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COMMENTARY

The Carter Administration: From The Sublime To The Ridiculous

In July, 1977, the *Forum* remarked that the Carter White House staff was the weakest since the Warren Harding Administration. That judgment, which initially seemed to some to smell of partisan hyperbole, is now shared by most observers in Washington, especially by veteran Democrats. But it would be an oversimplification to dismiss this Administration with a few one-liners.

The Carter Administration seems more a patchwork quilt with occasional flashes of originality and courage, intermixed with copious quantities of amateurishness and mind-boggling ineptitude. Such gutsy initiatives as Carter's attempt to tamp down the ~~water~~ project pork barrel have been so ineptly executed as to inflict serious political damage on the Administration. Although Administration policy on the Mideast has been fundamentally sound, the President's penchant for sometimes conflicting off-the-cuff remarks has inspired distrust among both the Israelis and the Arab moderates. Moreover, the bilateral Egyptian-Israeli negotiations are underway in large measure because President Sadat began to despair of the clumsiness of the Carter Administration's efforts to reconvene the Geneva Conference.

In 1972, the Nixon Administration was implementing its grand design for a generation of peace with breakthrough visits to China and the Soviet Union at the same time that Administration political agents were dabbling in a series of petty crimes that sent Nixon into early retirement. This spectacle of an Administration pursuing an objective in one area with consummate skill while botching the situation beyond belief in another area is really not all that rare a phenomenon. The Carter Administration currently provides such a study in contrasts with its performance in two very distinct areas, civil service reform and Sub-Saharan African foreign policy.

In the first instance, the Administration appears on the verge of making a historic breakthrough to improve the productivity of the arteriosclerotic civil service system. In the latter case, the Administration seems bent on a foreign policy that can only be inimical both to U.S. national interests and to the human rights concerns of our government. How did each of these situations develop?

Civil Service Reform: The Guts of Reorganization

During the Presidential campaign, Jimmy Carter made hay by preaching the virtues of government reorganization. He would tame the federal leviathan, he suggested, by consolidating over a thousand government entities into a few hundred. Making government productive, Carter implied, was really a matter for skillful engineering. Draw the boxes better, thus eliminating wasteful duplication, and government will be leaner and more responsive. As Carter's Reorganization Project has found, government consolidation is much more easily prescribed than accomplished. Much of the consolidation talk may be cosmetic, a kind of numbers game, rather than a fundamental shift in government decision making. Like their predecessors, Carter's aides have readily stooped to this tactic.

Fortunately, the Reorganization Project has proceeded more skillfully in the area of civil service reform. As many Washington hands could have told Carter before he became President, artful restructuring of government agencies might yield modest improvements in productivity. Far more critical, however, is an enhancement of the incentives, positive as well as negative, that govern the federal workplace.

Most observers of the federal civil service, regardless of their ideological persuasions, have come to several conclusions. First, the federal government tends to be as selective in its recruiting as private employers; the problem is not the quality of the input. Second, it is next to impossible to fire a career status federal employee for cause, and even then the process is likely to take about two years from initiation of charges. Third, the virtual immunity of deadwood employees from firing tends to sap the enthusiasm of able co-workers, thus tending to drag the civil service toward its lowest common denominator.

In the near future, the Carter Administration will be proposing some fundamental reforms in the civil service system. The first of these, to be accomplished through the President's reorganization plan, would split the Civil Service Commission into two entities, tentatively titled the Merit Service Protection Board and the Office of Personnel Management. As Richard Pettigrew, Carter's able reorganization chief and former Florida legislative leader, explained to the *Forum*, these changes are designed to assure that a more flexible personnel system will not be subject to excessive political abuses.

The Administration proposes to convert super-grade government employees, those at the GS 16, 17 and 18 levels, to an executive service. Department Secretaries and agency heads would have a fairly free hand in moving employees within this executive service between various jobs. Executive service employees would be eligible for substantial bonuses for superior work performance.

These same increased incentives would be extended to a lesser degree to lower level federal supervisory employees—those in the GS-9 to 15 range. The within step increase would no longer be assigned as a matter of right in almost any case where the employee hasn't punched out his boss in front of television cameras. (Last year only about 600 employees of the 2.5 million such Federal employees had these increases withheld). The moneys saved from the change in such procedures would be used to provide substantially increased bonuses to mid-level supervisory personnel.

In order to gain acceptance for these management reforms, the Administration is reorganizing the Civil Service Commission to provide increased guarantees against both politicization of the civil service and arbitrary treatment of "whistleblowers", i.e. federal employers who expose corruption.

"...the virtual immunity of deadwood employees from firing tends to sap the enthusiasm of able co-workers, thus tending to drag the civil service toward its lowest common denominator."

What we have seen to date of the Administration's civil service reforms suggest that they should be widely acceptable to Republicans intent on making government more productive. Just as it took a Richard Nixon to thaw U.S. relations with Communist China, so it is possible that a Democratic President such as Jimmy Carter may be best equipped to rein in the excesses of the civil service unions and their largely Democratic Congressional acolytes. While many of Carter's policies are hard for Republicans or discerning Democrats to stomach, his civil service reforms are likely to have a lasting benefit well after Carter has returned to Georgia in January 1981.

African Policy: A Riddle Inside An Enigma

The Administration's foreign policy in Southern Africa has meanwhile resembled an episode from The Three Stooges. Just as a laboriously negotiated internal settlement in Rhodesia/Zimbabwe was hammered out between Ian Smith and the leading black Rhodesian leaders, including Bishop Abel Muzorewa, the Carter Administration scornfully criticized the agreement on the grounds it wasn't assented to by Marxist guerillas. No matter that the black moderates have achieved assurances of majority rule, a principle which Smith and Rhodesian whites have resisted for over a decade since declaring independence from Britain. No matter that the black moderates who negotiated the agreement with Smith by most estimates command support of about eighty percent of Zimbabwe's blacks.

