

COMMENTARY

Time Is Right For A New Board Of Electors

By Donald Phares
and Howard Paperner

The biggest problems facing this area within the next decade will be regional ones. Economic development, transportation, equitable taxation and infrastructure are but the tip of the iceberg. Unfortunately, though, the area is singularly ill-equipped to deal with these issues.

Why? The problem is simple: too many governments. There are St. Louis and St. Louis County, not to mention the 90 municipalities in the county. That makes a regional perspective, not to mention cooperation, very difficult.

Still, the problem is not insoluble. The state constitution provides a mechanism to address these pressing regional issues: a board of electors.

Recent attempts to address issues on a city-county basis have come to naught. The 1987 Board of Freeholders proposed an economic development district and a metropolitan commission that could address specific issues. The 1990 Board of Electors proposed a metropolitan economic development commission and a metropolitan park commission. The 1987 board's membership was found to be unconstitutionally restricted. The 1990 board's efforts were rejected by the voters.

The litany of concerns awaiting attention provides sufficient rationale to try again to create another board of electors. While the record of such a constitutional creature is poor, precious few alternatives are available.

Any board of electors proposal would require voter approval, but the timing could be right to try again now.

First, there seems no likelihood that the Legislature can deal with the countless problems involved given the highly politicized and localized nature of the environment. However, a board of electors proposal would go directly to a city-county vote and would not require legislative scrutiny or approval.

Second, voter approval would satisfy the requirements of the state's Hancock amendment that mandates almost literally, certainly politically, that any local revenue change has voter sanction. Since the amendment's passage in 1981, the courts have adhered to a strict interpretation. The proposed Hancock II amendment that may be on the November ballot contains stricter language on revenue issues. City-county voter approval of a board plan, which would affect revenue, would satisfy either Hancock version.

Third, under the state constitution, a board of electors can deal with virtually any city-county issue. The constitution also explicitly permits it to examine the functioning of any local jurisdiction — county, municipal, school district or special district. Such a board can propose almost any plan for any government or fiscal structure for all or any part of the city-county area.

Fourth, this constitutional provision has undergone the scrutiny of every court with jurisdiction, including the U.S. Supreme Court. The legal status seems unequivocal.

Fifth, much of the controversy over the 1987 board was

about its product — a set plan proposing 37 new cities. During deliberations, considerable opposition was raised to such a fixed-map proposal.

Focusing on a process to accomplish the governmental and fiscal objectives for the area might be palatable to political participants and to the voters. Clearly, such a process would need sharp teeth to address such areawide concerns as governmental reorganization, local resource disparities and provision of adequate services by municipalities and the county, along with a clear delineation of their responsibilities.

The Boundary Commission, which was created by the Missouri Legislature in 1989 to evaluate proposals for annexations and incorporations, was declared unconstitutional by the Missouri Supreme Court in May. The commission, while process-oriented, was hobbled by its legal inability to force or encourage change and by its perceived control by county government.

Finally, two other major issues that confront the area might be brought under board purview. St. Louis school desegregation has been a legal and political issue for decades. It is worth

considering whether a new board of electors could help move toward resolution of this policy quagmire. The task would be Herculean, but much can be said for a local solution to a problem that presently is dominated by non-local participants.

The other issue relates to the Metropolitan St. Louis Sewer District (MSD). This is the one success story for the constitutional board provision. It was approved by voters in 1954. However, it now stands practically immobilized and is beset by problems, most of which stem from finances.

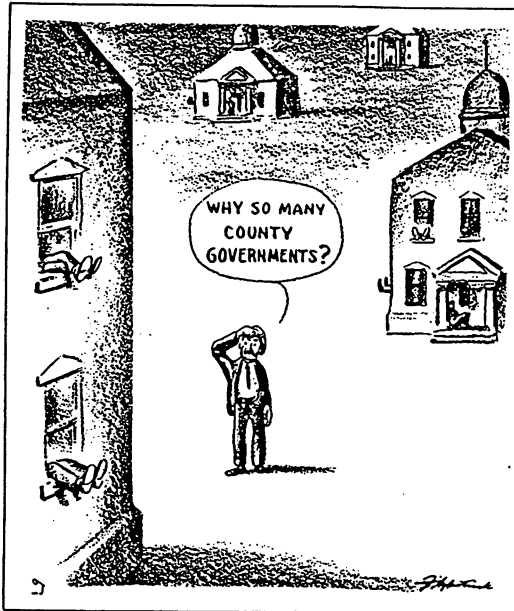
MSD is unable to meet either expanding local service demands or strict state and federal environmental mandates. It needs hundreds of millions of dollars for capital improvements, plus additional operating funds. It cannot raise these funds, however, because courts have struck down past rate increases, and the Hancock amendment requires voter approval for new revenue. Voters refuse.

