

1955

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Recommended Citation

W. Bernard Richland, *Statutory and Practical Limitations Upon New York City's Legislative Powers*, 24 Fordham L. Rev. 326 (1955).
Available at: <http://ir.lawnet.fordham.edu/flr/vol24/iss3/2>

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STATUTORY AND PRACTICAL LIMITATIONS UPON NEW YORK CITY'S LEGISLATIVE POWERS

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ONE of the remarkable phenomena of New York City Government is the sharp decline of the City's legislative powers and their exercise over the past one hundred and twenty-five years.¹

On both the state level and on the federal level, legislative powers have been exercised over a constantly expanding area while those of New York City have been cut down by Constitution, by law and by practice. The fact is that the principal New York City legislative body, the Council,² which is in session all year round, which is familiar with the City's problems and is responsible to its people, has been largely relegated to the task of naming streets after neighborhood heroes and transferring land from one City Department to another. Nowhere does this appear more clearly than upon a comparison of the ordinances adopted by the Mayor, the Aldermen and Commonalty of New York City in 1827 and the local laws adopted by the New York City Government in recent years. The 1827 ordinances covered a wide area of the life of the community, while with few exceptions, local laws of New York City in recent years have been strikingly lacking in significance.³

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1. The decline of the City's legislative power has been attributed to the quality of the personnel of the Board of Aldermen. See Shaw, *The History of New York City's Legislature* 1-14, 30-34, 46, 50, 56-109 (1954). However, other writers have observed that the quality of local government is often a reflection of the paucity of its powers and its subservience to rural-dominated state legislatures. See, e.g., Reed, *Municipal Government in the United States* 98, 102-03, 146 (rev. ed. 1934).

2. New York City's legislative power resides in the New York City Council, the Board of Estimate and the Mayor. Under the New York City Charter, local laws are initiated in the Council, N.Y.C. Charter § 21 (1938) and are subject to veto of the Mayor, with the proviso that such a veto may be overridden by a two-thirds vote, N.Y.C. Charter § 38 (1938). However, a substantial body of local legislative power resides in the Board of Estimate which acts as an upper house of the City Legislature, in regard to proposed laws which amend any provision of the Charter, transfer or change the powers and duties of or confer new powers and duties upon or prescribe qualifications, number, mode of selection or removal, terms of office or compensation of City officers, reduce or repeal taxes, fees or charges or interest or penalties, N.Y.C. Charter § 39 (1938).

3. The Municipal Ordinances of 1827 (*Laws and Ordinances Made and Established by the Mayor, Aldermen and Commonalty of the City of New York, in Common Council Convened, A.D. 1827*) reveal the following significant enactments:

A law to regulate auction sales (c. 3); a law to regulate carts and cartmen which provided for licensing and fixed rates for transportation of scheduled goods at scheduled rates (c. 6); a law to license and regulate chimney sweeps which provided for licensing and fixed hours of labor for employees. In what must have been a radical departure, it prohibited the

employment of boys under 11 and prohibited a chimney sweep from requiring his apprentices to work before 6 a.m. or after 4 p.m. in the winter and before 5 a.m. or after 6 p.m. during the remainder of the year (c. 7); a law regulating the measurement of coal (c. 9); a law to regulate the fees upon making distress for rent (c. 11); a law regulating hackney coaches and carriages which provided for licensing and fixing of charges and rates (c. 16); a law relating to retailers of spiritous liquors (c. 21); a law regulating pawn brokers and dealers in second-hand goods (c. 26); a law regulating public porters which provided for their licensing and fixed rates (c. 28); a law respecting the issuance of tavern and excise licenses which regulated the licensing of liquor establishments (c. 46); a law regulating the sale and manufacture of bread which fixed the size of loaves (c. 51). It will be noted that many of the above described ordinances of 1827 dealt with matters now regarded as of "state concern" and either completely beyond the power of the City to deal with under the Constitution or from which the City is excluded by statute. (See note 6 *infra*.)

In contrast to the group of significant laws adopted by the legislative authorities in 1827, it is difficult to characterize more than seven of the one hundred twenty-nine local laws of the City of New York for 1954 as of equal significance. The 1954 local laws which can be appropriately so characterized are Local Law No. 1 which established a new City Labor Department; Local Laws Nos. 6 and 128 which provided exemption from taxation to encourage construction of new housing; Local Law No. 24 which prohibited the conversion of dwellings to rooming houses; Local Law No. 34 which established the position of school crossing guard; Local Law No. 42 which extended the existing local laws prohibiting discrimination in government-aided housing; Local Law No. 46 which authorized the use of stock cars as taxicabs, and Local Law No. 116 which established a Community Mental Health Board.

