ISSUES

INVISIBLE GOVERNMENTS: PENNSYLVANIA'S MUNICIPAL AUTHORITIES

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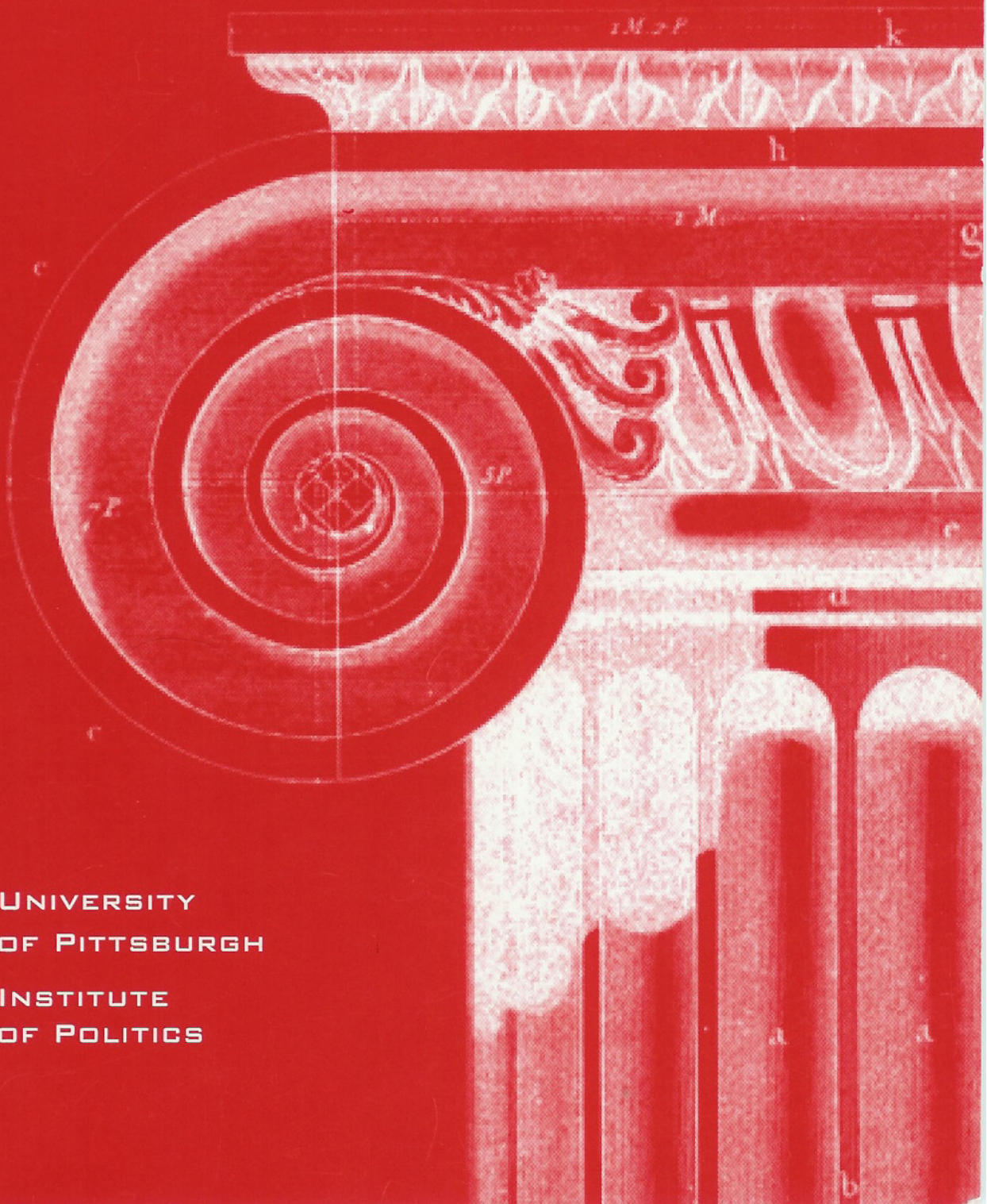

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Chapter 1
Invisible, Invulnerable

Here's a quiz for you as a civic-minded Pennsylvanian:

A. When was the last time you voted in an election for a member of your local municipal water authority? Or sewer authority?

B. When was the most recent time you received a notice of a public hearing on a rate increase by your local water authority? Or sewer authority?

C. When last did you notice on your property tax bill an item for paying off bonds for your local municipal water authority? Or sewer authority? Or solid-waste disposal authority?

O.K. This test was a fooler. The purpose is to demonstrate how little most of us know about the municipal authorities that play an important role in our pocketbooks and the development of our communities. As one expert, Alberta Sbragia of the University of Pittsburgh, puts it, "These authorities are so much a part of the landscape that they are invisible."

Yet the 2,484 municipal authorities in Pennsylvania have at least $2.2 billion in operating revenues and at least $14.9 billion in debt (outstanding bonds). We say "at least" because these figures totaled at the Pennsylvania Department of Community and Economic Development represent only the 80 percent of Pennsylvania's municipal authorities that bothered to file required reports. That constitutes one reason they are called "invisible governments."

Back to that quiz.

Question A is a trick, particularly if you as a conscientious citizen named a date. The reason is that members of municipal authorities are appointed, not elected. They are named by what is called "the governing body," the elected officials of a county, city, township or other municipality that has established the authority under the state's 1945 Municipal Authorities Act (which we hereafter will call the 1945 MAA).

This is both the glory of the municipal authority concept and, in some eyes, its drawback. But the point is that you the citizen have no direct way via the ballot to affect the makeup of an authority board—for reasons that will be explained later. The answer to Question A is that you've never voted because that is not the way it's done.

Question B is another prank, for two reasons. One is that you may receive your water and maybe your solid-waste disposal from a private company. In that case, you may have received a notice of a proposed rate increase and of a public hearing on the subject. If you are served by a municipal authority, you may or may not have been given that courtesy; it is not required under the 1945 MAA.

Question C is a real fooler. That's because, by definition, municipal authorities may *not* use general-obligation bonds that require tax money. Instead,

their very reason for being is to utilize revenue bonds, paid for by fees and service charges, such as based on the volume of water used.

Indeed, the system of revenue bonds and governmental authorities of all kinds—turnpike, urban redevelopment, housing, airport, as well as municipal authorities—was established decades ago to bypass tax levy and bonding limits that citizens had placed upon state and local governments either through constitutional revisions or legislation.

But, as with almost everything regarding municipal authorities, there are a couple of exceptions. One is known as "guaranteed" bonds. We'll be explaining that later, too, in Chapter 4. But for our purposes here, this exception underlines one reason authorities are not a generally known subject. Not only are authorities and their financing mechanisms complex, but for almost every rule, there is an exception. The deeper one delves, the more temptation there is to throw up one's hands in despair.

The other exception—in a practical sense—is the "leaseback" system. Example: A school district can establish an authority which issues revenue bonds to pay for the construction of new facilities, such as classroom buildings. Obviously, the latter can't pay for themselves in the sense that a water system with paying customers can. But through a "leaseback" arrangement, the school district pays off the bonds through its property tax and other revenues. That is another way in which a local government can bypass debt limits and bonding restrictions.

At this point, a restricted definition is in order. This *Issues* brief will deal specifically with municipal authorities, and not state authorities such as the Pennsylvania Turnpike Authority. Nor does it address urban redevelopment authorities and housing authorities, authorized under separate laws.

Nor will it cover transportation authorities, such as the Port Authority Transit (PAT) of Allegheny County, or parking authorities.

The problem is that the 1945 MAA language is too broad for the purposes of this Institute of Politics document. It talks about a host of possibilities—transportation, marketing, shopping, terminals, bridges, tunnels, flood control projects, highways, parkways, traffic distribution centers, parking spaces, airports, parks, swimming pools, recreation grounds, sewer systems, waste disposal facilities, waterworks and distribution systems, steam-generating facilities, hospitals, health centers, buildings for private, nonprofit, nonsectarian secondary schools, colleges and universities, as well as state-related universities and community colleges, motor buses for public use, and industrial development projects.

In seeking an appropriate definition, we turned to the Pennsylvania Municipal Authorities Association for

a description of agencies within its membership of 558 authorities. Its executive director, Douglas E. Bilheimer, said that 90 percent of its members are water and/or waste water (sewer) authorities. The figures: sewer, 258; water, 142; water and sewer combined, 100; solid waste and landfill, 10; multi-purpose (combined water and sewer and parks, for example) 15; and "other," such as ambulance services, golf courses, and recreational and park systems, 33.

So, although some questions raised about authorities could apply across the board, we will largely restrict our consideration to those included in the scope of Bilheimer's organization.

But, first, to set the stage for our discussion of municipal authorities, some anecdotes.

Chapter 2
Accusations and Accolades

To gain a flavor of the complexity of the debates surrounding Pennsylvania's municipal authorities, here are some comments and anecdotes from varying viewpoints:

Douglas Bilheimer, executive director of the Municipal Authorities Association: "The volunteers on these authority boards give service above and beyond what you would expect. They are your neighbors who take time out of their lives to do public work. In about half the authorities, there is no compensation at all for board members. The average is about $50 to $100 a month. When people criticize compensation, they overlook the fact that the figures are set by the elected officials on the governing board that established the authority. Yes, there are abuses in some cases where authority members appoint themselves as officers, gaining added income. Our association is against that. We have supported recommendations across the years; we have not stonewalled. Some legislators insist, 'Not enough!' We say, 'Why take it further?'"

State Sen. Allen G. Kukovich of Westmoreland County: "When I was running in a special election [for the State House of Representatives] back in 1977, some guy came in and told me about hiring practices in the Municipal Authority of Westmoreland County. 'Nepotism,' he said. And a labor situation where some people did a lot of work, and others did little. I found it impossible to check the validity of these claims. There was no one to go to except the authority itself. Then in the mid-1980s, I got complaints from officials in one of my townships that its municipal authority had become more powerful than the governing body, with a lot of wheeling and dealing, patronage problems, and utility rates going up. I said,'That's your problem; you created them.' They replied, 'We can't get rid of them.' Then the Greensburg *Tribune-Review* did its [1992] series on the Municipal Authority of Westmoreland County, and

I knew I had to move on the problem. That's when some of us introduced the resolution that resulted in an investigation by the Local Government Commission." (For more on the latter, see Chapter 6.)

Richard Gazarik, co-author of the Greensburg *Tribune-Review* series: "I had been covering local government, including municipal authorities, and knew there was a gap there. So I persuaded the newspaper to establish an 'authorities' beat, rather than having coverage scattered out among reporters on a regional basis. One result was the series that Chris Rodell and I did on the Westmoreland County Municipal Authority. It got a lot of attention. But you know something—nothing since has changed. Nothing!"

Joseph Wiesner of Robinson Township, Allegheny County, past president of the Municipal Authorities Association of Pennsylvania: "When people talk about authorities, they forget the human side. Let me give an example. During the years when the steel mills were closing, people faced mortgage foreclosures and utility bills they simple couldn't meet. I was a Robinson Township officer then, and I saw the way that the municipal authorities were able to give people a break by delaying their payments. The private utilities couldn't do that. They had to answer to stockholders. Yes, like anything else, there are a few bad apples in the barrel. But that's no reason to throw out the baby with the bath water."

