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COURTS AND CITY-COUNTY CONSOLIDATION IN PHILADELPHIA

By

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At a time when the subject of consolidation of Philadelphia City and County is foremost in the minds of students of constitutional law in Pennsylvania, it is appropriate to consider its relationship to the judiciary. The consolidation amendment itself does not directly affect the courts, since the courts are statewide in organizational structure, though their jurisdictional scope may be limited to county boundaries.¹

The Act of July 12, 1913 created the Municipal Court of Philadelphia² and the Act of May 5, 1911 set up the County Court of Allegheny County.³ Neither of these courts functions outside of its respective county limits. Likewise, the Courts of Common Pleas are courts of original jurisdiction in the county in which the particular court is located.

Yet all of these courts are state courts, being component parts of a statewide system of judicial districts, each district comprising one or more counties.⁴ Furthermore, the salaries of all judges are paid from the state treasury and are not a charge upon municipal or county revenues.⁵

City-county consolidation in Philadelphia was not legally possible until the state constitution was amended in an appropriate manner. Change in the basic law of the state was necessary because all county offices were constitutional, that is, they were established and enumerated in the constitution itself, so that in order to abolish them or revise the basis of their legal authority it was necessary to revise the constitutional provisions from which such authority was derived. This was no less true in Philadelphia than in the other sixty-six counties of the state, the county offices for all counties having been provided for in the first section of Article XIV, as follows:

"County officers shall consist of sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, commissioners, treasurers, surveyors, auditors or controllers, clerks of the courts, district attorneys and such others as may from time to time be established by law. . . ."⁶

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¹ See testimony of President Judge John A. Boyle of the Municipal Court of Philadelphia before the Advisory Consolidation Commission on June 10, 1952, Minutes of Commission, p. 348.

² P.L. 711, 17 P.S. 681.

³ P.L. 198, 17 P.S. 621.

⁴ Act of May 25, 1921, P.L. 1163, 17 P.S. 721.

⁵ Pa. Const. Art. V, § 18.

⁶ § 1.

In the legislative session of 1949 a resolution was introduced and passed by both houses providing for city-county consolidation in Philadelphia.⁷ This resolution reads in the main as follows:

"Section 1—

That the following amendment to the Constitution of the Commonwealth of Pennsylvania be and is hereby proposed in accordance with the Eighteenth Article thereof.

That Article XIV be amended by adding thereto Section 8 as follows:

Section 8—

(1) In Philadelphia all county offices are hereby abolished, and the city shall henceforth perform all functions of county government within its area through officers selected in such manner as may be provided by law. . . .

(6) This amendment shall become effective immediately upon its adoption.

(7) Upon adoption of this amendment all county officers shall become officers of the city of Philadelphia and until the General Assembly shall otherwise provide shall continue to perform their duties and be elected, appointed, compensated and organized in such manner as may be provided by the provisions of this constitution and the laws of the commonwealth in effect at the time this amendment becomes effective, but such officers serving when this amendment becomes effective shall be permitted to complete their terms."

By constitutional mandate, the resolution had to be passed at the next successive session of the General Assembly and further had to be submitted to the voters of the state before it could become effective.⁸ The session of 1951 gave its approval⁹ and at the general election in November of that year the voters ratified the action of the assembly. In accordance with the wording of the resolution, the county offices thereupon became city offices.

* * * * *

Though the courts themselves are not affected, the new amendment directly applies to several offices that are functionaries of the courts. These are the register of wills, the prothonotary, the clerk of the courts (clerk of Quarter Sessions) and the sheriff. Without the services performed by these officials, the courts could not carry out their constitutional duties. The register of wills, who is ex officio Clerk of the Orphans' Court,¹⁰ serves as chief clerk of that court and performs all of the services usually carried on by a clerk of court, e.g., preparation of motion and trial lists, custody and maintenance of court dockets and indices and recording of court orders and decrees. In addition, he has charge of the pro-

⁷ Joint Resolution 4 of 1949, P.L. 2139.

⁸ Pa. Const., Art. XVIII, § 1.

⁹ Joint resolution 1 (Senate Bill 67)

¹⁰ Pa. Const., Art. V, § 22.

bate of wills and granting of letters of administration in decedents' estates, as well as innumerable other details connected with estate administration. The prothonotary is the chief clerk of the seven Courts of Common Pleas and supervises the manifold activities of the clerks and assistant clerks of those courts as well as the clerks and assistant clerks of the civil division of the Municipal Court. The clerk of Quarter Sessions is, as the name implies, custodian of the records and recorder of the transactions in his court. The sheriff is the officer charged with the service of court processes and the execution of court decrees and judgments. Therefore, it will be seen that several of the offices subject to consolidation are arms of the courts, without which an orderly performance of court business would be impossible.

