

CHAPTER VII

MUNICIPAL HOME RULE

BRIEFLY stated, "home rule really means that the powers of local government shall be large enough to enable localities to manage their own affairs; that they shall be allowed to manage those affairs without legislative interference; thus causing all municipal citizens to feel a healthy sense of responsibility for the conditions in which they live as well as the certainty that they have it in their power to work distinct changes and improvements in those conditions."¹

In other words, the city should be an almost independent agency like the State and the nation. It should be free to frame and alter its form of government, to determine the number of officials and how they shall be nominated and elected, to engage in any business activity that its people desire. It should decide as to how it shall secure its revenues and how it shall spend them, as to its own indebtedness and the kind of taxes to be levied. The city should be sovereign in its own field of action. And this field is for the most part easily determined.

¹ *Home Rule for Cities*, Robert S. Binkerd. Address to Third Annual Conference of New York Mayors at Utica, N. Y. Municipal Government Association, New York.

The Home-Rule Movement.

The movement for home rule had its beginning in Missouri in 1875, where the State constitution gave Saint Louis the right to frame its own charter through an elective board of thirteen freeholders. After the charter had been draughted, it was submitted to the electors of the city without being referred to the legislature for approval. Under this provision, Saint Louis adopted its charter in 1876 and Kansas City in 1890. In 1879 California adopted a home-rule provision to the constitution, under which cities adopt their own charters subject to ratification by the legislature. The legislature, however, must reject or approve the charter as a whole. In 1889 Washington permitted cities of over 20,000 population to prepare their own charters. Colorado, Wyoming, Minnesota, Oregon, Oklahoma, and Michigan have since widened the powers of cities in this regard. Where charters are prepared by local commissions they must be ratified by a vote of the electors.

The Ohio Constitution.

The constitution of Ohio, adopted in 1912, confers very wide powers on the cities. It provides:

(1) That any city or village may determine the form of its government either by electing a commission of fifteen to frame the charter and submit it to the people; or

(2) The legislature may pass a general or special act which a city or village may adopt by majority vote; or

(3) The legislature shall provide general laws for the government of cities which will automatically take effect in all the cities or villages which do not themselves adopt their own charters under (1) and (2) above.

The constitution also grants cities very wide discretion as to the activities they can assume. In addition to the powers already enjoyed they are authorized to—

(1) Enforce police, sanitary, and other regulations not in conflict with general laws.

(2) Acquire, construct, own, lease, and operate public utilities and issue special mortgage bonds in excess of the general limits of bonded indebtedness prescribed by law, which mortgages shall be a lien only on the property and earnings of the utility itself.

(3) Exercise the right of excess condemnation.

Under the power to revise their charters many cities immediately called conventions to draught new charters. Among them were Cleveland, Youngstown, Dayton, Springfield, and Columbus. And instead of uniformity, variety was the result. Cleveland retained the mayor or federal form of government, with a large council as before; Dayton and Springfield adopted the manager plan; while a number of other cities adopted modifications of these plans; in other cases the people on referendum vote rejected the new proposals altogether.

The New York Plan.

The last session of the New York legislature (1914) adopted what is known as the optional city

charter bill, which went into effect July 15, 1914. This measure gives to every city of the second and third class the right to adopt any one of seven different charters if the majority of the voting citizens desire it. These plans are of the greatest variety. Under Plan A the city may elect a council at large of five members, one of whom is elected mayor. The terms of all are four years, a part of the members retiring every two years. The mayor is a ceremonial head who presides over the council but has no veto. All legislative, executive, and administrative power is vested in the council, which decides what offices are necessary and fixes their duties, qualifications, and salaries. All subordinate officers are appointed by the council and may be removed by it.

Plan B differs from Plan A much as the manager plan differs from the commission plan. Instead of the actual administrative work being performed by the elected officers the council acts as a board of directors and chooses a manager to direct the administrative work of the city. Under this plan the mayor has substantially the same powers as under Plan A. Under Plan A members of the council are paid substantial salaries, while under Plan B, inasmuch as members of the council are not expected to devote much time to the city, the salaries are on a lower scale.

Plan C is a still further modification. It provides for a mayor and four or six councilmen, depending upon the size of the town, all elected at large. The

council possesses full legislative power. The administrative power is lodged in a city manager whom the council selects. The manager becomes the administrative head of the city; he prepares the tentative budget of city expenditures and reports and makes recommendations to the council.

Plan D provides for a separation of the executive and legislative departments. Both the mayor and the council are elected at large, the mayor being the executive head of the city with the power to appoint all officers created by the council. The council elects its own president. The mayor has the power of veto and receives a salary three times that of the council.

Plan E differs largely from Plan D in that the council may consist of nine persons elected at large, the powers of the mayor and the council being the same as under the preceding plan.

Plan F provides for the mayor or federal plan in that the council is chosen by wards, each ward being entitled to one councilman.

Plan G provides for the adoption by third-class cities of the existing second-class cities' law.