State Rep. Thomas Petrone of Allegheny County, ranking Democrat on the House Urban Affairs Committee: "When I became a legislator, I began hearing about questionable authorities. Often from people who worked for authorities; they volunteered information. That there were no-bid contracts handed out, often in huge amounts. Qualified people who weren't political being summarily dismissed or their careers sidestepped, while people less qualified were pushed up. Things that should be looked into. When we began hearings, the more we dealt with the problems, the more people tried to block us. Water and sewer authority people clammed up. Some people got scared and asked the political powers to get us to turn down the heat. This is not a Republican or Democratic issue. When we made a request for subpoena powers, it really scared some people. We didn't get them."

Christopher J. Moonis, director of legislative affairs for the Pennsylvania League of Cities and Municipalities: "For us, changing the authorities law is not an issue crying out. The act is a blessing. You can escape the politics. There is no need for reform legislation."

With this glimpse of some of the issues that have arisen on the subject, we now turn to history and the reasons the system of authorities evolved in the United States.

Chapter 3
The Ascendancy of Authorities

First, a definition from *The Pennsylvania Manual*, the compendium of state government information published biennially:

> Authorities: The authority is a special kind of local unit. They are not general government entities as are cities, boroughs, and townships. They are set up to perform a special service.
>
> An authority is a body corporate and public authorized to acquire, construct, improve, maintain and operate projects, and to borrow money and issue bonds to finance them. Projects include public facilities such as buildings, including school buildings, transportation facilities, marketing and shopping facilities, highway, parkways, airports, parking places, waterworks, sewage treatment plants, playgrounds, hospitals and industrial development projects.
>
> An authority can be organized by any county, city, town, borough, township or school district of the Commonwealth, acting singly or jointly with another municipality. An authority is established by ordinance by one or more municipalities. The governing bodies of the parent local unit or units appoint the members of the authority's board.
>
> If incorporated by one unit, the board consists of five members; if comprised of two or more local units, there is at least one member from each unit, but no less than five. The board carries on the work of the authority, acquires property, appoints officers and employees, undertakes projects, makes regulations and charges, and collects revenue from services of the facilities or projects.

The original reason for the establishment of authorities was the restrictive provision for incurring debt imposed by the Commonwealth prior to the 1967-68 constitutional amendments, but they have proven useful mechanisms particularly for joint municipal projects. As of January 1997, there were 2,484 authorities in Pennsylvania. They have continued to grow at a substantial rate from the 1960 figure of 1,398.

In this *Issues* brief, we will be discussing municipal authorities, those dealing particularly with utility services such as water and sewers and with economic development. We will not be touching upon state authorities, such as the Pennsylvania Turnpike Authority, or housing or parking authorities, although there are many similarities with both the advantages and the drawbacks of municipal authorities.

Perhaps the best description of how and why authorities have become so much a part of the American landscape—although usually in a virtually invisible way—comes in a book titled

Debt Wish: Entrepreneurial Cities, U.S. Federalism, and Economic Development. The author of the book, published in 1996 by the University of Pittsburgh Press, is Dr. Alberta Sbragia, now director of Western European Studies in Pitt's Center for International Studies.

In her preface, Sbragia writes: "I became interested in capital investments and the constraints imposed on governments by needing to borrow for such investment during my dissertation research on public housing in Milan, Italy. I then decided to carry out comparative research, thinking that I would probably write a comparative book. Yet as I delved more deeply into the topic, I realized that the American case was the most interesting. As my research progressed, I decided that the American case deserved a full-length in-depth analysis in its own right."

Further study as a visitor at the Harvard Business School resulted in *Debt Wish*.

Three major factors emerge in her book.

A. Handcuffing government

Americans in their instinctive desire to curb local government and hold down taxes had, by early in this century, virtually handcuffed the abilities of cities in particular to address problems caused by population and economic growth.

State legislatures, responding to these public pressures, plus the growth of the federal government, resulted in "a shrunken role of cities in the American system of government," Sbragia contends. "City government lost much of its formal autonomy. Major (and many minor) policy initiatives needed the approval of state legislatures."

"Cities also became limited informally. They began to compete for residents, employment, and tax revenue with the suburbs that provided an escape for citizens unhappy with the city. Although city officials have long been aware of the limits within which they worked, scholars writing about urban politics in the 1960s and 1970s usually ignored these limits. Scholars regarded the politics of cities as originating in the political life of cities, rather than as responses to forces outside."

Political scientists in explaining how all this came to pass cite what is called "Dillon's Rule." This "rule" holds that local governments are "creatures of the state." It was laid down by John Forrest Dillon, a U.S. circuit judge, who in his 1872 "Treatise on the Law of Municipal Corporations" drew on his previous experience as chief justice of the Iowa Supreme Court during a period of turmoil over municipal railway bonds.

In addressing numerous cases involving municipal assistance to various private enterprises, both railway and manufacturing companies, Judge Dillon decided that cities in their competitive eagerness to attract a railway line or a manufacturing firm had been profligate in their investments and had intervened in economic affairs that were "better left to private enterprise." Dillon concluded that state control of

municipal government—finance in particular—would minimize the mingling of public and private functions, which he saw as detrimental in the operations of municipalities. Hence "Dillon's Rule."

B. Bypassing the shackles

If Americans are good at erecting barriers to governmental action, they are equally adept at finding ways around those very roadblocks when it is obvious *something* has to be done.

The method of "escape" was the invention of revenue bonds. They are unlike general obligation bonds, which are paid off by taxes—usually taxes on property. Instead, revenue bonds are paid off by dedicated revenues from fees or other charges for the services provided by the facility. For example, bonds for a new water-treatment plant are liquidated by fees charged to users of water from that plant, based on how much they use.

Sbragia writes that the city of Spokane, Washington, was the first issuer of revenue bonds to be recognized as such. The city was unable to issue general obligation bonds to finance a waterworks system because it had reached both its tax and debt limits. It decided to borrow, using the revenue from the waterworks system as the source of repayment.

The process weathered two successive legal challenges in the state supreme court of Washington—Winston vs. City of Spokane in 1895 and Kenyon vs. City of Spokane in 1897—and became the model for other cities in Washington: Tacoma, Seattle, Aberdeen, Centralia, Everett, and Walla Walla. Sbragia notes that Western municipalities became experimental laboratories for the nation in the development of revenue bonds because the principles of home rule were particularly strong there. Even though there was an absence of state enabling legislation, Western cities felt no need to ask for permission from their state legislatures.

Before long, Washington constitutionally and then Illinois allowed revenue bonds to be issued, primarily for developing water systems. Other states amended their constitutions to sanction the practice—Michigan in 1909, Ohio in 1912, and Pennsylvania in 1913 (see Chapter 4). The spread of revenue bonds became more rapid after World War I.

C. And the Biggest Step

The next big step came in 1926 when the Port Authority of New York offered two issues totaling $34 million. That offering is considered "a landmark in the history of revenue-bond financing," not only because the amounts were larger than ever before but also because they were for something new—toll bridges.

But the truly historic aspect was that they were issued by an "authority," rather than a city, town, or district. That opened a whole new frontier for municipal financing.

Apparently, the term "authority" emerged from an ironic English critic who thought the new type of agency

had too much authority. That twist of history is similar to the way the term "Gothic" for some of the most beautiful cathedrals and other buildings in the history of architecture came from traditionalists blasting the new style by linking it to the barbarian Goths instrumental in overthrowing the Roman Empire.

Authorities and revenue bonds became particularly important during the Great Depression of the 1930s for hard-pressed communities caught between taxing and debt limits and, on the other hand, dwindling revenues from eroded tax bases.

Sbragia describes how the administration of President Herbert Hoover used the 1932 establishment of the Reconstruction Finance Corporation (RFC) in responding to the cries for help from mayors facing widespread unemployment. Hoover divided public works into those that were productive (that is, self-supporting) and those non-productive (not self-supporting). "He was vehemently opposed to federal financing of unproductive works, arguing that the jobs they created were not worth the cost."

When Franklin D. Roosevelt became president in 1933, his administration in establishing the Public Works Administration (PWA) took the route of pushing as fast as possible projects that provided jobs. The use of revenue bonds was one way to achieve prompt action because municipalities could circumvent the taxing and debt limits to borrow through the PWA. By 1937, the PWA had bought not only $225.3 million in general-obligation bonds but $166 million in the "new kind," revenue bonds.

Therefore, in American municipal financing, the concept of authorities using revenue-bond financing came to be seen as a welcome panacea for at least three reasons:

1. As already described, this "twin" offered a way for hard-pressed governments to circumvent tax and debt limits imposed by state constitutions or state legislatures or local referenda.

2. The process allowed for a fairer distribution of the burden of paying for public services. That is, revenue bonds were paid off by the actual users of the facility and in proportion to their use. For example, water customers paid only for the gallons they used, whereas in the regular tax system there was no such correlation.

This arrangement, in turn, presumably allowed taxes and general-obligation bonds to go for amenities such as police and fire protection, streets and parks where a specific cost-benefit ratio couldn't easily be established for a given citizen, household, or business.

3. Though seldom mentioned in discussions of the subject, one impetus for the establishing of authorities was the "good government" movement in the early 20th century.

Faced with continuous corruption in many city governments, including boss-run political machines, reformers were anxious to get as many functions as possible "out of politics." Authori-

ties run by high-minded citizens with professional backgrounds in finance, law, or engineering—men who didn't have to run in elections for public office and thus get "dirtied" by politics—seemed a perfect way to operate many governmental services on a more business-like basis.

In many cases, that has been the happy result. An outstanding Pennsylvania example came with the appointments in the late 1940s to the first Urban Redevelopment Authority of Pittsburgh by then Mayor David Lawrence, who served as chairman. In order to assure his Democratic administration of corporate support for the rebuilding program that became Pittsburgh's Renaissance I, Lawrence named numerous Republican business leaders to the authority board, to the point that he joked that this was the first time he had selected a board in which he was in the minority.

But the story of authorities also has had two quite divergent results, both of them to the consternation of reform-minded citizens and academics.

One outcome has been the realization that in too many cases, politics intrudes heavily. Either the governing board that established the authority plays politics with appointments or authority board members themselves can't resist temptations to indulge in political games, including the use of no-bid contracts for rewarding supporters.

On the other hand, a different complaint has arisen. That is that because authority board members do not face the voters in an election, voters find they have no recourse if an authority does what it pleases. There is no way to follow the proverbial advice to "throw the rascals out." Even governing boards can find "their" authority riding off in its own direction, regardless of the effects on zoning or town planning efforts by the municipal government.

The issue has gone beyond the theoretical in Pennsylvania as actions by a few municipal authorities have brought in the 1990s demands for reforms.

We now turn to the Pennsylvania story.

Chapter 4
The Pattern in Pennsylvania

"Dillon's rule" obviously applies to municipal authorities in Pennsylvania as it does to every other type of local government. But, interestingly, some knowledgeable people in the field feel it doesn't apply sufficiently, citing a lack of sufficient state requirements for accountability and transparency. (More on this later.)

"Dillon's rule" holds that "local governments are the creatures of the state." As described in the previous chapter, the name comes from an 1872 treatise by an Iowa judge.