Forty-eight of the Local Laws of 1954 dealt with technical amendments to the Building Code and the Electrical Code, of which thirty-seven dealt with specific amendments relating to the maintenance of sprinkler systems. Fourteen of the Local Laws named streets and public places after neighborhood heroes and eighteen provided for the transfer of land from one City Department to another City Department.

The year 1954 does not provide a proper basis for considering the extent to which the City has exercised legislative powers. Indeed, that year was among the most fruitful in the past decade. A more typical example is provided in the Local Laws of New York City enacted during the year 1951. There were two hundred and two local laws and a breakdown of their characteristics is most revealing. Fifty-two of the laws, more than one-quarter of their total number, named particular streets and playgrounds after local heroes; fifteen of the local laws transferred land from one municipal department to another; sixty-two were technical changes in the building laws. Almost all of the rest of the local laws dealt with comparatively inconsequential aspects of the internal government of the City.

The only local laws for 1951 which can properly be characterized as significant were Local Law No. 41 which prohibited discrimination in government-assisted housing; Local Law No. 42, which established a Commission for the Foster Care of Children; Local Laws Nos. 44 and 45 which required policemen to give thirty days' notice of their intention to retire on a pension; Local Laws Nos. 97 and 98 which provided for the enforcement of Federal Price Regulations, and the group of local laws which are re-enacted from time to time, providing excise taxes pursuant to special State enabling acts and the technical amendments to those tax laws. Local Laws Nos. 59, 60, 90, 91, 92, 199.

In 1951, the City Council seems to have devoted a great deal of its energies in considering precatory resolutions, the purport of which ranged from exhorting the State Legislature to act in regard to a variety of matters affecting the City Government, to urging that the people of Ireland be given the right to choose their own form of government. N.Y.C. Council Res. Nos. 264-493.

It is the purpose of this study to sketch briefly the constitutional and statutory provisions which have brought this about and the restrictive interpretations by the courts along with the practices of the City Government which have aided in this result.

I. CONSTITUTIONAL PROVISIONS

The City Home Rule provisions of the New York Constitution are contained in article IX. Section 11 provides in general that the Legislature may act in relation to the "property, affairs or government" of cities only by general laws which apply in terms and effect to all cities, except upon the request of a particular city or cities and a two-thirds vote.⁴ Section 12 empowers every city to adopt local laws relating to their property, affairs or government, and, in addition, to adopt local laws relating to its officers, business, obligations, streets and property, transit facilities, taxes and the conduct of their inhabitants and the protection of their property, safety and health. However, all such laws must be "not inconsistent with the Constitution and the laws of the state."⁵

We have pointed out at length elsewhere, that the grant of legislative power to cities, like the guarantee of immunity from state interference with cities contained in the Home Rule provisions of the Constitution, is largely illusory.⁶ It would serve little purpose to repeat here the observations which have already been made. Suffice it to say that the term, "property, affairs or government" which sets the area of City immunity from State regulation has been so construed by the courts as to mean neither property, nor affairs nor government in the ordinary sense in which those words are used in common parlance. Since the immunity of cities from legislative interference is limited to interference by special legislation with their "property, affairs or government" and since those terms have been narrowly construed by the courts and since local laws must be consistent with all laws properly enacted by the Legislature, local legislative power is at the mercy of a State Legislature which has shown no inclination to be merciful in this regard.⁷ In fact, the State Legislature can act, as it has, by special law (notwithstanding the fact that the Constitution appears to authorize only general legislation) in regard to the principal "property" of the City, its costly transit system⁸ and its costly water supply system.⁹ It

4. N.Y. Const. art. IX, § 11 (1938).

5. N.Y. Const. art. IX, § 12 (1938).

6. Richland, *Constitutional City Home Rule in New York*, 54 Colum. L. Rev. 311 (1954); Richland, *Constitutional City Home Rule in New York: II*, 55 Colum. L. Rev. 598 (1955).