In order to bring about the adoption of one of these plans a petition must be filed, containing the signatures of at least 10 per cent. of the voters requesting it, after which the plan is voted on at the following election. Special elections may be held by order of the council. If the plan proposed is adopted it continues in force for a period of four years, during which period no other plan may be

considered. This with the home-rule bill adopted by New York in 1913 gives the cities of that State a large degree of autonomy and frees them from persistent interference of the State legislature. A full home-rule constitutional amendment is required to secure to the cities of New York that degree of freedom which now prevails in many Western States.

Financial and Constitutional Limitations.

Even in those States which have granted the most generous municipal autonomy many limitations remain which make the grant of less value than appears. Attempts to regulate property in the public interest must still be tested in the courts, and if they contravene the constitution they are, of course, illegal. There are constitutional and legal limitations on the amount of indebtedness that can be incurred as well as on the rate of taxation that can be imposed. In some States the bonded indebtedness may not exceed 2 per cent. of the assessed valuation; rarely can it exceed 10 per cent. These limitations preclude the exercise of the powers which have been granted, for if the city cannot secure the necessary money it is helpless to enjoy the rights extended to it. In Ohio, for instance, where cities may own the street-railways and gas companies, they are precluded from doing so by limitations on their borrowing powers, while the tax rate is limited to one per cent. for all purposes. None of our cities have anything like the freedom enjoyed by the cities of Germany.

The German City.

The cities of Germany have the most generous freedom of action in their local affairs of any cities in the world. The municipal codes of the individual states are based on the Prussian law of 1806 under which municipal corporations enjoy the fullest autonomy. They are almost city states, like Hamburg and Bremen.

The Prussian law as interpreted by the Prussian superior administrative court means that no law has fixed limits to the activities of cities as cities. To the cities is intrusted severally the care of the moral and economic interests of their citizens, in so far as special laws have made no exceptional provision for the care of such interests. In default of such laws the limits of municipal activities, over against the state as the superior controlling authority, are to be found only in cities' local territorial jurisdiction, *i. e.*, in the local character of municipal functions.¹

"There are," says Doctor Albert Shaw, "in the German conception of city government no limits whatever to municipal functions. It is the business of the municipality to promote in every feasible way its own welfare and the welfare of its citizens."²

Powers of German City.

Generally speaking, cities can do anything they are not specifically forbidden to do. They can do almost anything an individual or a private corpo-

¹ *Government of European Cities*, by W. B. Munro, p. 119.

² *Municipal Government in Continental Europe*, p. 323.

ration can do. While in America the city can do only those things that are specially enumerated in the municipal code, in Germany the city enjoys all the powers that are not specifically denied to it. Its powers are not dissimilar from those of the American State under the Constitution. The city can borrow such money as the council votes, subject to approval by the central administrative authorities. It can collect such revenues as it needs. There is no fixed limit to its bonded indebtedness or the tax rate. The city can engage in banking, in real-estate speculation, in the ownership of street-railways, gas and electric-lighting companies; it can build docks, own slaughter-houses and markets, and manage restaurants and wine-handling businesses. It can build and manage opera-houses, theatres, and concert halls, and provide in countless ways for the health, convenience, and comfort of the people. It can even own stock in a private corporation. It can speculate in land, build houses, or loan money to workmen for the encouragement of home ownership. It can engage in almost any kind of private business and make profits from its undertakings. It has considerable latitude in taxation. It can experiment and through experiment work out new sources of revenue, as did Frankfort, which devised the ingenious unearned-increment tax adopted in 1904. This tax proved so popular that it was immediately copied by other cities. In a few years' time it spread all over the empire. It was finally adopted as a source of imperial and state revenue.

The city can also regulate property with something of the freedom of the state and the power is rarely interfered with by the courts. It can plan streets, lay out private property, limit the height of buildings and the lot area to be covered by them. The German city has every needed power to build and plan in a big, comprehensive way.

Germany has built the most wonderful cities in the modern world. In many ways they are the most wonderful cities the world has known. The explanation is traceable to freedom, to the sense of responsibility and power which affects all classes. Men aspire to municipal office because of the opportunity offered them for service, while business men bow to the will of the community as they do to the will of the empire. They recognize its sovereignty. As a result of these conditions there is a fine local patriotism, a city pride, like that which animated the cities of Greece, of mediæval Italy and Germany. The German city is almost a state. And this is a condition precedent to any highly developed city life.

Summary.

Municipal home rule is being rapidly extended to the American city. It is being endowed with the right to manage its own affairs in its own way and to determine for itself the form of government it will have. Under home rule the city is being intrusted with all those functions which are exclusively local and which do not affect the State or the nation. It is being accorded local self-government in its local affairs.

The German city is the freest city in the modern world, and the wonderful achievements of the cities of that country indicate the possibility of the city when it is free to develop itself as its needs require. The German city can do anything necessary for the welfare of its citizens. The municipal code enumerates only the things the city cannot do, while in America the charters enumerate specifically the things the city can do. And there are few legislative limitations on the German city. There is no such thing as ripper legislation or constant interference by the legislature with the city's life. It can own property and carry on businesses. It can speculate in land, build houses for working people, or loan its credit to a private corporation. It has also power to regulate property without interference by the courts. By means of this freedom the German city has become the most wonderful city in the modern world.