That doctrine has underpinned

the various steps taken historically in Pennsylvania concerning municipal authorities, revenue-bond financing, and the like.

Restricting Municipal Borrowing—1874

Whether or not "Dillon's rule" played a specific role in a landmark event in Pennsylvania in 1874, that was the year a constitutional amendment was passed restricting municipal borrowing. (The 1838 constitution had been amended in 1857 to limit state borrowing.)

The reasons are explained in a Pennsylvania Economy League study published in preparation for the 1967-68 Constitutional Convention. It said the 1874 restrictive amendment "reflected reaction to rapidly mounting debt during a period of rapid population growth for Pennsylvania cities... 21 percent up for the decade before 1874." The populations of Pittsburgh, Allegheny (then a separate city), Scranton, Wilkes-Barre, and Williamsport doubled in that period right after the Civil War.

Another reason was the rapidly growing practice of cities subscribing to railroad stocks as they vied for railroad access to markets.

The restrictions apparently placed unbearable burdens upon Philadelphia, in particular. The Economy League study noted that between 1911 and 1951, there were five statewide ballot issues liberalizing debt restructuring for Philadelphia.

Revenue Bonds Accepted—1913

As noted in Chapter 3, a significant breakthrough came in 1913, when voters approved a constitutional amendment that accepted the practice of what became known as revenue-bond financing.

As explained by the Economy League's "preparatory books" described above, "the borrowing capacity of the municipalities was expanded by Section 8, added to the Constitution in 1913 to permit additional borrowing by counties, boroughs, and cities for construction or acquisition of **self-sustaining** waterworks, subways, underground railways and street railways. " The emphasis on "self-sustaining" is ours because that's the key to the revenue-bond concept.

But the establishment of authorities didn't become prevalent until two decades later. A helpful history comes in a green-cover booklet published by the Pennsylvania Department of Community and Economic Development (DCED) titled "Municipal Authorities in Pennsylvania." It reads:

"Municipal authorities in Pennsylvania, as in many other states, had their beginning in the Depression of the 1930s. As part of its fiscal policy, the federal government granted money to states and municipalities for public works providing both employment opportunity and public facilities. These grants had to be matched by the recipient unit, but many states and localities were unable to pay their shares,

due both to reduced revenues and restrictive debt limits.

"A number of states, including Pennsylvania, then created state authorities to borrow outside constitutional debt limits by making use of revenue bonds. In a number of cases, the states permitted specified authorities to be formed by municipalities.

"Three states—Pennsylvania, Alabama and South Dakota—passed general enabling legislation allowing their municipalities to create authorities. The Municipalities Authorities Act of 1935 allowed financing of public works projects outside the municipal debt limits set by the state constitution," the DCED document explains.

Again, the Economy League's preparatory booklets for the 1967-68 Constitutional Convention outline the rationale for establishing municipal authorities in the first place. One was written by David Kurtzman, director of the League's taxation and finance section, a man whose record included being a state Secretary of Administration, a state Secretary of Education, and an interim Chancellor of the University of Pittsburgh. The Kurtzman analysis cited:

- The need for a method of financing public improvements that does not conflict with constitutional and statutory debt limitations.
- The need for an administrative agency to manage public enterprises which, in certain cases, have common characteristics.
- The need for an agency which can cross governmental boundary lines for effective handling of intercommunity problems.

That helps explain the definitive actions that came after 1935. One was the passage by the State Legislature of the Municipality Authorities Act of 1945 (described in this *Issues* brief as 1945 MAA). The second was approval by the voters on April 23, 1968, of the Constitution as rewritten by the 1967-68 Constitutional Convention, which contained a Unit Debt provision. That directive to the State Legislature resulted in the Unit Debt Act, of 1972. We will now describe those successive landmarks in the story of municipal authorities in Pennsylvania.

Municipal Authorities Act of 1945

For more than 50 years, this statute (1945 MAA) has been the basic law under which municipal authorities are established, operate, and can be terminated. *The Pennsylvania Manual's* definition of municipal authorities can be found in Chapter 3.

The law itself can be found in the Pennsylvania statute books. A copy also is carried in the Pennsylvania DCED's green-cover manual, "Municipal Authorities in Pennsylvania."

The statute contains 21 sections, including various definitions; "purposes and powers," with general and bond sections; remedies of bondholders; governing body; investment of authority funds; moneys of the authority; competition in award of contracts; accep-

tance of lands, water and water rights; acquisition of capital stock; use of powers, limitation of powers, termination of authority; tax exemptions; and conveyance by authorities to municipalities or school districts of established projects.

A listing of the multitude of activities possible under 1945 MAA can be found in Chapter 1.

A handy way to focus on the municipal authorities is to note a listing in the DCED manual of authorities NOT covered by 1945 MAA. This list of "local authorities of a specialized nature" authorized under separate state laws includes:

County authorities. County water supply authorities. Housing authorities. The Allegheny Regional Asset District. Industrial and commercial development authorities. Metropolitan transportation authorities.

Parking authorities (in Allentown, Erie, Harrisburg, Lancaster, Philadelphia, Pittsburgh, and Reading). Pennsylvania Intergovernmental Cooperation Authority. Philadelphia Regional Port Authority. Port of Pittsburgh Commission. Public auditorium authorities (two have been formed, both in Allegheny County—the Stadium Authority of the City of Pittsburgh, which constructed Three Rivers Stadium, and the Public Auditorium Authority of Pittsburgh and Allegheny County, which constructed the Civic Center and the Lawrence Convention Center).

Redevelopment authorities. Residential finance authorities (namely, the Allegheny County Residential Finance Authority to help finance below-market-rate mortgages for qualifying home purchasers). Second class county port authorities (namely, Port Authority Transit (PAT) of Allegheny County). Third class city port authorities (namely, the Erie-Western Pennsylvania Port Authority).

Another way to slice the pie is to note the types and dates of legislation covering authorities other than those in the 1945 MAA. They include housing, 1937; urban redevelopment, 1945; veterans housing, 1947; parking, 1947; public auditorium (for Allegheny County and Pittsburgh), 1953; port authority (for Allegheny County), 1956; and metropolitan transportation (for Philadelphia), 1963.

1967-68 Constitutional Convention

The next milestone in the history of authorities in Pennsylvania came with the Constitutional Convention of 1967-68. Proposals to hold such a "Con-Con" had been rejected five previous times by Pennsylvania voters. This time it was packaged as a "limited convention," with subject matter carefully circumscribed (mostly to avoid the touchy subject of a graduated state income tax), and was backed by leaders of both political parties. The subjects which were allowed included home rule, the minor judiciary, and local-government matters.

Therefore, among the permissible subjects brought before that conven-

tion of elected delegates was the question of local-government debt management. By that time, as a later (1970) Economy League study reported, over 65 percent of local debt outstanding across the Commonwealth was authority debt. It commented: "Thus, the significance of the debt limits in the 1874 Constitution as a control over local borrowing was sharply diminished."

At this point, one other piece of history needs to be noted. In 1966, the debt limits for political subdivisions other than Philadelphia were increased to 15 percent of the assessed value of its taxable real estate. The governing body on its own could incur debt up to 5 percent of that assessed value. To go above that percent, it needed approval of its voters.

This 1966 event was the benchmark against which changes by the 1967-68 Con-Con can be gauged, as we shall see later.

At the end of considerable discussion, the Con-Con wrote and passed the following "Local Government Debt" passage in the amended constitution as Article IX, Section 10:

> Subject only to the restrictions imposed by this section, the General Assembly [State Legislature] shall prescribe the debt limits of all units of local government including municipalities and school districts. For such purposes, the debt limit base shall be a percentage of the total revenue, as defined by the General Assembly, of the unit of local government computed over a specific period immediately preceding the year of borrowing. The debt limit to be prescribed in every case shall exclude all indebtedness (1) for any project to the extent that it is self-liquidating or self-supporting or which has heretofore been defined as self-liquidating or self-supporting, or (2) which has been approved by referendum held in such manner as provided by law. The provisions of this paragraph shall not apply to the City or County of Philadelphia.
>
> Any unit of local government, including municipalities and school districts, incurring any indebtedness, shall at or before the time of so doing adopt a covenant, which shall be binding upon it so long as any such indebtedness shall remain unpaid, to make payments out of its sinking fund or any other of its revenues or funds at such time and in such amounts specified in such covenant as shall be sufficient for the payment of the interest thereon and the principal thereof when due.

The voters of Pennsylvania on April 23, 1968 approved the new State Constitution as revised by the 1967-68 Con-Con.

Unit Debt Act of 1972 (Act 185)

That paved the way for the third landmark event, action by the State Legislature to pass legislation to carry out the "shall prescribe" mandate of the newly written Section 10 of Article IX.

That statute, enacted by the 1972 Legislature as Act 185, was entitled "the Local Government Unit Debt Act."

It should be noted that that step wasn't easy. The Legislature let pass on April 23, 1972, the four-year deadline set by the Con-Con for fleshing out with specific legislation the guidelines that the convention had set on debt management.

That presumably left municipalities and authorities high and dry in terms of issuing bonds. That trite expression takes an ironic twist in that it was the flooding that wracked many communities in the wake of Hurricane Agnes in June, 1972, that sluiced the Legislature into action. The directive of Con-Con on debt management became effective when Senate Bill 1410 was passed and signed into law by Gov. Milton Shapp on July 12, 1972.

Fundamentally, local government debt management was changed from a property tax assessment foundation to a total-revenue basis.

Before: Debt limits on municipalities were based on the municipality's assessed valuation—that is, the total value of real estate property as assessed for tax purposes. As outlined in the 1966 changes described above, the debt limits for political subdivisions other than Philadelphia were set at 15 percent of the total assessed value. The governing body on its own could incur debt up to 5 percent of that assessed value. To go above that percent, it needed approval of its voters.

After: Specific debt limits were taken out of the State Constitution (except for Philadelphia). The Con-Con recognized the need to retain limits but decided to leave those specifics to the Legislature, a way to allow greater flexibility in financing. (That was why definitive action by the Legislature was crucial and the reason a deadline was set.)

In the words of the 1970 Economy League report, the Con-Con "recognized local government as a separate and distinct entity capable of rational decision-making and effective administration. . . ."

What the Legislature did in the 1972 Unit Debt Act was to:

1. Exclude from debt limits all indebtedness approved by voters of a municipality ("electoral debt" is the technical term).

2. Provide that "nonelectoral" debt —that which a municipality incurs without going to the voters—will be based on revenues, rather than assessed valuation.

The borrowing base is defined as an "arithmetic average of revenues received in the three full fiscal years prior to the year in which the debt is to be incurred." That means the inclusion of all revenues—and not just those from real estate levies. That covers income from local wage and sales taxes and from recurring income such as the "liquid fuel grant"—a municipality's share for roads from the state gasoline tax. And it includes long-term commitments made to municipal authorities, known as lease-rental debt.

The best definition of lease-rental debt comes in the "Debt Management Handbook," a red-cover manual issued by the state DCED. "Under this type of arrangement, an authority (or other government entity) acquires or constructs a facility for the purpose of leasing it to a local government unit, such as a school district or municipality. The authority arranges the financing and issues debt. It may arrange for the construction or acquisition of the facility, or it may pass this task to the leasing municipality."

