

County Dissolution

Besides home rule, there is no other Constitutional restriction on consolidation, detachment, or dissolution of a local government by the State.¹ Counties are creations of the state legislature, and the legislature has provided in County Law § 50: “Whenever the legislature divides a county or alters its boundaries, the act shall provide the method and manner of the disposition of assets and apportionment of liabilities of such county or counties.” Unlike provisions in both Town Law and Village Law that set forth procedures for the voluntary dissolution of towns and villages, there is no similar provision for dissolution of counties at the local level.

Article IX, § 2 of the NYS Constitution contains a limitation on the legislature’s ability to enact legislation regarding the “property, affairs or government” of a local government by requiring a request from at least two-thirds of the membership of the local government legislative body or upon request of its chief executive officer concurred in by a majority of the local legislative body (a home rule request).

The dissolution of a county government likely involves a matter for which a home rule request must be received from the county legislature. County dissolution would seem to clearly involve the county’s property, affairs, and government. While it could be argued that dissolution of a county is a “matter of state concern,”² and therefore, not requiring a

¹ The language within Article III, § 5 of the NYS Constitution would have the effect of prohibiting the Legislature from dissolving a county by its provision that established counties (except Hamilton County), “shall always be entitled to one member of assembly”. However, this language within the NYS Constitution was essentially held to be void by the US Supreme Court, see Reynolds v. Sims, 377 US 533 (1964) and applying the rule of apportionment strictly according to population to New York, WMCA v. Lorenzo, 377 US 633 (1964). Subsequently, the Court of Appeals found that, based on the Supreme Court rulings, a full Assembly seat could no longer be guaranteed to each county, see Matter of Orans, 15 NY2d 339 (1965). A new constitution proposed by the Constitutional Convention of 1967 would have eliminated its unenforceable provisions, but voters rejected the proposal (the whole thing was presented as one package). Thus, Article III of NY’s Constitution retains the old language, now “dead letters” as one commentator puts it.

² In City of New York v. Village of Lawrence, 250 NY 429 (1929) the Court of Appeals treated a municipal boundary change as a matter of state concern. The court held that although “annexation or disconnection” of a city’s territory “does in greater or lesser degree affect the property, affairs or government of [a] city,” the “property, affairs or government” language in the home rule article did not limit the legislature’s power to act by special law, adopted without a home rule message, to transfer territory from the City of New York to the adjacent Village of Lawrence. The 1964 Home Rule amendment altered the legislature’s traditionally plenary authority over municipal boundary changes, however. Article IX now gives constitutional protection to an aspect of local boundaries, and it does so in a manner clearly intended to protect existing boundaries from alteration by the state without the consent of the affected localities. Taking the amendment in combination with the other extensions of the scope of home rule, it could be argued that local boundaries are no longer a matter of “state concern,” but instead should be protected as an aspect of local “property, affairs or government.” However, there is no express constitutional limitation on other forms of boundary alteration, such as consolidation or dissolution. In fact, since the Constitution limits annexation and does not address local boundaries generally, it could be interpreted as ratifying the traditional judicial treatment of all other aspects of local boundaries as matters of state concern subject to the plenary authority of the legislature.



home rule request,³ the legislature would likely require a home rule request for political and practical reasons, as well as legal analysis, before moving forward with a county dissolution bill.

Assuming that a home rule request or message is required, a further question is whether a home rule request must also be received from any other affected counties, presumably, those counties of which the dissolved county would become a part. To the extent that the legislature's special act would provide that other abutting counties that "annex" the dissolved county's territory would be responsible for the dissolved county's liabilities, equipment, property, or employees, it would seem that home rule requests would also have to be submitted by these other affected counties. The requirement for a home rule request can be obviated by a certificate of necessity from the Governor, which recites facts constituting an emergency requiring enactment of such law, and a two-thirds passage in both the Senate and Assembly.

Dissolution of a county is a function of the State, most likely upon home rule request, which would seem to be required from all affected counties, and the State would have discretion over the disposition of assets and liabilities.

³ Although it may seem odd to provide a local government with greater protection against the forcible annexation than the removal of one of its boroughs, in City of New York v. State of New York, 76 NY2d 479 (1990), the Court of Appeals held that chapter 773 of the Laws of 1989, a "special law that prescribes a procedure for determining Staten Islanders' interest in secession from New York City, and the basis on which they would wish such separation to be accomplished," was not an "act in relation to the property, affairs or government" of the city of New York, and thus, did not require a home rule message under the NYS Constitution. Judge Hancock in his dissent wrote, "The court today holds that a measure which establishes a detailed process aimed at splitting New York City into two separate cities -- while depriving four of its five boroughs from any voice in the process -- does not affect its property, affairs or government." He goes on to ask, "what will 'affect' the property, affairs or government of an existing city so as to necessitate home rule compliance?"