7. Richland, *Constitutional City Home Rule in New York: II*, 55 Colum. L. Rev. 598, pt. XV (1955).

8. *Salzman v. Impellitteri*, 203 Misc. 486, 124 N.Y.S. 2d 369 (Sup. Ct.), aff'd, 281 App. Div. 1023, 122 N.Y.S. 2d 787 (1st Dep't), modified, 305 N.Y. 414, 113 N.E. 2d 543 (1953).

9. See N.Y.C. Admin. Code § 982-7.1 (1937); Opinion of N.Y. Att'y Gen. March 10, 1954.

can similarly interfere with its principal "affairs" and "government," its power of taxation,¹⁰ its power to become indebted,¹¹ its power over the school system,¹² and effectively abolish the legislative powers of the City in regard to these subjects. Moreover, since City immunity from legislative interference does not preclude interference by general laws applicable alike to all cities,¹³ the power of local legislation is further drastically narrowed by laws affecting cities generally.

II. STATUTORY PROVISIONS

City Home Rule Law

The principal statutory provisions which further reduce the legislative power of New York City are contained in the City Home Rule Law and in the New York City Charter.¹⁴ Section 11 of the City Home Rule Law,¹⁵ like article IX, section 12 of the Constitution, sets forth in broad terms a grant of power far more apparent than real. Cities are authorized to adopt local laws in relation to the framework of their government, the manner in which their officers shall be selected and paid, control over their transit facilities, their streets and their other properties, control over their taxing and indebtedness powers and the protection, safety and welfare of their inhabitants.

Having expressed a generous, general grant of legislative power to cities, the City Home Rule Law then goes on to cut those powers down close to the vanishing point. This is accomplished by two devices.

Under section 21,¹⁶ there is completely eliminated from the field of local legislative power the following basic subjects, among others:

- (1) Power to increase tax or debt limits fixed by law;
- (2) Power to change local requirements as to the issuance of bonds;
- (3) Power in regard to the City's school system or any teachers' retirement system;
- (4) Power to adopt legislation which "applies to or affects" any provision of the Labor Law, the Workmen's Compensation Law or the Multiple Dwelling Law;

Cf. *Board of Supervisors v. Water Power and Control Commission*, 227 App. Div. 345, 238 N.Y. Supp. 55 (3d Dep't 1929), *aff'd*, 255 N.Y. 531, 175 N.E. 300 (1930).

10. See note 8 *supra*.

11. *Ibid*.

12. *Eriksen v. City of New York*, 167 Misc. 42, 2 N.Y.S. 2d 280 (Sup. Ct. 1937); *People, ex rel Elkind v. Rosenblum*, 184 Misc. 916, 54 N.Y.S. 2d 295 (Sup. Ct.), *aff'd*, 269 App. Div. 859, 56 N.Y.S. 2d 526 (2d Dep't 1945), *aff'd*, 295 N.Y. 929, 68 N.E. 2d 34 (1946). See also cases cited in dissenting opinion of Desmond, J. in *Daniman v. Board of Education*, 306 N.Y. 532, 544, 546-47, 119 N.E. 2d 373, 381, 382-83 (1954).

13. N.Y. Const. art. IX, § 11 (1938); *Richland*, *supra* note 6, *passim*.

14. The Charter, although adopted by a referendum of the electorate of New York City, has been accorded by the courts the status of a state statute. See *Daniman v. Board of Education*, 306 N.Y. 532, 119 N.E. 2d 373 (1954).

15. N.Y.C. Home Rule Law art. II, § 11 (1939).

16. N.Y.C. Home Rule Law art. II, § 21 (1939).

- (5) Power to enact legislation relating to judicial review of civil service disciplinary proceedings;
- (6) Power to amend a City Charter, contrary to its own terms or to enact laws prohibited by the City Charter.

The second device by which the City's power to legislate is limited under the City Home Rule Law (section 15) is by requiring that certain laws adopted by the City shall become effective only if approved at a referendum by a majority of the City's voters.¹⁷

Obviously, a referendum on a local law is a highly expensive undertaking.¹⁸ Moreover, it necessarily delays the enactment of laws. Indeed, so expensive and inconvenient is this device that in the past ten years it has been used only once. When the City needs legislation which is subject to referendum, it is driven by the twin forces of convenience and economy to solicit the State Legislature to enact such legislation in order to avoid the referendum provisions of the City Home Rule Law.