Before we detail the important exceptions, let us outline the basic limits on "nonelectoral" capacity.

1. For counties, multiply the borrowing base by 300 percent. (That is, if a county has a revenue base of $100 million, it can borrow up to $300 million without going to the voters.) The overall limit, including lease-rental debt, cannot exceed 300 percent of the borrowing base.

2. For first class school districts (namely, Philadelphia), multiply the borrowing base by 100 percent. Elements in the overall limit are the same as defined for counties (see just above).

3. For all other local units of government, multiply the base by 250 percent. The overall limit is the same as defined above.

However, the reader will not be surprised to learn that there are exceptions to what is included in that revenue base.

For example—a crucial point for our discussion—revenues, rates, user charges, etc., which are pledged to self-liquidating debt are excluded. That covers the usual type of revenue bonds. So in adding up "revenues" under the post-1972 system, the income that goes to pay off revenue bonds doesn't count against the debt limit.

As with anything else on this subject, however, there is an exception to that rule—"guaranteed" revenue bonds. Those are revenue bonds for which the governing municipality that established the authority pledges its support. The "full faith, credit, and taxing power" of the municipality is put behind the bonds, meaning that, if necessary, tax revenues can be used to pay them off. (Note: This is why in Chapter 1 we said there are exceptions to the general rule that property taxes don't go to pay off revenue bonds.)

But in that case, the expected revenue to pay off the bonds is counted in the revenue and consequent debt-limit calculations described above.

A municipality can always go to the voters for approval of a bond issue, including a "guaranteed" issue for an authority. If voter approval is received, this "nonelectoral debt" can be reclassified as an "electoral debt." In that eventuality, it doesn't count against the "nonelectoral debt" limit.

A final note of caution:

This chapter constitutes a broad-brush view of the subject and in no way purports to cover all the nuances and exceptions within Pennsylvania municipal authority law. Lawyers specializing in the subject and the State De-

partment of Community and Economic Development remain the best sources for more detailed information. Any questions should be directed to:

The Legal Office
State Department of
Community and Economic
Development
Room 524 Forum Building
Harrisburg, PA 17120
Telephone: 717-783-8452

But the story of any organization goes beyond laws and rules. It involves the action and interactions of people, including those who operate strictly within bounds and those who don't.

We now will turn to that part of the Pennsylvania record of municipal authorities.

Chapter 5
Examples or Exceptions?

"Auditors charge Alcosan with waste and inefficiency."—Headline in June 12, 1987, Pittsburgh *Post-Gazette*

"Water board's 'kin' make big payroll splash." — Headline in April 27, 1992, *Tribune-Review* of Greensburg

By and large, the story of municipal authorities in Pennsylvania is a sterling one. Proof is the fact that the number of authorities has grown to 2,484, up from 1,398 in 1962.

Clearly, something is being done right. In most cases the theory has worked that conscientious, knowledgeable citizens could be attracted to serve on boards at personal sacrifice in time and money, in order to make possible the financing and development of needed projects for their communities, avoiding politics in the process.

But, as in any field of human endeavor, there have been exceptions, and these have raised questions about the system. The best analogy: Just because 95 percent of citizens commit no crimes doesn't mean you don't need police departments.

In the past two decades, questionable situations have arisen here and there, giving impetus for calls for reform.

Bearing in mind that the vast majority of municipal authorities don't deserve being thereby tainted, here are some examples that have caught widespread public attention.

Perhaps the most notorious instance is that of the Allegheny County Sanitary Authority—Alcosan for short—which serves the city of Pittsburgh and 77 other municipalities. Questions raised about the agency brought a four-month audit in 1987 by the office of Allegheny County Controller Frank Lucchino.

Lucchino's office cataloged "a pattern of abusing the public trust" that extended from excessive travel expenditures to splitting purchases to avoid receiving bids.

The *Post-Gazette* in a June 12, 1987, editorial, "Alcosan: wallowing in waste," listed what it called "the more eyebrow-raising examples" listed in the report:

- So much overtime is being run up that 52 percent of the shift workers, including security guards, are making more than $40,000 a year.
- So many summer employees have been put on at one point (at $1 to $2 above the minimum wage) that they outnumber the agency's regular 300-member work force.
- Board member Eugene DePasquale ran up $32,414 in travel expenses over five years for technical conferences in Munich, Athens, Vienna and other cities, including Los Angeles, where his plane landed at 11:40 a.m. for a one-day conference that started at 9 a.m. and for which his hotel bill was prepaid for four days.

The *Post-Gazette's* news story carried further details of the Lucchino audit. For example, it found that "Board members and employees, attending seminars, including several overseas, had extravagant and undocumented expenses totaling $141,773.85."

The auditors found that summer employment programs for high school and college students cost nearly $1.6 million "despite mounting financial losses." A general supposition among newsmen covering the subject was that many of the jobs were used for patronage purposes. The Lucchino report noted that "it is possible that some summer employees could have been paid for hours never worked."

Meeting expenses were highlighted for a total of "$14,710.97 for food and beverage luncheons at private clubs, including the Oakmont Country Club, the Rivers Club, the Churchill Valley Country Club, the Hyatt House and the Downtown Club." The audit report dryly recommended for the future: "Hold all meetings at Alcosan's administrative offices, 3300 Preble Ave., North Side."

Four days later James E. Creehan, Alcosan executive director, resigned. Seven months later DePasquale finally resigned. The *Post-Gazette* in a Feb. 17, 1988, editorial headlined with DePasquale's nickname, "'Jeep' calls it quits," had this to say:

"Some way or the other, the word finally got through to DePasquale—that well-traveled sewer connoisseur—that he had literally gone too far, and so is grumpily giving up his seat on the Alcosan board. His decision to depart does much to clear the air around the Alcosan plant and create a fresh image of the supervision of the sewage-treatment authority."

The editorial also suggested that another board member prominently mentioned in the county controller's audit, Councilman James O'Malley, should follow suit. O'Malley declined to do so.

Efforts in the State Legislature to change the composition of the board failed. So, except for the Creehan and DePasquale resignations, nobody ended up for the worse.

However, the Alcosan affair gave impetus to a reform group of academics to offer some recommendations for

improving the management and ethics of Pennsylvania's authorities (more on that in Chapter 7).

The second blockbuster concerning a municipal authority came with a six-part series in the Greensburg *Tribune-Review* on the Municipal Authority of Westmoreland County (MAWC), written by reporters Richard Gazarik and Chris Rodell.

The articles noted that the authority's water division had grown in the past five decades from 1,500 to 94,000 customers. Also, starting in 1986, the MAWC has taken on the task of handling municipal solid waste.

Gazarik and Rodell wrote that "charges of influence peddling, nepotism, and cronyism mingle with high praise the authority has received for its successes. . .

"The MAWC payroll, some say, is bloated. . .with insiders knowing too little and getting paid too much.

"Historically, the water company has been controlled by politicians and power brokers—such as [founder George] Sweeney and the late House Speaker James Manderino—while the day-to-day operations were handed over to professional water managers."

"Why the inconsistency?," Gazarik and Rodell asked.

Among the surmises they offered as to why the MAWC receives both praise and criticism:

- Perhaps because the authority payroll is rife with the relatives and friends of authority members.
- Or because authority board Chairman Don Ruscitti is being surprisingly well-compensated from the water well, so to speak, getting a salary, a stipend, a leased car and medical benefits, with enough time left over to run a restaurant.
- Or because the Westmoreland County commissioners have placed their political cronies in well-paying jobs at the authority.
- Or because one authority member has a son earning $43,550 at the MAWC.

In response to queries from Gazarik and Rodell, board members said that if the workforce is too big or too well paid, it's the fault of the union—the Utility Workers Union of America, AFL-CIO. In retort, Frank Ranieri, the union's president, said the authority was top heavy with managers.

In its second article, the *Tribune-Review* reported that chairman Ruscitti "has two daughters working full time in authority jobs and a son who has held a summer job and works during holidays." The article listed other cases of what it considered nepotism involving relatives of other MAWC officials. In a later article, Gazarik and Rodell wrote that "at times, the authority could resemble a family reunion. Brothers, sons, sisters, daughters—they're all there."

The series about the Municipal Authority of Westmoreland County,in Gazarik's words in 1998, "got a lot of attention." It did prompt a legislative study (see Chapter 6).

However, Gazarik adds sadly, "But

you know something—nothing since has changed. Nothing!"

A sampling of other examples that have come to public light include: two authorities not directly under the jurisdiction of the Municipal Authorities Act of 1945 (1945 MAA).

In 1996, the office of County Controller Lucchino was asked by the U.S. Department of Housing and Urban Development (HUD) to check into the use of Section 8 vouchers issued by the McKeesport Housing Authority. Section 8 housing concerns units owned and operated by nonprofit agencies or by individuals, with rent for low-income occupants partially paid by federal vouchers.

Lucchino's office found that in some cases people were receiving money for operating units rented with Section 8 vouchers to other members of their families, a form of "double dipping." It turned out that this was a problem nationally, and the federal government has taken steps to halt it.

In another case in Allegheny County in 1996, critics of the incoming Republican majority charged Commissioners Larry Dunn and Robert Cranmer with heavy-handedness in replacing eight of the nine members of the board of the Port Authority of Allegheny County. This instance is cited as an example of a governing body playing politics with an authority.

Apparently involved in the matter was Patrick A. Risha, assistant superintendent of the South Allegheny School District, a man heavily entangled in Mon Valley politics.

Risha may have pushed his luck too far. According to a copyrighted story by the Pittsburgh *Post-Gazette* on Nov. 24, 1996, he angered Cranmer during a breakfast meeting in West Mifflin. Present also was Samuel R. Anthony of Anthony Equipment Co., Risha's cousin and PAT board vice chairman, a Dunn appointee.

According to Cranmer, Risha and Anthony tried to give him a lesson in politics, telling him "how things have to work" in county government. Cranmer said, "They pointed out to me that when people give money, they expect to get something in return. I said, 'No way,' and we left."

The article commented that "the meeting led to a split between Cranmer and Dunn over patronage, fund-raising, and Risha." Note: Cranmer later was to join forces with the third commissioner, Democrat Michael Dawida, to form a new coalition running county government.

The Nov. 24 article continued: "Risha's meeting with Cranmer last summer mirrored similar encounters with officials at Alcosan and PAT. Ira Weiss, Alcosan board chairman and former county solicitor, said Risha had approached him with 'insatiable demands' for political favors, including requests that Alcosan buy supplies from a business Risha owns, Demand Services, in Elizabeth."

Note: Anthony resigned from the PAT board on Oct. 14, 1996 after the *Post-Gazette* published articles about

meetings he and Risha held trying to line up business with PAT officials.

A final instance worth noting is a question of ethics raised about hiring practices at the Monroeville Water Authority. In September, 1997 the Monroeville Ethics Board reacted to complaints that the water authority was violating the municipality's ethics code by hiring relatives of elected or appointed government officials for authority jobs. It recommended that five board members resign or be ousted and that former authority manager LaVergne Gardner be fined $500.