From the foregoing it may be observed that some measure of consolidation among these agencies has already taken place. For example, the register of wills has for many years been clerk of the Orphans' Court.¹¹ The prothonotary is clerk of the civil division of the Municipal Court¹² and the clerk of Quarter Sessions serves similarly for the Criminal, Domestic Relations, Juvenile and Misdemeanants Divisions of the Municipal Court.¹³ (These divisions are considered to be criminal or quasi-criminal.) The sheriff executes the orders of the Courts of Common Pleas, Municipal Court, Court of Quarter Sessions and Court of Oyer and Terminer. It may be noted in passing that consolidation among the courts themselves is a reality to the extent of requiring the judges of Common Pleas to sit in the Courts of Quarter Sessions and Oyer and Terminer.¹⁴

* * * * *

A discussion of city-county consolidation must necessarily mention the Philadelphia Home Rule Charter of 1951.¹⁵ For a long time, the state constitution had authorized cities to frame and adopt their own charters, subject to such regulations as might be imposed by the legislature.¹⁶

It was not until the legislative session of 1949 that effective action was taken to accomplish this for Philadelphia. At that session a law was passed providing for the appointment of a charter commission,¹⁷ which after being duly appointed, prepared a new charter for the city. This charter was approved by the voters of Philadelphia at a special election in April, 1951, and became effective when a new city administration took office in January, 1952. It contains provisions for the integration of the old county offices into the city government¹⁸ and therefore has a direct bearing on the implementation of city-county consolidation.

¹¹ See n. 10.

¹² Act of July 12, 1913, § 4, P.L. 711, 17 P.S. 684.

¹³ See n. 12.

¹⁴ Pa. Const., Art. V., § 8.

¹⁵ Adopted by the electors April 17, 1951.

¹⁶ Pa. Const., Art. XV, § 1.

¹⁷ Act of April 21, 1949, P.L. 665.

¹⁸ Philadelphia Home Rule Charter, § 1-102(2).

The process of implementation was highlighted by a decision rendered by President Judge Frank Smith of the Court of Common Pleas No. 5, in the *Margaret S. Carrow* case.¹⁹ In this case, a former employee of the sheriff, discharged without cause by the new sheriff who took office in January, 1952, brought a mandamus action to compel her reinstatement. She charged that under the terms of the consolidation amendment, the sheriff had become a city officer, and hence that the employees of his office are within the purview of the Home Rule Charter which provides that employees of any governmental agency who may become city employees by virtue of a constitutional amendment are entitled to hold their positions subject to taking a qualifying examination within one year.²⁰

Since the plaintiff was discharged without having taken this examination, and without just cause, the sheriff had thereby violated the terms of the charter. Judge Smith ruled in her favor and his ruling was upheld on appeal to the Pennsylvania Supreme Court.²¹ The decision has had a far-reaching effect upon dismissals for political reasons in all of the former county offices and is an indication that other provisions of the charter also would be applicable to former county employees. No doubt other aspects of this matter will be the subject of future court tests.²²

* * * * *

Although the salaries of judges are paid from the state treasury, those of their assistants come from the city treasury and hence provide another area in which consolidation and the new city charter impinge on the operation of the judiciary. The salaries of all officials and employees of the former county offices are required by the constitution to be regulated by law.^{22a}

The General Assembly has provided that such shall be paid out of the city treasury and fixed by city council. One of the latest laws on this subject was enacted in 1947 and vested in city council the power to fix salaries of the employees of the courts.^{22b} Included in this group are tipstaves, court criers, law clerks and secretaries to the judges, whose salaries are included in the budget of the county commissioners. Since these officials are paid out of funds appropriated by city council, they are thus subject to extra-judicial influences.

Encroachment on this basis is resisted by the courts. Several of the Common Pleas judges, when certifying their bimonthly payroll vouchers delete the words indicating that the employees' services were rendered to the "City of Philadel-

¹⁹ C.P. 5, Dec. term, 1951, No. 7131.

²⁰ Philadelphia Home Rule Charter, § A-104.

²¹ *Carrow vs. Philadelphia*, appellant, 371 Pa. 255.

²² For example, § 10-107 of the Philadelphia Home Rule Charter prohibits partisan political activity on the part of any appointed officer or employee of the city. Many former county employees have been politically active some of whom may be expected to resist the application of this section to them.

^{22a} Pa. Const., Art. XIV, § 5.

^{22b} Act of May 2, 1947 P.L. 134.

phia" and substitute therefore the word "court." Also, the language of the certification to the effect that the employees were appointed to their respective positions and at rates of pay established under the provisions of the Philadelphia Home Rule Charter or other applicable law, rule or regulation is revised so as to eliminate reference to the charter or other rule or regulation and to retain only reference to "applicable law." The prothonotary, in his certification, has adopted an essentially similar procedure.