The Administration's Southern African policy seems posited on the following premises: First, anything that Ian Smith favors must be bad, and second, any agreement must be judged not on its benefits for the people of Zimbabwe but instead on its acceptability to the leftist dictatorships of sub-Saharan Africa.

Thus, the Administration finds itself in the anomalous position of helping abort what may be the only liberal democracy in Southern Africa. The Zimbabwe experiment, if implemented in the cooperative spirit that has recently prevailed between Smith and the black moderates, could provide a first in post-colonial Africa. Zimbabwe could emerge as a multiracial society with a free political system and a recognized right of opposition.

The success of Muzorewa and other leaders in building such a society in Zimbabwe may in fact offer the only realistic hope of causing South African whites to soften their policies toward the nonwhite peoples of the Republic of South Africa. Should the Marxist Patriotic Front win the day in Zimbabwe, as the Carter Administration almost seems to desire, this can do little but cause white South Africans to retreat into greater repression.

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Editor: John C. Topping, Jr.
Managing Editor: Arthur M. Hill, II

POLITICAL POTPOURRI

Republican Comeback In New York City

In November, 1977, Republican fortunes in New York City reached their lowest point since 1624, when the Algonquins—believed to be closet Republicans because of their low assessment of Manhattan's net worth— sold that island to the Dutch for about $24. Despite offering the voters the most knowledgeable candidate in State Senator Roy Goodman, the Republican Party won only a humiliating 5 percent of the mayoral vote.

The mayoral debacle resulted largely from the general election contest's evolving into a rerun of the hotly contested Democratic primary. Eighteenth District Congressman Edward Koch won the Democratic primary in a hard-hitting runoff against Secretary of State Mario Cuomo, who continued into the general election as the Liberal Party nominee and meanwhile tried to broaden his base through a Neighborhood Preservation appeal. The ethnic patterns that had dominated Democratic primary voting reasserted themselves in the general election with Koch harvesting the great majority of Jewish votes and Cuomo, the Liberal Party nominee, sweeping conservative Catholic neighborhoods. In this situation, Goodman, a moderately liberal Jewish Republican, was simply odd man out.

Some observers suggested that the results might also reflect an acceleration of the erosion of the Republic base in New York City. The Lindsay party switch, Watergate, and out migration to the New York, New Jersey, or Connecticut suburbs have all further diluted Republican strength. For several years, not a single wholly New York City Congressional District was represented by a Republican.

On Valentine's Day, 1978, New York City voters indicated that the epitaphs for New York City Republicans may have been premature. Both Congressional special elections to fill the seats vacated by Koch's accession to the mayoralty and Representative Herman Badillo's joining the Koch Administration as Deputy Mayor were swept by Republican nominees.

The one unalloyed triumph was scored in the largely Silk Stocking Eighteenth District by progressive Republican S. William Green. Formerly a state assemblyman and a Regional Director of the Department of HUD, Green put together a brilliant campaign to edge out former Democratic Congresswoman Bella Abzug.

Abzug won the Democratic designation by virture of a court decision reversing her narrow defeat by Carter Burden in a disputed vote of District Democratic Committee members. Abzug's high name recognition was balanced by two liabilities—her non-residency in the East Side Manhattan Eighteenth District and the aversion of many Eighteenth District Democrats to her bellicose political style. Green got a strong boost from California Republican Congressman Pete McCloskey who told New Yorkers that Abzug's advocacy of a position on the floor of the House virtually guaranteed swinging a number of anti-Abzug legislators to the other side.

Robert Garcia, a Democratic State Senator running on the Republican and Liberal Party lines, handily won the special election for the seat vacated by Herman Badillo. Garcia enjoyed support of Badillo, a Democrat, and his political organization. This district, which includes the South Bronx, contains some of the worst slums in any American city.

The New York results suggest that the Republican label is not necessarily a fatal burden. Further, the Abzug defeat raises another intriguing possibility. Had Bella Abzug won only a few thousand votes more in the 1976 Democratic Senate primary, it is likely that Daniel Patrick Moynihan would today be teaching at Harvard, Gerald Ford would be President and Jim Buckley would be a Senator and leading conservative contender for the 1980 Republican Presidential nomination.

Griffin Decides To Run For Reelection

Responding to pleadings from Michigan Republican leaders to reconsider his decision to retire at the expiration of his term, Senator Robert Griffin on February 13 announced that he would run again. Governor William Milliken reportedly pressed Griffin to run during a luncheon meeting the two had on February 9. The next day the Governor broke the suspense about his own reelection intentions, announcing his candidacy and his intention to have Eastern Michigan University President, Jim Brickley, a former lieutenant governor, as his running mate.

The recent developments have strongly buoyed the morale of most Michigan Republicans, who feel that the party will now have an unusually strong statewide ticket. One victim of Griffin's change of plans was Northern Michigan's able U.S. Representative, Phil Ruppe. Ruppe had announced that he would not seek reelection for the House in order to run for the Senate. Griffin's reentry to the Senate race forced Ruppe and several other Republicans to withdraw from that contest. Ruppe nevertheless felt bound by his earlier decision not to run for his House seat. Ruppe's retirement sets up the strong possibility that in the next Congress Pete McCloskey will be ranking Republican on the Merchant Marine and Fisheries Committee, chaired by New York Congressman Jack Murphy. Quite a contrast.

McCall Throws His Hat In The Ring

Former Oregon Governor Tom McCall, an outspoken Republican progessive and one of the most popular governors in Oregon history, has announced that he will seek the governor's mansion. Although McCall may face tough primary competition from Republican leaders in the State Senate and the

RIPON POLICY PAPER

Neighborhood Democracy: A Blueprint To Revitalize City Government

by Thomas E. Petri

Discussions of land use controls normally evoke images of forests, farmland, and urban sprawl. They center on laws, governmental mechanisms and regulatory techniques for bringing human activity into a better accommodation with the natural environment. But what of land use in the metropolitan centers of urban and suburban America? Here the question is not one of preserving the natural environment, but rather of maintaining and, if possible, improving the urban neighborhoods where most people live and spend time.