The grounds for the recommendations were that board members Quentin Wingert, Arthur Carr, Mario Franceschini, Robert Bell, and Thomas Curran violated the ethics code when they filled four positions in 1995. Those hired were Wingert's son, Gardner's son, Bell's son, and Carr's soon-to-be son-in-law. Gardner, who left the authority in August 1996, recommended the hires. The board approved them, with Wingert and Bell each abstaining from the votes pertaining to their sons.

Gardner and the board members appealed the findings to Common Pleas Court. In April, 1998, Senior Common Pleas Judge J. Warren Watson reversed the Monroeville Ethics Board's recommendations. He ruled that while the Monroeville ethics code asserts public confidence in government can best be sustained by eliminating corruption, patronage, nepotism, and special privileges, it did not define nepotism or specifically make it a violation of the code. Watson held that the board members had complied with the ethics ordinance by disclosing conflicts of interest and by abstaining from voting on their own sons.

As of the time of publication of this *Issues* brief, it is not clear whether the matter might still come under the purview of the State Ethics Commission. An official there affirmed that the State Ethics Code does cover municipal authorities.

In sum, questions across the years have been raised about the activities within a relatively few municipal authorities. Weighed against these instances could be cited thousands of positive, untainted actions by authorities across the Commonwealth. Nevertheless, the Alcosan and Municipal Authority of Westmoreland County affairs did arouse criticism which resulted in at least two significant studies. We turn to them in the next two chapters.

Chapter 6
A Legislative Look

During his first election campaign in 1977 for the State Legislature, Allen G. Kukovich of Westmoreland County began hearing complaints from constituents about the Municipal Authority of Westmoreland County, particularly about hiring practices and nepotism.

"At first, I thought it was just something isolated," recalls Kukovich, now a state senator. "But gradually I began to realize there was more to it than that. And that questions of accountability went just beyond the Westmoreland County authority and into other authorities around the state."

As time went on, Kukovich as a member of the State House of Representatives found compatriots who had similar concerns, not only in Westmoreland County but elsewhere. Then came the Greensburg *Tribune-Review* series described in the previous chapter, which clearly galvanized the situation.

The result was that Kukovich and five other House members from Westmoreland County and 17 House members from other regions around the Commonwealth on June 17, 1992, introduced House Resolution (HR) 354. (Thomas Petrone, quoted in Chapter 2, was one of the other 17.)

The result was what clearly became the most searching look ever into Pennsylvania's municipal authorities—a June 1993 report to the State Legislature by the Local Government Commission. The title of the report suggests its sweeping nature:

"A Review of Compensation and Hiring Practices, Contracting Procedures, and Ratemaking of Large Municipal Sewer, Water, and Solid Waste Authorities."

Interestingly enough, the report gave aid and comfort both to those who said changes were needed and to those who contended, "If it ain't broke, don't fix it." But the result has been an impasse that has lasted through several sessions of the Legislature since 1993.

The study was conducted by the staff of the Local Government Commission (LGC) under its executive director, Virgil Puskarich, with the assistance of the Office of Special Assistants of the Public Utility Commission (PUC). The methodology consisted of sending detailed questionnaires to the 50 largest municipal authorities and analyzing their returns.

In its report to the Legislature, the LGC stated as a caveat that "the following recommendations should be construed as suitable for authorities which mirror the size of those entities examined and are not necessarily applicable or appropriate to the vast majority of authorities which fall beyond the scope of this endeavor. In addition, these recommendations are based upon the degree of accuracy, reliability, and truthfulness of the responses to the questionnaire and do not reflect corroborated findings that could have been achieved by more comprehensive research activities such a professional management audits of each authority surveyed."

The LGC report made recommendations concerning nine areas. For six of them, it said that "no legislative action is warranted at this time." Those six areas were as follows:

1. Personnel management. "Based upon the information supplied by the

authority respondents, the personnel management standards to which these entities adhere appear to embrace professionalism and fairness."

2. Nepotism. "Although a clear majority of the surveyed authorities do not impose any rule against the practice of nepotism, its existence was inconsequential." Note: The executive summary portion of the report explained that "of the 2,667 employees hired by the surveyed authorities, only 38 are immediate family members as defined by the questionnaire."

3. Authority boards: "Authority board members who are appointed as officers of the authority have their compensation, if any, determined by the same board of which the aforesaid individuals are members."

4. Salaries, wages, and other cash compensation: "The internal structure of wages and salaries appears to be formulated upon fixed policies or negotiated agreements."

5. Bidding and contracting: "In general, purchases by authorities over $10,000 require competitive bidding. While the [1945 MAA] exempts certain types of purchases from the competitive bidding process, the surveyed authorities overwhelmingly bid all contracts."

6. Professional service providers: "The authorities studied indicated no apparent aberrations with regard to monies expended for the services rendered by these professional providers [of personal or professional services or of insurance]. Only in those instances in which a capital project was undertaken did expenditures for such services rise significantly. Generally speaking, the respondents spend user dollars wisely."

However, on three subjects the LGC report suggested remedial action. They were as follows:

7. Professional management firms: "Pennsylvania grants broad discretion to authorities to modernize their management structures by utilizing, among other options, the services of professional management firms. However, an insignificant number of the surveyed authorities avail themselves of these services, thereby rendering indeterminable a firm conclusion with regard to the efficacy and prudence of these firms."

The LGC report therefore recommended that "the Legislature further consider the policy implications of requiring the utilization of professional management firms by municipal authorities before pursuing any legislative initiatives."

8. Customer complaints: The key here was Question 52 in the LGC questionnaire sent to the 50 authorities, which read, "Does your Authority record the number of customer complaints that are filed with your office?"

The LGC report commented: "The Office of Special Assistants within the Public Utility Commission found troubling the authorities' response to the recording of the number of complaints filed in the various of-

fices of the survey respondents (Question 52). For those authorities which answered Question 52, the number of complaints appears to be artificially low when compared with similar complaints filed by customers of public [investor-owned] utilities."

The LGC report recommended that the State Legislature amend Section 4B of the 1945 MMA "to require authorities to maintain an annual listing of customer complaints on all issues relating to rates and service and further require that such records be made available to customers of the authorities. In addition, customers should be permitted to make photocopies and/or extracts of these complaints at reasonable costs as determined by the authority board."

9. Ratemaking: "Under current law, municipal authorities are under no obligation to conduct special meetings or hearings devoted to the establishment or adjustment of rates charged to customers for various services. As a result, when rates are instituted or altered, a strong likelihood exists that customers perceive that they have been excluded from the decision-making process even though they had the right to be present at a required public meeting (under the Sunshine Law) when rates are discussed by the authority board. The [PUC] Office of Special Assistants correctly points out that customers of public utilities have a Consumer Advocate to represent their interests before the PUC, while authority customers have no representation other than themselves or an attorney whose fees must be borne by the customer. In addition, case law places a heavy burden on the customer to prove that authority rates are arbitrary, capricious, and unreasonable. For this reason, a special effort should be made by municipal authorities to insure that customers are given adequate and frequent notice of meetings in which rates are the subject of discussion. Perhaps no other controversy in dealing with municipal authorities is greater than those relating to rate increases."

The LGC recommended that Section 4B (h) of the 1945 MMA be amended "to require that a special public hearing be held by authorities when rates are initially established or adjusted. Furthermore, a separate mailing should be sent to authority customers indicating that rates are being adjusted and affording to those customers an opportunity to present testimony either on their own volition or through a representative of their choosing, such as an engineer or utility attorney. Copies of the testimony obtained from this hearing should be made available to any customer, at their expense, which could provide additional information to the Court of Common Pleas if a rate adjustment is subject to litigation."

The Executive Summary elaborated on some of the bases for the report's recommendations.

• Overall, the management of personnel by the surveyed authorities most likely does not differ significantly from

that exhibited by other governmental entities and the business community.

• The majority of these authorities have developed personnel policies and/or have entered into collective bargaining agreements to guide the daily affairs of personnel management in an orderly and uniform manner.... Labor costs reviewed in relation to operating expenditures elicit no remarkable findings.... Labor costs do appear higher in the southwestern and southeastern sections of the Commonwealth than in most other regions of the state. It is conceivable that such elevated costs reflect a higher cost-of-living in the Southeast and the presence of collective bargaining agreements in the Southwest.

• Although most of the surveyed authorities do not have a rule prohibiting nepotism, the incidence of such was found to be minimal in these organizations.

• With regard to hiring practices generally, we found that the vast majority of authority respondents use a controlled application process which requires prospective employees to answer identical questions either orally or in writing. This laudable practice would appear to facilitate unbiased competition among potential candidates for employment.

• Our review of the raw salary data submitted by the large authorities elicited no concrete determinations. The diversity of the authorities under review, even within specific groups, makes definite assertions concerning this issue a highly speculative proposition.

• Nevertheless, it would appear that large authorities, either as a group or in individual types of service, do not excessively engage or rely upon part-time or low-wage employees. Middle-range salaried employees constitute what appears to be an acceptable portion of the authorities' structures. Instances of what might appear to be an inordinate number of employees occupying the upper end of the salary range usually represent only a few individuals being remunerated over $60,000 per year.

• Inasmuch as an insignificant number of authorities indicated that they employ a professional management firm to run their day-to-day operations, we have little basis and, therefore, feel disinclined to make any recommendations with respect to the benefits and/or liabilities which accrue to an authority utilizing their services. Whether professional management services are purchased by authorities at higher prices than necessary remains problematical.

• Analysis of annual costs and/or premiums incurred by the surveyed authorities for certain professional service providers for the years 1989, 1990, and 1991 yielded no disturbing results.

• Given the experience of the PUC staff with PUC-jurisdictional municipal operations, the staff was pleasantly surprised by the quality of the data provided by the authorities on gross plant

investments and accrued depreciation. Such data are necessary when employing cost-based forms of regulation. However, there is some concern about the comparisons of gross-undepreciated plant investment costs per customer between the Class A water companies and the water authorities. The mean average of such costs for Class A utilities is $1,483, which is significantly below the water authorities' mean average of $2,116. There may be several reasons for these differences, such as unrecorded retirements or uncounted "customers."

The Executive Summary of the LGC report then underlines findings that led to its recommendations for remedial action in two major areas:

- One troubling finding emerged with regard to the recording of customer complaints by municipal authorities. The vast majority of the 50 largest authorities indicated that they did **not** maintain a record of the number of customer complaints.
- Another area of concern was that relating to public meetings. Less than half of the municipal authorities surveyed conduct public meetings or public hearings when setting or changing rates. The OSA staff [of the PUC] opined that the creation of the Office of Consumer Advocate and the Office of Small Business Advocate demonstrate that customers believe an additional representation before the PUC is required. Presumably, this was an inference that something similar was needed in connection with rate-setting procedures by municipal authorities.
- Finally, the surveyed authorities generally charge lower rates than do the regulated utilities; however, authorities have some cost advantages.

— First, municipal authorities have access to lower cost financing than water companies.

— Second, water authorities are subject to taxes which are not part of authorities' costs of operations. "It should be noted that when municipal authorities are forced to invest in new plant additions due to the requirements mandated in the environmental laws, the rates of the affected authorities will increase."

Even though the LGC report has lain dormant, it is safe to say that it will play a role should the State Legislature ever decide to take up the subject again.