The subjects covered by section 15 are, among others, the following:

- (1) Changes in the local legislative body;
- (2) Changes in the veto power of the Mayor;
- (3) Changes in the law of succession to the mayoralty, abolition of an elective office, or a change in the method of nomination, election, salary and powers;
- (4) Creation of a new elective office, changes in laws relating to public utility franchises, changes in a city civil service commission, the reduction of the salary of a city officer or employee fixed by statute;
- (5) Adoption of a new Charter.

All local laws within the range of those catalogued above can become effective only if approved by a majority of the voters.

New York City Charter

The New York City Charter¹⁹ duplicates the provisions of City Home Rule Law section 15 and adds other categories of laws fettering the City's legislative power through this device by requiring a referendum for any local law which: transfers power from any agency, the head of which is appointed by the Mayor to one, the head of which is not so appointed, or vice versa; dispenses with any provisions of the Charter which requires a public notice and hearing before official action can take place; changes a provision of the Charter relating to the audit of the City's accounts; removes Charter restrictions on the sale, lease or other disposition of City property; curtails the power of the City Planning Commission, or changes

17. N.Y.C. Home Rule Law art. II, § 15 (1939).

18. The cost of a referendum in New York City, if such were mandatory at a general election under N.Y.C. Charter § 40 (1936), would be absorbed in the cost of same and would therefore be unascertainable. The cost of a referendum at a special election pursuant to § 15 of the City Home Rule is estimated at approximately \$800,000.

19. N.Y.C. Charter c. 2, § 40 (1938).

the vote of the Board of Estimate requiring any City Planning matters; repeals or amends any of a large group of sections of the City Charter.

Thus, the practical effect of the referendum requirements of the City Home Rule Law and the City Charter have been to severely cut down the City's own legislative power in regard to matters which are patently of local concern and which should properly be left to the legislative authorities of the City. In all the years since the present New York City Charter was adopted in 1938, only one local law has been adopted by the Council which required its submission to referendum—the amendment to subdivision b of section 22 of the New York City Charter²⁰ which abolished proportional representation and provided for the election of councilmen from Senate districts, which was approved at referendum held November 4, 1947. Whatever other changes have been made in the Charter and which would have required referendum if made by local law have been adopted by State legislation passed upon the request of the City and two-thirds vote of each house of the Legislature. This method was used in regard to such details of City administration as, for example, the amendment of the Charter so as to provide for the office of Vice-Chairman of the City Planning Commission;²¹ an amendment permitting the President of the Council to designate one of his appointees to act in his place upon the Board of Estimate;²² an amendment to increase from \$1,000 to \$2,500 the amount of a purchase which would not require competitive bidding;²³ an amendment to reorganize the City Civil Service Commission and establish a Department of Personnel.²⁴

Other Statutory Provisions

The statute books abound with other special laws in the area of "state concern" and general laws which effectively limit New York City's power of local legislation. It would serve little purpose to enumerate those statutes. For the purpose of this article, we need only point out three typical examples.

As we have seen, both the Constitution and the City Home Rule Law purport to vest legislative power in the City over its "transit facilities." Yet, by enacting laws dealing with the City's transit system, the City has been effectively ousted from this important field.²⁵ Pension laws dealing

20. N.Y.C. Charter c. 2, § 22(b) (1936).

21. N.Y. Laws c. 339 (1952); N.Y. Laws c. 56 (1953).

22. N.Y. Laws c. 434 (1950).

23. N.Y. Laws c. 852 (1949); N.Y. Laws c. 788 (1953).

24. N.Y. Laws c. 354 (1954).

25. *Salzman v. Impellitteri*, note 8 *supra* and *Connolly v. Stand*, 192 Misc. 872, 83 N.Y.S. 2d 445 (Sup. Ct.), *aff'd*, 274 App. Div. 877, 82 N.Y.S. 2d 922 (1st Dep't), *aff'd*, 298 N.Y. 658, 82 N.E. 2d 399 (1948). See also *Browne v. New York*, 241 N.Y. 96, 149 N.E. 211

exclusively with City employees are clearly within the province of normal, local legislative power. Nevertheless, this power was withdrawn from cities by the Legislature.²⁶ Laws relating to the City's fiscal affairs are manifestly matters of local concern, yet by the enactment of the Local Finance Law, the City has lost its power in this regard.²⁷ The final example²⁸ was obviously directed solely at New York City. It provides that in every city in which the Mayor and the Presiding Officer of the local legislative body are elected at the same time and for the same term and in which such Presiding Officer succeeds to the office of the Mayor, he shall continue in his office for the remainder of the Mayor's term. The person succeeding to the office of such Presiding Officer shall continue for the remainder of his term. This provision was patently adopted to displace the succession provisions of the New York City Charter, in order to avoid the situation which took place in 1950 when a vacancy election for the New York City Mayor coincided with State elections,²⁹ an occurrence which the dominant political party obviously found contrary to its interest and one to be avoided.³⁰ The statutes dealing with the City's water supply system, similarly withdraw that subject from the area of local legislative power.³¹