For the better part of this century, land use in urban areas has been controlled by zoning and to a lesser extent by subdivision ordinances. These laws are essentially defensive in character. They divide a city up into zones and spell out what sorts of uses may be made of land in each zone. The goal is to prevent land from being used in ways which may detract from the enjoyment and property values of other landowners in a zone. To the extent these laws are effective, the result is to restrict land use in a community to one or a narrow range of uses or to segregate the community into residential, commercial and industrial districts.[1]

But what is the urban resident to do if he is dissatisfied with simply preventing other landowners from using their land in ways he feels are detrimental to his interests? What if he wants to take affirmative action to preserve or to improve his neighborhood and consequently his standard of living? Currently, he has three options:

1. He can go to city hall and ask the city government to provide more for him and his neighbors in the way of services, facilities, and regulations;

2. He can attempt to persuade his neighbors to band together voluntarily to improve their lot either by going to city hall as a group or by taking direct actions themselves; or

3. He can move to a community where the desired service or facility is already provided.

None of these courses of action is likely to produce the desired neighborhood improvement. In rural areas, a citizen often can get local action by talking to his neighbor on the town board or by speaking out at a town meeting and, if that does not work, by running for the town board himself. His voice counts in town affairs because he is one of a few hundred electors. But in an urban setting, the individual has no equivalent of town government to which he can turn for help. Quite often the limited scope of neighborhood improvement issues does not warrant municipal government action. This gap between the individual or the neighborhood, on the one hand, and city hall on the other, was once bridged in some cities by the political party with its ward heelers and neighborhood clubhouses. But no more, except, perhaps, in Chicago.

While forming a voluntary neighborhood association is certainly a more effective way to bring pressure on city hall than is individual action, associations are not themselves very satisfactory vehicles for direct self-help. Due to their voluntary nature, they lack stability, continuity, and comprehensiveness. If, for example, neighbors want a neighborhood park and fail to persuade city hall to provide it, they are unlikely to be able to provide it for themselves through their voluntary association. Those willing to contribute voluntarily toward a park will be discouraged from doing so by those who will not contribute but who will nevertheless benefit. And even if the park is established, it will be difficult to maintain over time on a purely voluntary basis.

Finally, perhaps it should be noted that while moving out may solve the individual's problem, it is often not feasible. And, in any event, it is not an effective way of bettering the neighborhood.

If individual initiative, voluntary association, or moving out are not useful solutions to the problem, then what can individual citizens do to control local land use and thereby preserve or restore the quality of their neighborhood environment? One highly promising approach to fill the void between the individual and city hall can be found in the use of a neighborhood unit of government modeled in part on private homes associations and, in part, on special districts.

The Private Homes Association

Today there are several thousand private homes associations in the United States. They range in size from the eight homes in Chicago's Atrium Homes Association to twelve thousand homes and over 50 thousand people in Kansas City's Country Club District, a federation of 29 private homes associations. Still larger private homes associations are currently under development.

Thomas E. Petri is a State Senator from Fond du Lac, Wisconsin. This paper was written while he was a Fellow at the Woodrow Wilson International Center for Scholars. It was reviewed by a committee of the Ripon Society, chaired by John C. Topping, Jr.

[1] Houston is one notable exception to the zoning approach to urban land use control. That city has no zoning ordinance. Instead it relies on a network of private agreements, enforced by both the contracting private parties and the city, to control land use. For an informed discussion of the advantages of the Houston approach see Bernard H. Siegan, *Land Use Without Zoning* (Lexington Books, D.C. Heath & Company, 1972).

A private homes association is a legal entity provided for by covenants in the deeds or other documents establishing title to the land encompassed by the association. Its purposes generally are: to maintain community facilities; to provide community services; and to regulate community real estate. A private homes association is distinguishable from other private clubs or neighborhood associations in three respects. First, unlike these voluntary organizations, its legal status is established by the title to the real estate governed by the association. Second, membership is mandatory, not voluntary. All property owners must belong to the association as long as they own property. And third, the cost of operation is paid from fees assessed against each owner's property. These fees must be paid. If they are not, they constitute a lien against the real estate which may be collected by legal action similar to that employed to collect unpaid taxes or mortgage installments.

Therefore, in several respects, the private homes association actually resembles a local unit of government more closely than it does a private organization. In other ways, however, the private homes association is similar to a club or corporation. Its structure and rules of operation are spelled out in articles of incorporation and by-laws that normally provide for a governing board elected by vote of the property owners. A two-thirds vote of the owners is normally required to change rules governing operation or for dissolution of the association.[2]

The private homes association has a long history. The first such association was organized in London two hundred years ago by owners of property abutting Leicester Square. Its purpose was the maintenance of a park around which the homeowners' property was located.

New York's Gramercy Park, dating from 1831, is the oldest private homes association in the United States, although Bostonians might argue that this distinction ought properly to be awarded to Louisberg Square in their city, which was built in 1826. However, the Committee of the Proprietors of Louisberg Square was not organized until 1844. Like the older Leicester Square property owners' association, the Gramercy Park and Louisberg Square associations were organized to provide for the maintenance,and to regulate the use, of common park areas around which the members' homes were located.

In addition to its common park, the Louisberg Square association owns the streets around its park and limits parking on these street to its members. The association employs a part-time gardener-custodian to care for its park and to police its streets. For their park, private parking and for the custodian's services, the twenty-eight property owners in the association each pay an annual assessment of around $100.