In the meantime, the questions surrounding the Westmoreland County authority and Alcosan in Allegheny County resulted in another study that brought forward even more far-reaching reform proposals. We turn to that document now.

Chapter 7
Standards for Solutions

Christine Altenburger, as a professor preparing for her classes at the University of Pittsburgh, compared mu-

nicipal authorities in Pennsylvania and other states and felt there was a need in the Keystone State for specific standards. "I came to believe there was a need for professionalization, particularly in personnel matters," recalls Altenburger.

Not only was she a faculty member in the Graduate School of Public and International Affairs at Pitt, but Altenburger had been a member of the Penn Hills Township Council and a member of the Government Study Commission that fashioned a home rule plan that the township's voters approved. That involvement in local government raised her concerns about ethics in government in general.

In the early 1990s as a consultant to the Coalition to Improve Management in State and Local Government, Altenburger was asked to write an ethics guidebook for use by municipal authorities. The Coalition, a research group, at the time was headed by the late Donald C. Stone and headquartered at the H. John Heinz III School of Public Policy and Management at Carnegie Mellon University in Pittsburgh. The stated purpose of the Coalition is "to help states, counties and cities develop the executive capability to cope simultaneously with rapid economic and social change, reduced federal grant money, increased service demands, and resistance to higher taxes."

Stone wanted a practical way to effect changes that need to be made in the Municipal Authorities Act to set management standards and make them more accountable. The result was a guide for authorities titled "Standards for Local Public Authorities in Pennsylvania; Improving Organization and Management." The basic analysis was done by Dr. Beverly Cigler of Penn State-Harrisburg with the text written by Professor Altenburger.

The 1992 document carries this prefacing comment:

> The shortcomings and inadequacies in many local public authorities in Pennsylvania are due to deficiencies in the Municipality Authorities Act [MAA] of 1945. Its provisions fail to assure that authorities will be established only for appropriate purposes, that qualified persons are appointed to boards, that every authority must have a general manager or chief executive, that conflicts of interest must be avoided, and that the authorities are accountable to the governments that created them and thus to the public.

The "Standards" document outlines an assessment process by which to determine how well a particular authority measures up. It notes that "very small authorities, especially in the more rural areas of the state, may lack the resources to meet the standards fully. Because of the size of these authorities, some standards may not be relevant, and others may need to be adapted to particular needs and circumstances. What is important is to

understand the intent and the spirit of each standard and ask, 'Can we do better?'"

Part I of "Standards" addresses "The Decision to Create an Authority." It suggests the following criteria:

a. The functions assigned to the authority are technical and/or complex, are potentially self-supporting, are financed by revenues and borrowing, and require flexibility to respond to fluctuations in consumer demand.

b. The unreliability of the political environment might make it difficult for the local government to provide this service.

c. Questions of service-area coverage, financing, cost effectiveness, and mutual interests make a regional or joint approach to a need or problem, through an authority, the logical or feasible alternative.

Second, the authority is not being used by elected officials primarily as a device to duck the heat of having to impose a tax increase. Nor, third, it isn't created to provide a service or function that the municipality should be able to handle through its regular financial and administrative structure.

At this point the "Standards" document warns of the consequences of not applying these standards:

- Authorities created under the 1945 Municipality Authorities Act have a life of 50 years, which can be extended. Thus, "they may tend to create their own staying power, regardless of need or quality of operation."
- Because of the appointment process, authorities lack direct accountability to the public. The 1945 MAA places minimal reporting requirements upon the authority board, and there is no requirement for public hearings on the authority budget. "Because of the 'business-like' nature of their functions, there may be a tendency to assume that authorities are well run. The technical nature of their functions is not likely to excite interest. . .The frequent reference, then, to authorities as 'hidden governments' has justification."
- Authorities can become "political," particularly through appointment of board members with personal or political ties to municipal elected officials, sometimes with little regard for proper qualifications. Patronage—the awarding of jobs to relatives, friends, and political supporters—therefore can result.
- The credit rating of the incorporating local government can be adversely affected by the financial condition of the authority, over which it has no direct financial control.

Part II of the "Standards" outlines ways to increase the effectiveness and accountability of the authority board.

—Board members should stick to policy and program determination and not involve themselves in the day-to-day operation of the authority.

—The board appoints a manager and lets him/her run the day—to-day show.

—The board has adopted a policy to make clear how these standards will be carried out.

—Conflicts of interest should be avoided. For example, no member of the authority board should hold any office or position within the authority.

—No elected official or administrative officer of the parent local government is a member of the authority board. (Note: This is one of the more controversial elements in the Stone report, even for reform advocates, as is discussed at more length in Chapter 9.)

—The authority has adopted a policy to carry out these policies, including a way regularly to report to the public. That can include a general annual report, monthly or quarterly financial reports, regular program reports on goals and projects, and the presentation of a tentative authority budget in time for public review. All of these reports are formally presented to—and accepted by— the governing body of the incorporating municipality, with an opportunity for public input.

—Public participation in authority matters is also encouraged by strictly following open meetings ("sunshine") laws. A formal agenda should be prepared and made available to the public at or before each meeting.

—The work of the authority and of the board should be laid out in a manual of rules and procedures. This should include the adoption of rules governing the conduct of authority board members and of employees. The rules should require the public disclosure of any direct or indirect financial or other private interest in any business coming before the authority. And they should prohibit the acceptance of gifts or of benefits "from the profits of any contract, work, or service for the authority."

Part III of the "Standards" covers the finding and appointing of qualified board members.

Requisites include developing a job description, publicly advertising a vacancy so there can be proper competition, and the appointment by the governing body of a "blue ribbon," nonpartisan search committee to generate applications and make recommendations to the appointing authority.

Also, the Coalition guide urges that the local government's governing body adopt a policy prohibiting the appointment to an authority board of (a) relatives of any elected official or (b) officials of a political party.

In another proposal controversial even with reformers, the "Standards" calls for giving the municipal governing body power to remove for cause authority board members "for improper actions including misuse of their position in a manner designed to produce personal gain for the board member, commission of an act which is unlawful, and failure to perform a required duty in a proper manner." Under the 1945 MAA, that responsibility lies

with the Court of Common Pleas. (A fuller discussion of this proposal will be carried in Chapter 9.)

Part IV outlines procedures for the recruitment and appointment of a qualified manager. Part V defines the functions and duties of the manager. Part VI outlines ways to develop a motivated, productive workforce based on emphasizing merit. While a reading of the "Standards" finds nothing unusual in terms of understood procedures in business and government, the point is that the 1945 MAA doesn't include any such specificity.

Part VII calls for vesting financial management activities with the authority manager (under the 1945 MAA, it rests with the authority board as a whole). Included are stipulations (1) that the authority's system of accounting is in accordance with generally accepted accounting principles (GAAP), as set forth by the Government Standards Accounting Board and (2) that its annual audit meetings accept auditing standards, as set forth by the Institute of Certified Public Accountants.

"Standards" proposes that long-term debt instruments are issued only to implement projects contained in a multi-year capital improvement plan. And that the payback period on long-term debt is no longer than the useful life of the project. And, further, that a feasibility study of the project's impact on the debt ratio structure be done at the same time that engineering and design work is undertaken, with full disclosure to the governing body of the incorporating municipality before the debt is incurred.

If appropriate staff is lacking, the authority should seek the assistance of a financial advisor, but with selection based on a request for proposal. The same cautious procedures should be followed in selecting bond counsel and an underwriter.

The appendix of the "Standards" document outlines the numerous changes in the 1945 MAA that would be necessary to carry out the report's recommendations.

Copies of the "Standards" booklet can be obtained from The Coalition to Improve Management in State and Local Government, which now is located at the University of Texas at Arlington. Write to:

James Kunde, Director
Coalition/SUPA/UTA
Box 19588
Arlington, Texas 76019-0588
Telephone: 817-272-3327
Fax: 817-272-5008

Before offering our chapter of recommendations, we present a variety of views from knowledgeable persons on various sides of the question.

Chapter 8
Varying Views

"Municipal authorities now appear to be aware that they suffer an image problem."

That sentence in the 1993 Local Government Commission report on municipal authorities (see Chapter 6) is a key in the ongoing discussion on whether anything needs to be done about authorities.

The paragraph continues as follows:

"In fact, at the Pennsylvania Municipal Authorities Association's annual conference held August 25-28, 1991, a presentation entitled 'Working Effectively with Local Governments' was delivered by Patricia Hunt, president of Hunt Communications, Inc., and Virgil Puskarich, executive director of the Local Government Commission. Based on that conference session, Patricia Hunt wrote:

Virgil Puskarich. . .says that it is important for authorities to communicate, not only with citizens but also with local governments. Even, he suggests, more frequently and fully than by simply filing the currently required annual audit—a requirement which, according to an informal check with the Department of Community Affairs, a significant number of authorities neglect to follow. So authorities don't just seem uncommunicative; the record shows they are. Unfortunately, most people aren't comfortable with silence. They tend to fill it with their own perceptions. . .Mr. Puskarich fears that even isolated cases of nepotism or perceived overpayment of board members as authority officers can be misconstrued and may unjustly tarnish the image of all authorities. He stressed the need for authorities to report good news and to make allowance for receiving public comment."

The question is whether much has changed since 1991.

Puskarich in a 1998 comment had this to say: "I think that the authorities are a little more responsive than they were because they see that the Legislature has become more concerned about the operation of authorities in terms of accountability. Legislators have introduced bills that have caused the authorities to sit up and take notice. I believe the authorities are saying to themselves that they need to be a bit more aware, saying, 'If we don't police ourselves, some of those bills will pass and then we'll have a mandate thrust upon us.'"

Others are more critical, contending that the situation hasn't improved sufficiently and that remedial legislation still is needed.

Exponents of authorities won't deny that, as in any other area of human affairs, there is an occasional bad case, but contend that more legislation isn't the answer. "Let well enough alone," they counsel. And clearly there is a fear that even if a reform here and there is needed, legislative action could open a Pandora's box of complaints and proposed remedies that might under-

cut the authorities and the delicate balance within which they operate and obtain financing for public projects.

That apparently is the view of the House Urban Affairs Committee, to which a number of the reform bills have been assigned. Jeri Stumpf, executive director of the committee for the Republican Caucus, said it is unlikely that any of those proposals will be approved and sent to the floor. "The bottom line is that while there is some concern about the authorities, there is no crying need for legislation," Stumpf said.

The House Urban Affairs Committee is scheduled to issue a general report on the subject by Nov. 30, another reason Stumpf sees no action coming in the meantime.

We refer the reader back to Chapter 2 for some examples of varying views. Here are some other opinions that have surfaced in conversations and interviews on the subject.

State Sen. Allen Kukovich of Westmoreland County has been the leader in the Legislature in reform efforts, first in the House and now in the Senate. He said that what is discouraging to him is that he has offered "benign amendments" to the Municipal Authorities Act and yet has been bitterly attacked.

For instance, he proposed that authorities be required to keep available a list of customer complaints for public scrutiny. "I met with the Municipal Authorities Association and promised I wouldn't propose more stringent legislation if they wouldn't block this bill. They broke their promise. The measure passed the House but died in the Senate."