III. NEGLECT OF LOCAL LEGISLATIVE POWERS

Not only has local legislative power been limited and hampered in the manner described above by constitutional, statutory and Charter provisions, but it has been further cut down by a natural timidity on the part of the City's legislative body, induced by a restrictive judicial interpretation of their powers,³² from which the City's legislative body only now

(1925) and *Int. Ry. v. Public Service Commission*, 242 App. Div. 300, 275 N.Y. Supp. 5 (3d Dep't 1934).

26. N.Y. Laws c. 296 (1953). See *Gorman v. City*, 280 App. Div. 39, 110 N.Y.S. 2d 711 (1st Dep't), aff'd, 304 N.Y. 865, 109 N.E. 2d 881 (1952), cert. denied, 345 U.S. 962 (1953); Annot., 105 A.L.R. 259, 263 (1936).

27. See N.Y. Leg. Doc. No. 67, app. A, at 31-58 (1944).

28. N.Y. Laws c. 356 (1952), which had the effect of replacing the succession provisions of N.Y.C. Charter c. 1, § 10 and c. 2, § 29 (1938).

29. See *Joseph v. Corsi*, 277 App. Div. 351, 100 N.Y.S. 2d 49 (1st Dep't), aff'd, 301 N.Y. 742, 95 N.E. 2d 412 (1950).

30. See *Richland*, supra note 7, at 621, n. 201.

31. See note 8, supra.

32. See, e.g., *County Securities v. Seacord*, 278 N.Y. 34, 15 N.E. 2d 179 (1938); *Ainslee v. Lounsberry*, 275 App. Div. 729, 86 N.Y.S. 2d 857, appeal denied, 275 App. Div. 865, 89 N.Y.S. 2d 240 (3d Dep't 1949); *Scheiffelin v. O'Leary*, 219 App. Div. 660, 220 N.Y. Supp. 587 (1st Dep't 1927); *People ex rel. Elkind v. Rosenblum*, 184 Misc. 916, 54 N.Y.S. 2d 295, (Sup. Ct. 1945), aff'd, 269 App. Div. 859, 56 N.Y.S. 2d 526 (2d Dep't 1945), aff'd, 295 N.Y. 929, 68 N.E. 2d 34 (1946); *People v. Gorman*, 133 Misc. 161, 231 N.Y. Supp. 85 (City Ct. City of Binghamton 1928). A particularly discouraging example is provided by 749 Broadway Realty Corp. v. Boyland, 207 Misc. 76, 140 N.Y.S. 2d 766 (Sup. Ct. 1955) in which a court

seems to be emerging. The grand, although illusory tabulation of powers set forth in Constitution article IX, section 12 and in City Home Rule Law section 11 leaves open to City legislation an area which has not as yet been fully exploited—legislative power to deal with matters regarded as both of State and local concern, but as to which the Legislature has not completely occupied the field. An illustrative example is the City's power to enact local laws applying more restrictive requirements in tenements than are provided in the Multiple Dwelling Law.³³

Not until this year has a substantial attempt been made to exercise legislative power in regard to the latter. An elaborate Multiple Dwelling Code supplementary to and containing more severe restrictions than the Multiple Dwelling Law has been before the New York City Council for some time.³⁴

Up to now, changes in laws applicable to multiple dwellings desired by the City have been requested of the State Legislature. Such was the case even prior to 1950 when the Multiple Dwelling Law applied solely to New York City.³⁵ Even now, although the statute applies also to Buffalo, its dominant purposes and effects are upon New York City.³⁶