Roland Park, located on Baltimore's North side, was the first large-scale development governed by a private homes association. It was started in 1891 and covers 1230 acres. In its early years, the association provided water, sewer, and road maintenance, but over time the City of Baltimore assumed responsibility for these services. However, the association still does some property maintenance, takes care of a park, and enforces architectural controls. In 1913, Roland Park's developer, Edward G. Boulton, organized a second somewhat smaller homes association project in Baltimore. A third Boulton-sponsored development commenced in 1924, and a fourth in 1931. John Delafons, a British commentator on American land use practices, describes these four projects as "undoubtedly one of the best maintained and most attractive residential suburbs in America and probably in any other country."[3]

A principal argument for use of the private homes association device by developers of new projects is that it serves as a mechanism for the projects' residents to maintain and regulate the use of common facilities. This makes possible advanced subdivision design, incorporating such features as cluster developments, common carports and walkways and lighting, as well as parks, swimming pools, gyms, and other recreation facilities. These are projects which might otherwise fail because many residents would tend to neglect their obligations to contribute toward the maintenance of such common facilities if no means were available to enforce the obligation.

Urban Land Institute Survey

An Urban Land Institute-sponsored survey of 233 private homes associations concluded that use of private homes associations helped maintain neighborhood quality and property values in low and moderate income neighborhoods as well as in high income areas. [4] It found that regardless of social strata, older neighborhoods with private home associations sustained their property value in striking contrast to the deterioration of other housing of comparable age, initial cost, and location.

Two of the 233 reported cases, Eastpines near Washington, D.C. and Edge Moor Gardens, near Wilmington, Delaware, illustrate this point. Both subdivisions were constructed immediately prior to World War II as low-priced housing. Neither development is particularly attractive. Eastpines' 462 homes are divided by the Baltimore-Washington Parkway and its commons area is inconveniently located at the edge of the project. The Eastpines developer did not improve the commons area and erected only the shell of a commons building, leaving it to the residents to provide their own recreational improvements. The development has

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2 See Byron R. Hanke, et al., *The Homes Associations Handbook,* (The Urban Land Institute, 1970) for a comprehensive discussion of private homes association organization. See also Genevieve Gray, "Developing Effective Leadership in New Condominium Associations", *Urban Land* (September 1975), p. 13.

3 John Delafons, *Land-Use Controls in The United States* (Cambridge, Mass: M.I.T. Press, 1969), p. 86.

4 Hanke, *et al., op. cit.*

always had an extremely high transient rate, as most residents are lower-level military personnel on two-year tours of duty in the Washington area.

Edge Moor's 385 sites are served by six different recreational areas. While there is a considerable turnover, its transient rate is not as high as Eastpines', and it is not divided by an expressway. Yet after 35 years, Edge Moor is relatively run down; its six recreational areas are untended and unsupervised. Those of Eastpines are well maintained and have a well organized schedule of recreational activities for the various age groups that live in the development.

What accounts for this difference? Eastpines, from its inception, was served by a functioning homes association that improved the recreational building and area, offered an ongoing recreational program, and enforced architectural controls. Edge Moor was not.

In none of the instances surveyed by the Urban Land Institute did a homes association unfavorably affect home values or marketability, and in 86 per cent of the cases, homeowners reported that their associations had a favorable effect on value. When asked their views on how well their homes associations did with maintenance and regulation of common areas, 85 per cent of all homeowners reported satisfaction. One-fourth of the 233 associations surveyed were made up of residents of low-priced housing. Ninety-five per cent of their members reported satisfaction with their association's maintenance and regulation of common neighborhood areas.

A review of the 233 associations provides a picture of what the typical association offers its members. Half own private parks and half own large recreation areas. One-fourth own swimming pools, and one in six a common hall or gym. One in five provides trash and garbage disposal service, and one in eight owns and maintains streets. Despite this range of services and facilities, sixty percent of the associations charge each homeowner an annual fee of $30 or less, and only a handful charge an annual fee in excess of $100.[5]

In addition to recreational facilities and maintenance and other services, private homes associations regulate landowners' use and maintenance of their real estate. Nearly all enforce architectural controls which have proven far more effective than public zoning laws in preserving the character of a neighborhood, since the former can control how a building is maintained or modified while zoning is limited to regulating the use that may be made of real estate in variously zoned areas.

Architectural controls vary from development to development. In Westlake Village, north of Los Angeles, the architectural controls committee must approve the color before a resident paints his house. In Walden, Near Minneapolis, residents are not allowed to keep their garage doors open: unsightly interiors might be exposed. In Levittown, residents may not keep more than two domesticated household pets, may hang hand laundry only in the backyard, and must mow and weed their lawns weekly between April and November.

At first blush, such petty and pervasive rules and restrictions appear arbitrary and authoritarian. They seem to stifle individuality, to produce a monotonous sameness, and to create a "Big Brother" atmosphere in which neighbors constantly watch and inform on each other. Yet, such arguments—while persuasive in the abstract—are contradicted by the practical experience gained over the course of several generations by tens of thousands of homeowners in thousands of private homes association-controlled neighborhoods.

The available evidence indicates that people often pay more to live in private homes association-controlled neighborhoods than in similar neighborhoods without such associations. One reason may be that the controls are less onerous and pervasive in practice then they might seem in theory. The controls are, after all, enforced by the homeowners themselves through their elected association. Each homeowner knows that he need only convince a majority of his neighbors that he is suffering injustice in order to remedy it by electing a new board of directors. While the demoeratic safeguard is of small comfort to a homeowner if he is only one of several million voters in a great city, it is a very practical protection for one of several hundred homeowners in a private association, as he can easily discuss his complaint with each of the other members. Controls that would be intolerable and oppressive if enforced by a remote authority, may be more palatable when exercised at a very local level. Then, they may increase the individual's sum total of freedoms.

In exchange for submitting to maintenance regulations and architectural controls that enhance the value of his neighbors' property, the member acquires the power through his association to enforce these same controls on his neighbors for his own benefit. Thus, the homes association protects the individual member from behavior by neighbors that might adversely affect the desirability of his own property and hence its market value.