* * * * *

The amendment provides for enabling legislation to carry out the purposes of consolidation.²³ Whether this legislation must be enacted by the General Assembly or whether the Philadelphia City Council, acting under the provisions of the Home Rule Charter, may pass ordinances to effectuate consolidation is a moot point.

City council has taken the initiative by providing for the appointment of an advisory commission to study the subject of integration of the former county offices into the city structure²⁴ and it is expected that this body will present a plan for the consideration of the council or of the General Assembly at its next session.²⁵ Various proposals have been presented to the commission, including a suggestion by several civic agencies that the duties of the clerk of Quarter Sessions and of the sheriff be transferred to the prothonotary.²⁶ It is interesting to recall that the Kephart Bill, (Senate Bill 897, Session of 1951), considered during the closing days of the 1951 legislative session but not enacted, contained somewhat similar provisions. It was the failure of this bill to become law that gave impetus to the claims of city council.

* * * * *

It will be recalled that the resolution of consolidation specifically amended Article XIV of the constitution. There are, however, other portions of the constitution pertaining to certain county offices which are not so amended. One such portion relates to the prothonotary and reads in part as follows:

"For Philadelphia there shall be one prothonotary's office, and one prothonotary for all said courts to be appointed by the judges of said courts, and to hold office for three years subject to removal by a majority of the said judges; the said prothonotary shall appoint such assistants as may be necessary and authorized by said court; and he and his assistants shall receive fixed salaries to be determined by law and paid by said county; all fees collected in said office, except such as may be by law due the commonwealth, shall be paid by the prothonotary into the county treasury. . . ."²⁷

²³ See subdivision (7) of § 8.

²⁴ Ordinance 48, City Council of Philadelphia (April 2, 1952).

²⁵ By the time this article appears in print, it is probable that some such official expression will have been made.

²⁶ Minutes of the Advisory Consolidation Commission (June 6, 1952).

²⁷ Pa. Const., Art. V, § 7.

Another section of the same article relates to the register of wills, as follows:

" . . . In any county in which a separate Orphans' Court shall be established, the register of wills shall be clerk of such court and subject to its directions in all matters pertaining to his office; he may appoint assistant clerks but only with the consent and approval of the court. . . ."²⁸

It is probable that any attempts to integrate the prothonotary and the register of wills into the revised city administration would encounter the above constitutional provisions and hence they would operate as limitations upon the exercise of full and unrestricted legislative authority.

The independence of the judiciary is such a fundamental principle of our governmental system, both federal and state, that it is axiomatic. Therefore, to the extent that the legislature encroaches on this independence, it is on dangerous ground. The authors of the city-county consolidation amendment undoubtedly had no intention of invading judicial prerogatives or interfering with judicial supremacy in its own sphere. Yet an attempt to deprive the courts of the exercise of authority over their own officers or to restrict these officers in the performance of their official duties may be so construed.

The prothonotary, for example, is a quasi-judicial officer,²⁹ and his office has been declared to be a part of the judicial department of the government.³⁰ His close connection with the judiciary is recognized by the requirement of Article V of the state constitution which makes him an appointee of the Common Pleas judges.³¹ Therefore there is merit in the argument that before the scope of his office is enlarged or revised, approval of the judges should first be obtained. Furthermore, it may be argued with validity that the prothonotary, the register of wills and the clerk of quarter sessions are officers of the first judicial district of Pennsylvania since the Philadelphia courts comprise this district.

City-county consolidation is not intended to invade the separation of powers among the coordinate branches of government and the Philadelphia Home Rule Charter relates only to the executive and legislative branches of the city government. The principle of an independent judicial branch ought to be strengthened and not weakened. Whatever changes may be made, whether by act of the state legislature or by city council, should be made with this end in view, as well as with due regard for the economical performance of all necessary functions. Care must be taken that such functions are not eliminated for misguided reasons of economy as such elimination will in the long run be harmful to the public in-

²⁸ Pa. Const., Art. V, § 22.

²⁹ By statute and rules of court, he may enter default judgments, tax costs and perform other judicial functions of a ministerial nature.

³⁰ *Comm. vs. Gregg*, 161 Pa. 582. While this case applied to the prothonotary of the Supreme Court, it also would apply in principle to the prothonotary of the Common Pleas.

³¹ See Pa. Const., Art. V, § 7.

terest. All officers of the court, both clerical and executive, are essentially judicial officers, and the closer they are tied to the courts which they serve, the better the quality of judicial service is likely to be.

At the present time it is impossible to write definitively on any of the numerous aspects of city-county consolidation. There are too many unanswered questions and unresolved doubts. These will be the subject of future discussion, litigation, and legislation. Meanwhile, the topic offers a challenge to students of constitutional and municipal law, as well as to all who are interested in good government in Pennsylvania's largest city.