The assertion of local legislative power even when its existence was doubtful, has, upon occasion, resulted in decisions upholding the validity of the local laws. Thus, although there was doubt as to the right of New York City to adopt an independent local law enforcing O.P.A. regulations and providing an additional punishment for violation of those regulations, the so-called Sharkey O.P.A. Law³⁷ was enacted and its validity was up-

struck down a local law designed by New York City to require taxpayers objecting to assessments to file with their protest a statement of income and expenses N.Y.C. Charter § 162, as amended by N.Y.C. Local Law No. 128 of 1952. The N.Y. City Home Rule Law § 11 (1939), expressly authorized cities to adopt local laws to aid in the assessment and collection of taxes. See Bill Jacket of Laws 1939, c. 867 on file in the State Library, Albany, N.Y. Yet, a local law enacted for such a purpose has thus far been held invalid as beyond the City's power. An appeal is pending.

33. As we have noted above, the N.Y. City Home Rule Law § 21 (1939), prohibits the City from enacting laws which "affects" any provision of the Multiple Dwelling Law. See Richland, *Constitutional City Home Rule in New York*, 54 Colum. L. Rev. 311, pt. VI (1954). However, the Multiple Dwelling Law § 3 (1946), expressly authorizes the City to enact more restrictive regulation than is provided in that statute.

34. N.Y.C. Council Int. 391, Pr. 346, Nov. 16, 1954; N.Y.C. Council Int. 395, Pr. 459, Apr. 5, 1955; N.Y.C. Council Int. 441, Pr. 518, July 12, 1955. These bills, and particularly, N.Y.C. Council Int. 441, Pr. 518, are an interesting experiment in legislation, not only in their substance, covering, as they do, a wide field of regulation, but in their form, in which tabulations of provisions are used to facilitate an understanding of the varied occupancy requirements of different types and classes of tenements.

35. See Note of Commission on amendment of § 3 of N.Y. Multiple Dwelling Law, of 1950 in 35-A McKinney's Consolidated Laws (Supp.).

36. See Legislative Committee Notes to amended sections of Multiple Dwelling Law in 35-A McKinney's Consolidated Laws.

37. N.Y.C. Local Law No. 35 (1945).

held by the Court of Appeals.³⁸ Similarly, local legislative bodies were discouraged for many years from enacting laws exempting their cities from the enormous burden of liability for defective sidewalks in the absence of written notice, by reason of an Appellate Division decision denying their right to do so in the face of an inconsistent State statute.³⁹ However, to the surprise of municipal law officers throughout the State, the same court overruled itself, held the same local law valid⁴⁰ and the Court of Appeals affirmed the decision.⁴¹ Fortunately, the city, in that case, left the local law on its books and so was able to try again and succeed in upholding its validity eighteen years later. Other municipalities which, despite the decision, adopted similar local laws, had their judgment acquitted.

On the other hand, such attempts, in the presence of doubt, have been unsuccessful but nevertheless have gone far to achieve their results. Thus, the City of New York, faced with the removal of Federal regulations in regard to rent control, determined to adopt its own body of laws upon this subject.⁴² The court struck down the so-called Sharkey Rent Control laws upon the ground that they conflicted with provisions of the Civil Practice Act in regard to summary proceedings.⁴³ However, the State Legislature was obliged by the very existence of the local laws to validate them⁴⁴ and later to enter the field of rent regulation itself and assign the task to a State agency.⁴⁵

38. *People v. Lewis*, 295 N.Y. 42, 64 N.E. 2d 702 (1945).

39. *Hayward v. Schenectady*, 251 App. Div. 607, 297 N.Y. Supp. 736 (3d Dep't 1937).

40. *Fullerton v. Schenectady*, 285 App. Div. 545, 138 N.Y.S. 2d 916 (3d Dep't 1955).

41. 309 N.Y. 701, 127 N.E. 2d 333 (1955). An interesting sidelight to the Fullerton case is provided in a veto message of Governor Dewey, who refused to approve a proposed State statute overruling the effect of the Hayward case. See McKinney's Session Laws of New York for 1953 at 2173. The basis of the Hayward decision was that the local law, which required written notice of a sidewalk defect before municipal liability could arise, was inconsistent with Second Class Cities Law § 244 (1945). Bills were passed by the Legislature in 1953 (Ass. Intro. 1261, Pr. 1287, Ass. Intro. 3229, Pr. 3695) to amend that statute and the Village Law so as to incorporate in these statutes provisions similar to those contained in the Schenectady local law struck down in the Hayward case. Governor Dewey, refused to approve the bill upon the ground that it would work a hardship on injured citizens. Having failed to obtain State legislation, the municipalities, adopted local laws, in the teeth of the Hayward decision, (See, e.g., Albany Local Law No. 1 (1953); Troy Local Law No. 2 (1952); and their assertion of a power which the courts had already denied them was later justified. See also, First Interim Report of the Joint Legislative Committee on Municipal Tort Liability, Leg. Doc. No. 42, at 22-23 (1955).