A Sense Of Community

The homes association also fosters a sense of community. As one resident put it: "There is a definite tendency for pride in ownership and a corollary intensity of responsibility in maintaining the association-owned facilities. There is also a noticeable quality of respect for each other's property. In my estimation, at least some of this stems from a feeling of individual responsibility that is engendered by such a neighborhood as this. There is a unique social 'pressure' not to conform, but to be good citizens."

Enforcement of each homes association's architectural controls and maintenance regulations is tailored to its particular circumstances, by its own architectural controls committee. Because the regulations reflect the communi-

[5] Hanke, *op. cit.*, pp. 14-25.

ty's standards, once the rules and the means for enforcing them are in being, the members tend voluntarily to adhere to them. Private neighborhood associations are almost never required to take formal action to secure compliance with regulations. The fact that steps can be taken means they do not have to be taken. Without the association, one or another of the property owners might succumb to the temptation to neglect maintenance, relying on the general quality of the neighborhood to sustain the value of his property. If enough owners in a neighborhood followed such a course of action, values would decline and all would suffer. And those who would suffer most of all would be the conscientious souls who worked and invested to keep their property in top condition and who saw their property's value nonetheless erode because of decline in the neighborhood. By establishing and enforcing standards of land use, the homes association allows the highest, rather than the lowest, common denominator to prevail.

Finally, the homes association makes it practicable to provide common services, facilities, and recreational opportunities, which, however desirable, are difficult to maintain on a purely voluntary basis or by the action of an existing unit of government. For example, the overall desirability of a neighborhood may be increased by reducing lot sizes and providing for a small park and recreation area. While of some benefit to all, it is not in the interest of any resident to assume all of the cost of maintaining and policing the common area. Hence dependence on voluntary action is likely to be ineffective. On the other hand, it is generally not desirable to have local government assume this responsibility for three reasons:

First, it is politically difficult for government to spend money on a facility of use only to a small segment of its population.

Second, it is relatively more costly for a government to maintain and police many small neighborhood parks than it is to maintain a few larger facilities.

Third, if the government assumes responsibility for a park, it must be available for use by all residents of the governmental unit.

Government control increases the cost and difficulty of maintaining and policing a neighborhood park. It can also result in conflict, and decreases the desirability of the facility for residents of the immediate area. The private homeowners association solves all of these problems.

In addition to fulfilling a variety of other functions, many private neighborhood associations once fostered racial and religious segregation either overtly, by enforcing explicitly racial and religious covenants written into legal titles to members' real estate, or covertly, through buy-out provisions giving the association the right of first refusal when a member sold his property. Today, it is clear that private homes associations may not be used for these ends. In 1948, the Supreme Court held that racially restrictive covenants were unenforceable.[6] In 1968, the Court upheld the constitutionality of Congressional legislation barring other forms of racial discrimination, private as well as public, in the sale or rental of all property.[7] The next year, this holding was specifically applied to discrimination by private organizations.[8]

Many local units of government, perhaps because they are unaware of the remarkable success of private homes associations, are reluctant to grant official approval of proposed association subdivisions with common areas. Difficulty in securing official approval is greatest when the proposals are for low, low-medium and medium price range housing. And yet, it is precisely in the lower range that the greatest benefit can be received for residents by use of advanced planning and the provision of common facilities and recreational opportunities. Also, it is in the lower price range that resident satisfaction with their private association is highest.[9]

Rather than discouraging subdivisions with private homes associations, local units of government may want to consider requiring the creation of private homes associations as a condition of granting official approval of a new subdivision , particularly where common areas for facilities are involved.[10] Further, state and local government officials may find it in their constituents' interest to foster the creation of private homes associations in existing neighbor-

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6 *Shelly V. Kraemer,* 334 U.S. 1(1948).

7 *Jones V. A.F. Mayer Co.,* 392 U.S. 409(1968).

8 In *Sullivan V. Little Hunting Park, Inc.,* 396 U.S. 229(1969). An association, Little Hunting Park, Inc., operated a subdivision park and playground for residents who were members of the association. Its by-laws provided that a member could assign his right to use the common facilities when renting or selling his property, subject to the approval of the association's board of directors. A member assigned his rights to a black and the board refused to approve the assignment. The Court held that this device was similar in application to a racially restrictive covenant and struck it down as discrimination in housing on the basis of race.

9 Hanke, *op. cit.*

10 New York State took a step in this direction in 1963, in the course of amending its New Town Law to make it clear that cluster subdivisions were allowable. The Law provides that, "In the event that the application of this procedure results in a plat showing lands available for park, recreation, open space, or other municipal purposes directly related to the plat, then the planning board, as a condition of plat approval, may establish such conditions on the ownership, use, and maintenance of such lands as it deems necessary to assure the preservation of such lands for their intended purposes ..." *N.Y. Laws,* Chapter 968, effective September 1, 1963.

hoods, or of a new local government entity at the neighborhood level, to fulfill many of the functions performed by the private neighborhood associations in new subdivisions.

Existing Sepcial District Legislation

While special district enabling laws are on on the statute books in a number of states, few of the existing laws are suited to the needs of those living within existing municipal boundaries. Many would like some vehicle they and their neighbors could use to help maintain or to upgrade neighborhood real estate, or to provide facilities and services that are not provided by the municipal government and can not practicably be provided by each neighborhood resident on an individual basis.

However, while no current state legislation is specifically designed to authorize the creation in an incorporated area of a formal government entity analogous to the private homes association, the State of California does have several statutes which with minor modification could authorize the establishment of such local institutions in incorporated areas. One of these California statutes provides for the formation of special municipal tax districts. Citizens of a municipality may petition their city council for creation of a special district as defined in the petition, provided that ten percent of the electors residing in the proposed district sign the petition. Such special districts may acquire, construct or operate any public improvement or utility and may furnish or perform any special local service desired by those residing in the proposed district. The facility or service is paid for by a special tax on the taxable property in the district not to exceed 35 cents a year on each $100 of assessed valuation. Such special districts may continue in existence for five years.