MSD may be in violation of federal and state laws but cannot obtain the funds necessary to comply. Since MSD was board-created, perhaps a new board could rectify its dilemma before a federal court intervenes and dictates change, an increasingly likely scenario.

Addressing the needs of St. Louis is essential for the area to enter the global marketplace. Over the decades, proposals and discussion have been extensive but accomplishments very limited. The significance of what now exists is onerous.

The recent Boundary Commission decision attests to this. St. Louis has been a textbook example of local government problems. Can it now become an example of how to confront them? It is time for a new board of electors to do just that.

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County Goes Back To The Drawing Board

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The evolution toward a sounder political and fiscal structure in St. Louis County seems to be at an absolute standstill. Indeed, it may be moving backward.

In the late 1980s, the Board of Freeholders was formed to address structural questions. It took its mandate seriously and developed, much to many countians' chagrin, a radical new map of St. Louis County. This map eliminated unincorporated areas and reduced the number of municipalities. The comprehensive plan proposed by the 1987 Board of Freeholders was declared unconstitutional by the U.S. Supreme Court in 1989.

While the freeholders and their plan went the way of history, county leaders knew that the county's political and economic structures needed revamping. The solution, at least in part, was the Boundary Commission, which had been created by the Missouri Legislature in 1989. The commission would evaluate proposals for annexations and incorporations for their economic and political viability — and their impact on the county. Its work is slow and cumbersome, but at least some order would be imposed on what had typically been a chaotic process.

In May, after more than three years of work and review, this body was declared unconstitutional by the Missouri Supreme Court in a unanimous decision.

However, the full implications of this recent Missouri Supreme Court decision are potentially far more sweeping and fiscally devastating than for just the Boundary Commission's work.

First, there is uncertainty about the proposals that have been acted upon already and those pending with the commission. At this point, one can only raise questions that ultimately must be settled legally; each has its own distinct implications.

- What is the status of proposals that have been voted upon and passed or failed?

- What is the status of proposals that were disapproved by the Boundary Commission?

- What is the status of proposals that were withdrawn, for whatever reason?

- What happens to pending proposals?

It seems quite clear that the work and analysis of this commission is at risk. Also, it must be noted that absent this review body, which did have the authority to approve or disapprove boundary change proposals, new proposals that are not now subject to review will undoubtedly flourish. The situation in the county has already reverted to the post-1983 *Town and Country* court decision environment of opportune, fiscally driven boundary changes.

Second, the statutory language on which the Boundary Commission was declared unconstitutional relates to the exclusive identification of a single governmental jurisdiction, St. Louis County, that is, "any first-class county with a charter form of government which contains a population in excess of 900,000." This language also affects a variety of other statutory provisions that relate to specific revenue sources for St. Louis County itself and for many, perhaps all, of the 90 municipalities in the county.

There are very serious potential revenue loss implications for both the county and its municipalities if the Boundary Commission decision is extended to statutory provisions affecting local revenue.

While the scope of potential risk is unknown at present, it could include at least the general sales tax, the utilities gross receipts tax, a motor vehicle license tax, a tax on cigarettes and a convention and tourism tax. Upon interpretation, coverage could reach in part or in whole to county government as well as to municipalities. To provide some parameters, sales and gross receipts taxes account for about

26 percent of county revenue and 57 percent of municipal revenue, substantial proportions to be at risk. It does seem unlikely, however, that school or special districts will be affected.

It also should be noted that the statutory language of the type used for St. Louis County (quoted above) raises fiscal concern for numerous other political subdivisions outside of St. Louis County. The legal implications of this decision reach statewide. They most obviously affect revenue but also could extend to a variety of non-financial, political or regulatory provisions, as well.

A brief perusal of Chapters 66 and 67 of the *Missouri Revised Statutes* shows St. Charles and Jackson counties, and many others, with revenue based on a population factor of the type proscribed by the recent Supreme Court case. One would have to spend considerable time searching the statutes to determine the full impact on financial and non-financial

local governmental provisions, but it seems extensive.

St. Louis has been seeking the Holy Grail of fiscal and governmental reform since at least the first Board of Freeholders in 1926. The recent Missouri Supreme Court decision defines a fiscal urgency that further intensifies the ongoing saga. The old proverb, or curse, "we live in interesting times" certainly applies to the St. Louis area.



October 2, 1949/Fitzpatrick
Yesterday's Castle

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