42. N.Y.C. Local Laws No. 73 (1949).

43. *F.T.B. Corp. v. Goodman*, 300 N.Y. 140, 89 N.E. 2d 865 (1949).

44. N.Y. Laws c. 14, c. 487 (1949); N.Y. Laws c. 1 (1950). See *Tartaglia v. McLaughlin*, 297 N.Y. 419, 79 N.E. 2d 809 (1948).

45. N.Y. Laws c. 250 (1950); N.Y. Laws cc. 36, 341 (1951). See *Friedlander & Curren*, *New York State Rent Control* xiii-xvi, (1950).

IV. EXPANSION OF LOCAL LEGISLATIVE POWER

Even assuming the exercise of its maximum legislative powers, New York City's government will remain hampered until there is a revision of both the Charter and special and general laws which limit its authority. To a City government faced with the day-to-day problems of managing its affairs, it matters little whether the barrier to their solution lies in laws applicable to all cities or only to New York City. The generality of a restrictive statute is of no merit in such a case. Clearly, a city with the population of a continent should be permitted to govern its internal affairs, adjust the structure of its government and deal with its property without the interference of a State Legislature.

General laws and Charter provisions alike which hamper a city government in this regard should be re-examined and revised. For example, a City which, for half a century has effectively legislated in regard to the structure and maintenance of large commercial and industrial buildings⁴⁶ should be similarly entrusted with broad legislative power over its apartment houses.⁴⁷ It seems hardly consistent with efficient and responsible government to require the City to run to Albany with its tenement housing problems and pray the State Legislature to enact the amendments to the Multiple Dwelling Law which time and the experience of the Building Department have shown to be necessary.

Similarly, the City's method of incurring indebtedness is or should be its own concern and it ought not be obliged to seek State legislation to deal with such matters.

However, entirely apart from such considerations is the situation in regard to matters which it is universally conceded should be within the orbit of a City's normal powers, as, for example, the form and operations of its government.⁴⁸ By general law, and by Charter provision,⁴⁹ such powers

46. N.Y. Laws c. 466 § 407 (1901).

47. See *Adler v. Deegan*, 251 N.Y. 467, 167 N.E. 705 (1929) and *Richland*, supra note 33.

48. The extent to which City legislative power is lacking in regard to matters of internal administration of City Government and purely local concern is indicated by the examination of the State statutes for any recent year. Literally scores of statutes are adopted in each session of the State Legislature dealing with matters affecting New York City alone in its property, in its government and in its affairs, in any reasonable sense in which those words can be defined. In the 1955 Legislative Session which marked a low point in recent legislative interference with New York City (cf. the 1953 experience in which the City was assailed upon all sides by the Legislature. See *Richland*, supra note 7, pt. XI) statutes were adopted relating to such matters of purely local concern as the demolition of the Third Avenue Elevated, after the discontinuance of its use as a transportation facility (N.Y. Laws c. 657); the pension rights of medical officers of the Fire Department (N.Y. Laws c. 122); the relocation and maintenance upon City property of an historical building known as Hamilton Grange (N.Y. Laws c. 285); authorization for the sale of City-owned waterfront lands (N.Y. Laws cc. 502, 833, 70, 69, 554, 490, 67, 456, 209) and the acquisition of cemetery lands in the Bronx (N.Y. Laws c. 337). The cited chapters of the Laws of 1955 were adopted by a two-thirds

are effectively removed from the domain of New York City's government, both directly and through the referendum device which, while preserving the appearance of vesting legislative power in the City, actually withholds it.⁵⁰