The City Council has the right to accept, modify or reject the petition for special districts. If it is accepted or modified, then a referendum is held in the proposed district and the district is created as submitted to referendum, if approved by a majority of those voting. The city government collects the tax, expends the proceeds, and administers the special district during its period of existence.[11]

Communities Services District

Another California statute authorizing the creation of local governmental entities closely analogous to private associations is the Community Services District law. But such districts may only be formed outside the boundaries of existing municipalities.

Like the special municipal tax districts, the first step toward formation of a community services district is taken by filing a petition signed by ten percent of the electors of the proposed district. The petition spelling out the purposes and powers of the proposed district is filed with the boards of the county or counties whose territory is included in the district.

As with the municipal tax district enabling statute, this law allows districts to be formed with a broad range of powers and duties. They may borrow, levy taxes, and charge for the use of the services and facilities provided. They may acquire property by purchase, lease or eminent domain, and may employ labor and purchase professional services. Such districts may be formed to supply water, and to collect, treat and dispose of sewage and storm water; they may collect and dispose of garbage; they may provide fire and police protection, and a variety of other facilities and services. When a petition for the creation of a community services district is filed, a public hearing is held on it and thereafter it may be approved, modified and approved, rejected by the county board, or scheduled for a vote of the electors residing within the boundaries of the proposed district.

Unlike the special municipal tax district, which is administered by the local city council, a community services district has its own elected directors. While the special municipal tax district is limited to a maximum existence of five years, there is no limit on the period of time during which a community service district may operate.[12]

New Community Districts

Kentucky, Ohio and Florida have enacted statutes enabling special, but temporary, "new community" districts. These laws are designed to overcome the problem created by the conventional view that municipalities may not be established unless a community of persons actually exists. This view impedes the development of planned new communities in vacant areas because, where it prevails, no government may be created at the outset of a development effort to finance and provide governmental facilities and services in coordination with the developer. The "new community" special districts which may be established in these three states are empowered to issue bonds to pay for such capital improvements as sewer, road, water management and supply, solid waste and erosion control systems, and other community facilities.

The procedures for creating these districts may be initiated by a petition defining the boundaries and governmental powers of the proposed districts, together with a master plan for development. The petition must be addressed to the county board in which the district will be entirely or largely located, and it must be signed by the owners of at least seventy-five percent of the land to be included in the district.

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[11] Calif. Code Annot. 6000.

[12] Cal Code Annot. Code. 6000. For a comprehensive study of public attitudes in California toward that state's multi-division special districts see, Robert B. Hawkins, Jr., *Self Government by District: Myth and Reality.*

After a hearing, the county board may grant or deny the petition. If the petition is denied, the petitioners may appeal the county board's decision to the state. If the petition is granted, the "new community" special district is created and continues in existence until it is annexed by an existing municipality, merged into the county's system for delivering services, or is itself granted a charter incorporating its area as a municipality. It is governed by a five man board composed of two members appointed by the county board and three members appointed by the petitioning landowners.[13]

Other State Laws

Pennsylvania, in 1945, adopted a frequently used statute enabling local units of government (municipalities, counties and townships) to incorporate "authorities" to acquire, construct, improve, maintain, and operate projects. Such authorities may exercise the power of eminent domain and borrow money. They are not given the power to tax, though they can levy special assessments against the properties benefited by sewer or water main construction. They may not engage in activities that bring them into competition with existing private enterprises except in the case of garbage collection and disposal operations, industrial development programs, and hospital projects.[14]

Two Minnesota statutes are of tangential interest. One provides for zoning by property owners' initiative subject to approval by the local city council. If 50 percent of the property owners in a proposed district sign a petition, the city council may, by a two-thirds vote, designate their area a residential district wherein only single family residences and duplexes may be erected and maintained. The same procedure may be followed to designate areas such as industrial districts.[15]

The second statute authorizes municipalities to establish municipal housing and redevelopment authorities, with the power to acquire real estate by purchase and by eminent domain, to borrow money, and to undertake and operate projects subject to the planning and zoning laws of the locality.[16]

Colorado's Recreational Facilities District law contains a number of interesting features.[17] These districts may be established to acquire land by purchase or eminent domain for parks, open space, scenic, scientific, historic, aesthetic or other public interest. They may also own and operate public recreational facilities including playgrounds and T.V. relay facilities. And they may overlap existing municipal boundaries.

Creation of a district is initiated by petitions signed by at least 15 percent of the property owners in the proposed district and filed with the county court which holds a hearing and passes on the petition.[18] No real estate used for manufacturing or mining that is valued over $25 thousand and no farm of 40 acres or more may be included in a district without the owners' permission.[19]

Once established, the district has the power to levy a tax, not to exceed four mills per year, against all property within its boundaries.[20] District taxes are collected by the county.[21]

Louisiana also authorizes recreational districts to operate playgrounds and similar facilities and to levy a tax for their maintenance.[22]

Until 1975, when the legislation was repealed, the state of Iowa authorized municipalities and towns to establish districts within their boundaries to provide a community center house with adjacent recreational grounds for the use of residents of the districts. However, while this legislation authorized the issuance of district bonds, it did not authorize imposition of a levy to pay for operation of facilities.

A central difference between the private homes association and the special district is that the former is a private organization deriving its power from a contract entered into by the owners of the real estate encompassed by the association. The latter is a governmental unit whose powers are derived from delegation by the state or other unit of government. In no instance, under current state law, may citizens organize special districts on their own initiative without first receiving the approval of an existing governmental entity.

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13 For a more complete discussion of interim or "new community" special districts, see the Advisory Commission on Intergovernmental Relations, *The Problem of Special Districts in American Government,* Report A-22, May, 1964, and *Urban and Rural America: Policies for Future Growth,* Report A-32, April, 1968, Washington, D.C.: Government Printing Office as well as a proposed model New Community District Act prepared by the commission staff that was adopted from a bill enacted in Florida in 1975 drawn in turn from legislation enacted in Ohio and Kentucky.