The problem with the present system, Kukovich feels, is that citizens have nowhere to turn, feeling especially powerless if the elected officials on the governing board making the authority-board appointments are also unresponsive. He compares the situation to that of electric and gas utilities regulated by the state Public Utility Commission. The PUC not only holds public hearings on their rate requests but has a Consumer Advocate Office to represent consumers as a class—and for free.

Kukovich says that even a well-run utility can be unresponsive. He points to the Unity Township Authority in his county, with superior service but providing sewer service to only 40 percent of its area, which wraps around Latrobe on the south.

Kukovich and allies also filed a bill concerning the commingling of operating funds and reserves, mandating there be a separate accounting. It, too, passed the House but not the Senate.

Another effort was to require authorities to advertise vacancies. That one didn't even pass the House.

Why? The Municipal Authorities Association is a close-knit group, Kukovich says. That was shown, he says, when efforts were made to pass ethics legislation covering the authorities "and we got complaints even from the honest authorities."

Kukovich would like to see the PUC given quasi-judicial oversight of the authorities similar to that which it holds over private utilities, including water and sewer companies. He is quick to say that the State Legislature would have to appropriate much more money to the PUC, as present staff couldn't be expected to handle the added load.

Another reformer, State Rep. Greg Vitali of Delaware County, believes the reason there is such resistance to changing the system is what he calls "Pay to Play"—the practice of awarding lucrative no-bid contracts to political contributors.

That is, if you want entree to political officers, if you wish to obtain contracts, you contribute to their election campaigns, he explains. Even though municipal authorities presumably are shielded from politics, Vitali contends many are tied in with local politics, including their governing boards.

"It's bad government, not criminal, just bad government," Vitali explains, "I mean the use of government contracts as a fund-raising device...the understanding in the bond industry that it's pay-to-play—in order to play in the bond market, you have to make political contributions. It's not explicit, but the idea is that if you back the right horse with campaign money, there will be rewards. It's not just bond accounts, but underwriting, printing, and so on. It's one place in government where Democrats and Republicans cooperate."

The result, Vitali says, is that in Pennsylvania inflated rates are charged for bond work, compared to Florida, for example, which has a $20,000 cap on such fees. A University of Oregon study showed that when there are three to seven bidders, the cost is a third to a half lower, he adds.

Vitali has introduced legislation that would apply reforms to all bond services for state authorities. At this point, however, he is not tackling municipal authorities. "One bite at a time," he explains. Though the effort is frustrating, Vitali says philosophically, "It is a role you play."

Yet another reformer, State Rep. Tom Petrone of Allegheny County, also talks about the difficulties of effecting change. "You have clandestine mini-governments, run by a few people, using bonds, using taxpayers' money."

Petrone says it was the Alcosan situation (described in Chapter 5) which got him interested in doing something about municipal authorities. But when hearings were initiated, "the more we dealt with it, the more people tried to block us. Everybody has friends somewhere that don't want something done about it."

Interestingly enough, interviews for this *Issues* brief found no evidence that the natural competitors of some municipal authorities, such as private water, sewer, and waste disposal companies, were making any attempt to curb the authorities. Perhaps it is be-

cause they are seeking for themselves the opposite route, that of deregulation. Or it may be that they understand full well the political implications of bucking the complex web of entities public and private anxious to maintain the status quo.

Nevertheless, the views of a leader in the private field are well worth noting. He is Robert M. Ross, president of the American Water Company, headquartered in Hershey.

Ross's first point is that "there are a lot of well-run water authorities in Pennsylvania and some bad ones. But the same is true for private companies."

Emphasizing that his company is not doing any lobbying concerning municipal authorities, Ross in response to direct questions allows that "the playing field is not level. We are a tax-paying private entity, versus authorities which do not pay taxes. So when you are competing for an area to provide service, privates will be a little higher because of the tax factor. They get a break on financing. We are under the PUC; they are not."

Ross goes on to say, "The rate that a private company charges is predicated upon the pure cost of service to each class of customer. Oftentimes, an authority can set its rates politically, that is, not raise rates for years and years, so customers are not paying the true cost of services. Often they can do it with cash; they don't even have to borrow money. That gives them an uncompetitive advantage."

Furthermore, Ross explains, authorities may say, "We have to build a water main or a new tank." So they'll raise the rates a year ahead. "We [privates] have to spend capital first; then go to the PUC to get rates increased. We pay up front and then try to recoup after the fact."

Ross affirmed, "Everyone is entitled to good water service. I can't run pipelines to all these places. But there ought to be a way to get competition equal—apples and apples—with everyone operating under the same rules and regulations."

At this point, it is helpful to hear from advocates of the authorities' point of view.

Joseph Wiesner of Allegheny County, immediate past president of the Municipal Authorities Association (1996-97), is a particularly apt spokesman because of the variety of posts in his background. From 1971-89, he was executive director of the Robinson Township water and sewer authority. Then he was general manager of the Wilkinsburg-Penn Joint Authority from 1989-91. And he has been chairman of the Findlay Township Authority the past seven years. He currently is working in the private sector, as marketing director for Commerce Capital Markets, Inc., a financial advisory firm.

First, Wiesner points to the 1993 Local Government Commission report on authorities (see Chapter 6). He underlines that the Municipal Authorities Association worked hard with the survey, including offering to open

up financial records for auditors. "When the survey was done, it was apparent that the authorities do a pretty doggone good job."

Basically, Wiesner warns of the dangers of tampering with a system that has worked well for more than 50 years, especially in providing services for hundreds of thousands of customers in "new" areas. He says it is interesting to watch critics when they realize the impact of their proposals for change. Wiesner ticks off a list of critical legislators who with an exception here and there have changed their minds, such as when they come to realize "that the rates of private water companies often are 100 percent higher than that of municipal authorities."

He draws on his own experience to point to the benefits of the authority system. In 1980, the assessed valuation of Robinson Township was $65 million. Under his direction as head of the municipal authority, $3 million was spent on expanding the water plant and building a new sewage plant. The result was that the township's assessed valuation zoomed to $165 million in 1990, showing the value of "an investment in the community" that not only avoided the raising of property taxes but, instead, allowed them to be lowered twice.

To complaints about "an unlevel playing field," Wiesner notes that quality of water is the ultimate standard. Private companies and authorities alike have to meet standards set by the state Department of Environmental Resources or the federal Environmental Protection Agency or their county Health Department.

Wiesner said complaints often center on the question of nepotism. He contends that 90 percent of authorities prohibit that practice. "Are we going to change everything to cover that last 10 percent and hurt 100 percent of the people in the process? If you are going to change the nepotism rules for authorities, you should do it across the board for every level of government."

People who talk about PUC regulation don't realize the advantages they have with a local authority under the present system, Wiesner holds. "You can easily get to the CEO or to the board in a public forum at least once a month. You don't need a lawyer. You can spend $2 for gas to go to an authority board meeting, instead of having to go to Harrisburg and spend money for a lawyer to appear before the PUC."

Besides, authorities are more sensitive to raising rates, Wiesner said. And they don't have to answer to stockholders demanding a higher return on investment.

In the same sensitivity vein, Wiesner made the comment quoted in Chapter 2 that during the industrial downturn of the 1980s when many laid-off workers couldn't meet payments, authorities were able to show mercy in ways private companies couldn't.

Finally, Wiesner says that complaining people should be criticizing

the elected municipal officials who appoint authority-board members. That is the place for unhappy customers to effect change, he holds.

Douglas Bilheimer, executive secretary of the Municipal Authorities Association, echoes this sentiment, adding that it is the elected officials who set the compensation for authority board members.

There are abuses in some cases, such as where board members appoint themselves as officers to obtain extra compensation. "Our association is against that. We think the compensation for officers should be set by the [elected] governing board."

Bilheimer contends that the association has **not** stonewalled reform efforts across the years. "We have supported reasonable concepts." But Bilheimer underlines concerns that what some legislators have in mind "would go much too far."

That sentiment seems to prevail among representatives of the various local-government associations. These are the men and women in Harrisburg whose jobs include lobbying in the State Legislature.

In an informal interview session with several such representatives, held at the office of the Local Government Commission in the State Capitol, various opinions on the subject were voiced.

Douglas Hill of the County Commissioners Association of Pennsylvania League of Counties affirmed that reform of authorities "is not in our policy platform."

As quoted in Chapter 2, Christopher Moonis of the Pennsylvania League of Cities and Municipalities said the Municipal Authorities Act is a blessing, with no need for change.

Elam Herr of the Pennsylvania State Association of Township Supervisors, created a slight stir with a suggestion that there should be a better procedure for governing boards to rein in authorities that veer off in headstrong ways. "Once appointed, those authority boards pick up their own agenda, such as running a sewer line where they want rather than in compliance with a municipal plan."

But others were quick to point out that such independence was exactly a major reason for the authorities system in the first place. The discussion underlined a recurring difficulty in assessing the proper balance of power between elected and appointed officials, as well as of direct or indirect accountability to the electorate. (See Chapter 7 for a discussion of setting standards on the subject.)

Herr then mentioned a topic which garnered a unanimous consensus stemming from a recent incident in which the New Garden Township Municipal Authority in Delaware County reached a hundred miles to seek to use its eminent domain rights to acquire a parking garage in Harrisburg. Under the law, a municipal authority is allowed to exercise eminent domain in another municipality, ostensibly where it is necessary to run a line to make a water or sewer system work.

But an outcry arose over the New Garden effort, on grounds it wasn't for a utility line but, rather, a bald attempt to tap a revenue source. The authority first backed off from the condemnation effort, then tried to purchase the parking garage, and finally under continued pressure retreated entirely.

Elam's peers agreed with him that such a revenue "grab" wasn't in keeping with the intent of the statute. Bilheimer said an effort would be made in the Legislature to prohibit such maneuvers.

Herr also wondered how one could get rid of an authority once its original reason for being is gone. Provisions in the law on the subject are quite cumbersome, he explained.

Overall, the sentiment among these representatives of municipal associations was that authorities had done an enormous amount of good for communities, enhancing the services offered by elected officials and promoting economic development, assets that far outweighed the liabilities cited by critics.

Finally, we turn to the viewpoints of state agencies that either presently deal with municipal authorities or that have been suggested as part of the "solution."

Attorney General:

If there is any specific agency in state government given a measure of oversight responsibilities in the 45 MAA, it is the Attorney General's office.

Section 8C provides: "The Attorney General of the Commonwealth of Pennsylvania shall have the right to examine the books, accounts, and records of any Authority."

As a matter of course, the Attorney General's office hasn't used this power to exercise any general oversight of authorities. But, as explained by David DeVries, chief deputy attorney general, Section 8C makes it clear that if any time the office wants to do so, it has the right to look at an authority's books without further ado.

DeVries cites the case of a stadium authority in the Scranton area, where allegations were made against some members of the authority, and the Attorney General's office was called in to investigate. Under Section 8C, there was no question but that it had the right to look at the books and accounts of the authority.

But as a general rule, DeVries explains, "We don't take this law [1945 MAA] to mean that we have some ongoing responsibility to audit authority books."

What about suggestions that the Attorney General's office be given specific oversight responsibilities in that regard?

DeVries replies: "We would need to see whether that could lie in our jurisdiction. We would want to discuss that with any legislator, including discussing the added resources necessary to carry out any additional responsibilities."

