local government boundaries are predicated on there being a consensus of the voters in each of the concerned areas. The standards and procedures thus established have made significant expansions and growth of local government areas all but impossible. One may assume from the size and number of procedural and popular support hurdles in the legislation, that when the current procedures were enacted (1960's) the general public view of growth was negative. After forty years of a shrinking population and shrinking economy, the public view may be, or may be becoming, different.
- There is no existing legal mechanism for establishing a metropolitan (County-wide or multi-county single government) in New York. Neither is there an established mechanism for either a City to become coterminous with the County, or for a County to replace, subsume, or merge with a City. Any such step would require specific state enabling legislation. As a practical political matter no such legislation is plausible without the passage of memorializing resolutions by each and all the affected local governments, and the unanimous support of the local, state legislative delegation.
- States outside the northeast have laws which make the geographic growth of cities far easier, and as David Rusk has demonstrated in his book, *Cities Without Suburbs*, where growth is possible, cities are faster growing, are more economically vital, and are more socially and economically diverse. He concludes that these are inter-related and interdependent characteristics.
- The quickest, easiest route to greater efficiency, cooperation, and coordination of government functions and services is through creative application of the provisions of Section 199-o of the New York State General Municipal Law.
- If there is a compelling argument to made for a metropolitan or regional approach to the provision of government services, or management of government responsibilities, it is the land use and development implications of the potential development of the various Destiny related enterprises. The possibility of the transformation of Central New York into a snowy version of Orlando, Florida should provide ample incentive for government cooperation in planning for the explosive high pressure growth that would follow Destiny's development.

For fuller discussion of the legal issues, see for instance:

Making Government Work: Intergovernmental Cooperation, Partnering and Consolidation in New York State

NY State Attorney General

http://www.oag.state.ny.us/press/reports/making_government_work.pdf

Consolidation for Towns and Villages

New York Department of State Division of Local Government Services

<http://www.dos.state.ny.us/lgss/pdfs/consolid.pdf>

The Future of Government Consolidation in Upstate New York

A report to SYRACUSE 20/20, Maxwell School, MPA, June 2005

<http://www.syracuse2020.org/reports/The%20Future%20of%20Government%20Consolidation%20in%20Upstate%20New%20York.pdf>