There are many factors which would seem to point to the desirability of expanding the legislative power of New York City. In the first place, it seems hard to reconcile with principles of representative and responsible government the present situation in which the largest and wealthiest city in the world is held on tight State legislative "leading strings."⁵¹ The City Government is obviously closer to and more cognizant of its problems than is the Legislature in Albany, a majority of whose members have neither responsibility to the City's electorate nor awareness of the City's governmental problems. The New York City Council and the Board of Estimate are in session all year round. They provide forums for the consideration and discussion of governmental matters. Their members are accountable to the City's people. A few typical examples demonstrate the value of these circumstances. The first is presented in the elaborate discussion of the complex and far-reaching proposed City Multiple Dwelling Code⁵² in study sessions and Committee hearings on the bills. These hearings have been going on from time to time since the end of 1954.⁵³ The second example is the public discussion before the New York City Council which preceded the enactment of Local Law No. 46 of 1954, authorizing the use of stock cars as taxicabs.⁵⁴ Going back a few years, another typical example is the public discussion before the Council and the Board of Estimate preceding the enactment of Local Laws Nos.

vote at the request of the City, it not having power to adopt them itself. See also pt. II of text *supra*.

49. See pt. II of text *supra*.

50. The New York City Charter Revision Commission described the Charter referendum provisions as designed as "safeguards against the ill-considered adoption of fundamental amendments." (Report of New York City Charter Revision Commission, in Williams Press Edition of New York City Charter and Administrative Code, xxxv (1943)). In the first place, several of the subjects hardly fit within the character of "fundamental." In the second place, the absolute power of veto held by the Board of Estimate and the limited veto power of the Mayor would seem to be adequate safeguards in a representative government.

51. The apt term used by Professor Thomas H. Reed, an outstanding scholar and municipal administrator, in his *Municipal Government in the United States*, c. vii (Rev. ed. 1934).

52. See Note 34 *supra*. The proposed Multiple Dwelling Code was drafted with the kind of cooperation and joint effort of responsible City agencies and community groups and subjected to the kind of scrutiny which could hardly occur during the brief State legislative session.

53. There were approximately forty study sessions, including two officially announced public hearings on the proposed Multiple Dwelling Code.

54. There were a number of Committee meetings at which interested groups were heard and one official public hearing on the stock car bill.

44 and 45 of 1951, which required policemen to give thirty days' notice of their intention to retire—a measure sponsored by the District Attorney of Kings County to aid in his investigation of the Harry Gross book-making scandal.⁵⁵

Proceedings before both Council Committees and the Board of Estimate in regard to significant local legislative proposals are characterized by a freedom of discussion and a manifest effectiveness of public debate by civic organizations, special interest groups and individual citizens quite foreign to proceedings in the State Legislature. This practice of the City's legislative bodies is in sharp contrast to that of the Legislature, typified by the passage of the 1953 Transit and Fiscal Control Laws.⁵⁶ The latter statutes profoundly affected the City in its most important property, its transit system, and its basic governmental powers, its tax and indebtedness powers.⁵⁷ Yet, they were hurried through the State Legislature in the closing days of its session without an opportunity being accorded to City community groups vitally interested in their impact to consider their complex terms or discuss their effect.⁵⁸

The shortness of the State legislative session, the practice of that body doing little or no legislative work, apart from the mere introduction of thousands of bills, until the closing week of the session, and the sheer bulk of the work to be accomplished in a matter of a few days⁵⁹—all these factors combine to render impossible at the State Capitol the kind of public deliberation and citizen participation in legislation, commonplace in the New York City Council and the Board of Estimate.

It is concluded that both reasons of principle and practical considerations point to the necessity of an expansion of New York City's legislative powers and the full exercise of its existing authority.

As Professor Thomas H. Reed stated the case for municipal autonomy:

“Capacity for self-government can be acquired only by the practice of self-government, and capacity for local self-government is the only safe basis for the great democratic state. It is a notable fact that the practice of home rule breeds civic self-respect and independence.”⁶⁰

55. Minutes of Public Hearings Relating to the Enactment of N.Y.C. Local Laws 44 and 45 of 1951; see also *Gorman v. City*, 280 App. Div. 39, 110 N.Y.S. 2d 711 (1st Dep't), aff'd, 304 N.Y. 865, 109 N.E. 2d 881 (1952), cert. denied, 345 U.S. 962 (1953).

56. N.Y. Laws cc. 199-205, 208 (1953).

57. Richland, *supra* note 7.

58. See Transcript of Record, at 31-110, *Salzman v. Impellitteri*, note 8 *supra*.

59. *Moscow, Politics in the Empire State* c. X (1948).

60. Reed, *op. cit. supra* note 51, at 146.