14 Purdon's Penn. Statutes Annotated, Title 53, Sec. 301-322.

15 Minnesota Statutes Annot. 361, 08, 462.010.

16 Minnesota Statutes Annotated 462.414 et. seq.

17 Colo. Rev. Stat. 29-7-101, et. seq. (1973).

18 Colo. Rev. Stat. 29-7-101, et. seq. (1973).

19 Colo. Rev. Stat. 32-2-108, (1973).

20 Colo. Rev. Stat. 32-2-115, (1973).

21 Colo. Rev. Stat. 32-2-118, (1973).

22 La. Stat. 4566.

Private homes association assessments are not tax deductible by members for purposes of their federal or state income taxes, whereas special district assessments are tax deductible by the owners of assessed property.

Special districts, as governmental bodies, are subject to federal and state constitutional provisions limiting the states' power, whereas private homes associations are not so limited. Thus, for example, there appears to be no question that private homes associations may exercise architectural and aesthetic controls over their members' real estate if they so contract. But there is a very real question as to whether a unit of government may exercise such powers without violating the Fourteenth Amendment to the U.S. Constitution, providing that no person shall be deprived of property without due process of law and that private property may not be taken for public use without just compensations.

A key similarity between private homes associations and special districts is that each is intended to provide services, and/or facilities not provided by existing governmental units, or that are supplemental to, rather than substituted for, existing services and facilities.

New Neighborhood Special District Enabling Legislation

The Ripon Society recommends the establishment of neighborhood special districts. Normally, these should be authorized by state enabling legislation. Municipal governments are creatures of state government, so it is clearly within the power of state government to authorize neighborhood special districts. It might also be possible to authorize neighborhood units of government by municipal action, but this would depend on existing state law. Where this course of action is available, those interested in establishing neighborhood special districts may wish to seek the necessary authorization at the municipal level rather than working for passage of state enabling legislation.

For constitutional reasons, federal enabling legislation is not practical. While there are a number of things the federal government might do to encourage and support neighborhood units, it cannot legally authorize them as local governments. Generally, past federal efforts to encourage neighborhood involvement through local advisory councils for federal programs have died on the vine. No doubt this happened for a number of reasons, but the principal one was, perhaps, that these councils were mandated from above rather than having their genesis at the local level. They were designed to assist in carrying out federal programs rather than to assist and support local councils in carrying out programs tailored to local needs.

It is essential that neighborhood special districts be created by state enabling legislation rather than by mandating a system of neighborhood government in municipalities as we mandate town government in counties. There is no reason to encumber people with another unit of government if they do not want such an entity.

Neighborhood special districts should have sufficient power to enable them to supplement, not substitute, for existing municipal facilities and services unless the substitution is authorized by the municipal government or the citizens of the entire municipality by referendum. The powers of neighborhood special districts should include the power to levy real estate and property taxes, to incur debt, to own property acquired by gift, purchase and eminent domain, to hire labor and to contract for services. The neighborhood district should also have the power to exercise such regulatory authority as may be delegated to it by the municipal government, or by the people of the entire municipality by referendum.

Some would go much farther than this, arguing that there do not appear to be any significant economies of scale in the supply of municipal services (other than water and sewer services) above the level of the smallest cities. They would also argue that since economies of scale are achieved when a population reaches the four thousand to 20 thousand range, neighborhoods of this size ought to be allowed, in effect, to secede from municipalities.[23] However, as this more extreme approach poses a threat to existing municipal government structures, it is almost certain to arouse fierce opposition from municipal officials and employees-opposition sufficient to prevent passage of any legislation in this area.

But while municipal governments would probably be able to defeat, and would certainly resist, establishment of competitive units of government in neighborhoods, they should welcome or at least not so actively oppose enabling legislation authorizing neighborhood special districts to provide supplementary facilities and services. Such legislation gives municipal government another way of resolving conflicting pressures for more facilities and services on the one hand and for lower taxes on the other. If, for example, a group of citizens agitate for a swimming pool in their neighborhood, the city council can tell them to form a special neighborhood district and provide one for themselves.

Powers

Several factors must be considered in determining powers to be assigned to neighborhood special districts. A unit of government does not amount to much and generally can do very little without the power to tax. There is a question as to whether there should be an upper limit on the amount of tax that can be levied. As we have seen, such a limit frequently is imposed on private neighborhood associations in their authorizing agreement and on special districts by

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23 See working papers prepared for the California Local Government Reform Task Force, (Robert Hawkins, Jr., Chairman) for a presentation of this argument.

the state authorizing statute. Because conditions vary widely from locality to locality, it seems wise for the state not to provide an upper limit on the tax that special neighborhood districts may impose, but to leave that up to the people of each neighborhood. As is the case now with some special districts, such taxes should probably be collected by the municipality and turned over to the neighborhood special district treasurer.

Authority to incur indebtedness is important if a neighborhood special district is to acquire or construct facilities. If this authority is withheld, the district might obtain such facilities by entering into long term lease arrangements. The power to hire employees and to contract for services is also important, as is the power to own property and to acquire it by eminent domain. The latter would enable neighborhood special districts to provide desired facilities, and to engage in architectural control programs if desired.

Currently, some municipal governments are attempting to increase architectural controls as they now exercise zoning authority, under the police power. While there has been a tendency to expand the police power in this direction, such controls are still of doubtful legality, because most courts accept the argument that they constitute a taking of private property for a public use without just compensation, in violation of the Fourteenth Amendment to the U.S. Constitution. However, while it might not be practicable for a municipality to impose such controls, it may be practicable for a special neighborhood district to do so by the use of the power of eminent domain to effect a partial taking of an owner's property in order to acquire from him his right to exercise architectural control over the property.

Presumably, if there was a strong neighborhood demand for such controls, most residents would be willing to enter voluntarily into contracts assigning specified architectural controls to the neighborhood special district. The cost to the district of acquiring architectural control over the property of recalcitrant real estate owners might be minimal, as such owners may not suffer much, if any, actual loss.

Initiation

New neighborhood special districts could be initiated by petition addressed to the city council and signed by ten percent of the residents of the proposed district, spelling out the boundaries of the special district, its general or special purpose or purposes, and the powers it is to have. After examining the petition to insure that it meets the requirements set forth in the enabling legislation, the city council would have to put the question to the people of the proposed district to decide in referendum.

The Ripon Society suggests that neighborhood special districts be limited, without a waiver by the city council, to not less than 200 nor more than 2,000 residents. Clearly, there is no magic in these numbers. They are chosen because experience with private homes associations seems to indicate that this is the optimal size range for such neighborhood units. However, city councils may wish to authorize neighborhood special districts of greater or smaller size. This would seem particularly appropriate when a new subdivision is under development so that a district could be established prior to or concurrent with construction and sale of new homes. The suggestion that a district's boundaries be entirely within a zoning category, unless this requirement is waived by the city council, is designed to prevent abuses. Without such a protection, citizens of a residential neighborhood, for example, might petition for a neighborhood special district whose lines were drawn to include an adjoining factory which it could tax to pay for most of the cost of a neighborhood park; or, with the same end in view, the more numerous residents of an apartment complex might petition for a district that would include the adjoining but less numerous occupants of a residential development.

The neighborhood special district could be governed by a five-person board, one of whom would be chairman, and another treasurer, elected by the vote of the citizens of the districts either by ballot or at an annual meeting as provided in their petition.

Many proponents of urban revitalization have naively assumed that our cities could be revitalized merely through the federal government's turning the spigot to provide a massive infusion of funds. Sad experiences with a host of well-intentioned and often counterproductive federal programs has revealed the inadequacy of such an approach. The most successful examples of neighborhood revitalization have almost invariably involved grass roots initiatives, often receiving little or no federal funding.

The Ripon Society believes that neighborhood special districts may provide a very useful mechanism for revitalization or maintenance of services in a wide variety of neighborhoods. The advantages of such special districts may be relatively clear in well-to-do neighborhoods where residents may be willing to pay additional taxes in return for specific services.

The neighborhood special district may also provide some advantages to lower income or marginal neighborhoods in which residents already feel severely pressed by existing property taxes. These neighborhoods may use neighborhood special districts to achieve goals not requiring increased expenditures. For example, they may enforce stricter architectural and maintenance controls than municipal governments are willing or able to impose on a city-wide basis.

Giving a neighborhood such an option may ease resistance to integration stemming from fear of declining property values by enabling neighbors to assure themselves, through their neighborhood special district, that property will be properly maintained. Finally, neighborhood special districts in lower income areas may serve as a means through which Federal and state assistance can be allocated to such areas.

While no panacea for the problems of urban and suburban neighborhoods, the neighborhood special district does provide a flexible instrument to empower residents to make their neighborhoods more liveable. Only through such citizen initiative can we have a realistic hope of shaping a better urban environment. ■

State House, he still seems the odds on favorite to win the governorship.

"By most calculations, Holton would be the strongest Republican nominee in the general election where the Democratic nominee seems most likely to be former Attorney General Andrew Miller."

Virginia Race Heats Up

Mid-February also witnessed the first tests of strength in the race for the Republican nomination for the U.S. Senate being vacated by Senator William Scott. There are three principal Republican candidates in this race: Linwood Holton, first Republican governor of Virginia in this century; John Warner, former Secretary of the Navy, Bicentennial Administrator, and present husband of Elizabeth Taylor; and Richard Obenshain, former Virginia GOP Chairman and darling of party conservatives.

By most calculations, Holton would be the strongest Republican nominee in the general election, where the Democratic nominee now seems most likely to be former Attorney General Andrew Miller. If Republicans were choosing their nominee by a primary, Holton would probably be a slight favorite. The conservative forces now in control of the state party machinery have, however, opted instead for a selection by state party convention.

Party mass meetings in various cities and counties as early as February determine the composition of the convention delegation that will assemble in Richmond in June. Byzantine intrigue is already underway between supporters of the various candidates. In Alexandria, the Warner and Obenshain forces teamed up to slow down Holton. In other counties the Warner and Holton forces have joined to block Obenshain. Warner's supporters believe that their man is best positioned in the end to benefit from this strategy. Positioned ideologically somewhere between Holton and Obenshain, Warner would hope to be the heir to the votes of either of his rivals, should they falter.

The first skirmishes have been inconclusive. Obenshain supporters claimed 9 of 11 delegates in rural Nottoway County. Alexandria's 57 delegates broke out at approximately 24 for Warner, 18 for Holton, 13 for Obenshain, and 2 either committed or for other candidates. In the same Alexandria elections, party moderates trounced conservatives, sweeping 80 percent of the committee seats and electing Nancy McCabe to chair the city committee.

Capitol Hill Rumblings

Highly respected California Congressman John Moss, who has decided to retire after 13 terms, characterized Jimmy Carter as the least effective President he had seen in his 26 years in Congress. The Congressman, who is the principal architect of most of our Freedom of Information law and much consumer legislation, told the *Washington Star* in a blunt interview of his inability to get through to Carter's assistants such as Hamilton Jordan. "I found that Mr. Jordan was not one to ever return a phone call. I learn rather slowly, and about the third time, why, I stopped calling".

Moss, who supported Carter in 1976 over his own state's governor, expressed a negative view of the Carter Administration's treatment of the Western states. "The general Western perception of the Administration is that it is not overly friendly to the problems of a semi-arid area of the country, and that it fails to understand some of the uniqueness of our climate ... There's no strong Western voice in the government. There is a tendency to overlook that part of the country," said Moss.

RIPON FORUM
800 18th St., N.W.
Washington, D.C. 20006