Department of Community and Economic Development:

At present, DCED continues the function of one of its predecessor agencies, the State Department of Community Affairs, in being the place where municipal authorities are suppose to file the annual reports. There are no penalties for failing to do so. As noted in Chapter 1, only about 80 percent of the authorities bother to comply.

Presumably, to fulfill a true oversight function, the DCED would need to be armed with many more tools than just a tightening of that report-filing section of the law.

Auditor General:

Another agency where responsibility conceivably could be lodged is the State Auditor General's office. Not only does it audit state agencies but its auditing functions follow state dollars wherever they are dispensed. For example, the office audits all 501 of Pennsylvania's school districts, since they receive anywhere from 10 to 80 percent of their funding from the state.

However, Richard Spiegelman explains, "We do not do general-purpose audits of other political subdivisions." Spiegelman is chief counsel for the Auditor General's office.

Still, Spiegelman says that auditing the municipal authorities "is a responsibility that we would be capable of undertaking, assuming we had the resources." That last phrase resonates within the current political climate in Harrisburg, where Auditor General Robert Casey Jr. is the only Democrat who is a non-judicial statewide elected official. It probably is not coincidental that, with a Republican governor and a Republican-dominated Legislature, budgetary changes mean the agency has 80 fewer employees than it did when Casey took over in January 1997 from Republican Barbara Hafer.

Spiegelman says that if the Legislature were to decide that oversight responsibilities regarding municipal authorities were to be given to the Auditor General's office, one rationale would be the flow of state dollars through PENNVEST. The Pennsylvania Infrastructure Investment Authority, nicknamed PENNVEST, is an independent state agency established to provide either grants or loans to water and sewer authorities, both public and private.

"Our audit of the PENNVEST program includes a sampling among the several hundred grants and loans given out to satisfy ourselves that money is going where it should be going. If we get a tip or an allegation that PENNVEST money is being misspent by a borrower or grantee, we can take further action," Spiegelman says. But that is the exception to the general rule that the Auditor General doesn't get into general-purpose audits of local subdivisions other than school districts.

Public Utility Commission:

The Public Utility Commission (PUC) is particularly mentioned as a

state agency where authority oversight responsibilities could be lodged. The theory is that the PUC would not have to establish a whole new set of rules and procedures because it already has them in place for regulating private water companies.

A spokeswoman for the PUC acknowledged that "this particular proposal has come around a couple of times, in a couple of different ways." But she then made two points:

- The PUC wouldn't initiate it.
- Recent history is moving in a different direction—toward deregulation, rather than more regulation. The electric and natural gas industries in Pennsylvania are a case in point, she said.

However, the water industry is an exception. "People want to get away from municipal control because standards are higher in private companies. Not across the board, let me hasten to say. But we get complaints about municipal systems; we hear more about their problems."

A particular example, she said, arises when an authority laps over a boundary into another municipality. People in the authority-incorporating municipality have the opportunity to vote for their officials who appoint authority board members. But those across the line don't. She cited Phoenixville in Chester County where a small number of customers, who happen to be located in the township, feel denied the rights that citizens of the town itself have.

With these varying views in mind, we now turn to recommendations on the subject.

Chapter 9
Recommendations for Reforms

In discussing any changes in the Municipal Authorities Act of 1945, it is first worth noting two observations.

One comes from the late U.S. Supreme Court Justice Oliver Wendell Holmes as described in a Pennsylvania Economy League's Preparatory Manual, written for the 1967-68 Constitutional Convention. It reads:

"Local government may or may not be, as someone has said, the political equivalent of motherhood. But in the forum of public discussion, allegiances are strong and the argument is vigorously pressed that the pattern of the local fabric, to use Justice Holmes' phrase, 'should be touched only with cautious hands.'"

The second comment comes from David DeVries, chief deputy attorney general:

"In Pennsylvania, we have a long historical tradition of autonomy for local subdivisions. We don't have a vast system of oversight of any governmental entity. That's our tradition, our history."

Weighing against these cautions is "Dillon's rule," frequently mentioned in this monograph as making clear the

dominance of the state over its various subdivisions, with the concomitant suggestion of responsibility.

Given the questions raised about authorities, even if only a few culpable ones, it certainly is not amiss to suggest the advisability of some touches with cautious hands for needed changes in the law.

Basically, the goals should be greater accountability and "transparency." That is, not only doing things right but accomplishing them in an open way so as to be convincing to the general citizenry.

GENERAL RECOMMENDATIONS

An obvious place to start is with the relatively few recommendations that emerged in 1993 from the Pennsylvania Local Government Commission (LGC) survey. But as will be seen, it is my feeling that some subjects merit further attention. (A fuller text of all the recommendations is carried in Chapter 6.)

Professional management firms:

Because only "an insignificant number of the surveyed authorities avail themselves of these services," the survey committee found it difficult to come to "a firm conclusion with regard to the efficacy and prudence of these firms." The report therefore recommended that before the Legislature requires authorities to hire professional management firms it should consider the various policy implications thereof.

It is high time that the Legislature took up this matter, as it often ties into the question of "Pay to play," where no-bid contracts in matters such as bond handling are handed out to political contributors.

Customer complaints:

The LGC report recommended that the State Legislature amend Section 4B of the 1945 MMA to require authorities to maintain an annual listing of customer complaints on all issues relating to rates and service and further require that such records be made available to customers of the authorities. In addition, customers should be permitted to make photocopies and/or extracts of these complaints at reasonable costs as determined by the authority board.

Rate making:

To insure transparency, the LGC report recommended amending the law "to require that a special public hearing be held by authorities when rates are initially established or adjusted. Furthermore, a separate mailing should be sent to authority customers indicating that rates are being adjusted and affording to those customers an opportunity to present testimony either on their own volition or through a representative of their choosing, such as an engineer or utility attorney."

Two other changes that seem to be generally favored both by the Municipal Authorities Association and by

various associations of local governments also are worthy of action.

Officer compensation:
Eliminate the practice of authority board members naming themselves as "officers" to obtain extra compensation. Or prohibit authority board members from setting salary of officers when board members hold those posts.

Eminent Domain:
Prohibit authorities from exercising eminent domain powers outside their boundaries for revenue-producing purposes (note New Garden Township case in Chapter 8).

Nepotism:
Tighten prohibitions on nepotism, with explicit definitions of the term.

Representation:
Establish proportional representation on authority boards for outside municipalities. (Admittedly, this recommendation is tricky; George Aman of the Pennsylvania Municipal Authorities Association cautions that an "unwieldy size of the authority board will result if each municipality to which an authority provides services is awarded a seat on the board.")

Reporting:
Prescribe specific statutory penalties for non-compliance with present law requiring authorities to file annual financial reports with the Pennsylvania Department of Community and Economic Development.

Customer complaints:
Establish a system of handling customer complaints, including maintaining a file of them available for public inspection.

Openness:
Encourage public participation in authority matters by requiring the publication of agendas for upcoming authority meetings. (Note next item—a recommendation on rate increases.) Make the annual budget publicly available before a scheduled public hearing on it. Provide advertisements and open competition for authority vacancies. Institute a formal process which authorities must follow in procuring outside professional services, including the use of bids.

Rate increases:
Require public hearings on any proposed rate increases.

DEBATABLE RECOMMENDATIONS

Certain areas exist where even reform-minded persons differ. Two of them arise out of the guide issued by the Coalition to Improve Management in State and Local Government, written by Prof. Emerita Christine Altenburger of Pittsburgh.

Liaison board members:
A Coalition recommendation, as outlined in Chapter 7, proposed that the standard be: "No elected official or administrative officer of the parent

local government is a member of the authority board."

Douglas Bilheimer, executive director of the Pennsylvania Municipal Authorities Association, says that the association at one time considered this a good idea—a way to keep out overt parent-body influence. But he said a change of attitude has taken place because of a realization that having a member of the governing board on the authority board can provide a liaison link that lessens the possibility the two bodies will work at cross-purposes.

If a limitation is set, perhaps it should be restricted to one person, in order to maintain the arm's length relationship that remains one of the better arguments for establishing the authority system in the first place (see Chapters 1, 3, and 4). Note: This may have to be at the sacrifice of parent-body representation of outside municipalities, meaning that desire (see Representation above) would have to be satisfied otherwise, such as by a rotation system.

Powers of removal:

Another controversial recommendation in the Coalition report written by Altenburger calls for giving the municipal governing body power to remove for cause authority board members "for improper actions including misuse of their position in a manner designed to produce personal gain for the board member, commission of an act which is unlawful, and failure to perform a required duty in a proper manner." Under the 1945 MAA, that responsibility lies with the Court of Common Pleas.

At times, officials of municipalities wish they had this power in order to rein in wayward authority board members. But it would seem that more than almost any other recommendation, this could alter or destroy the delicate balance between the parent government and the authority. Perhaps the pathway of redress to the Court of Common Pleas needs to be more explicit.

But I would suggest that this recommendation, however well intentioned in terms of rooting out crookedness, comes all too close to violating Justice Holmes's caution about touching "only with cautious hands" the pattern of the local fabric.

State oversight:

Even though the ethical record of Pennsylvania's municipal authorities has been sound on the whole, enough exceptions—and continuing exceptions—have occurred to suggest some tightening of the system is needed. Perforce, that would need to be at the state level.

Admittedly, this observation comes at an awkward time in terms of (1) the comment above by David DeVries about the historic approach in Pennsylvania and (2) in a period when the trend is toward deregulation, rather than the opposite.

But, given the way the State Leg-

islature continues to follow "Dillon's Rule" in maintaining control over so many minute matters in local government, as well as concerning certain types of business, it is difficult to argue that one entire sphere should be so haphazardly supervised.

Interviews suggest either the Public Utility Commission or the state Auditor General's office might be the place for that responsibility. (See Chapter 8 for responses from those agencies.) If a level playing field for investor-owned utilities and municipal authorities is sought, the PUC makes sense, since it already has the apparatus for handling rate cases and customer complaints concerning investor-owned utilities.

Obviously, any such addition to the load of responsibilities of either the PUC or the Auditor General's office would require additional appropriations for staff and other costs.

While such an arrangement would benefit authority customers and also the general public (in terms of tax dollars that often in one way or another are involved in the authority process), it clearly would add to the costs of the authorities and therefore their rates. Practically speaking, this should not be insurmountable for the larger authorities. But admittedly it could be for the smaller authorities, particularly in rural areas.

Therefore, there may need to be a two-tier system, in which the financially smaller authorities would have exemption from direct PUC supervision. They therefore would have fewer paperwork requirements as long as they were able to show accountability and transparency under the revisions of the law outlined under General Recommendations above.

These observations undoubtedly will not suit either critics or fans of the municipal authorities. But perhaps they can form the basis upon which dialogue can take place within the legislative process, particularly for the report the House Urban Affairs Committee will be submitting by Nov. 1, 1998.

There may be some in the municipal authorities family who think their bailiwick is untouchable. But authorities are still answerable to "Dillon's Rule," and therefore to governors and state legislators who are subject to the will of the people, especially if some particularly egregious example of corruption surfaces.

Regardless, the comment by Virgil Puskarich, the knowledgeable executive director of the Local Government Commission, remains highly pertinent: "Unfortunately, most people aren't comfortable with silence. They tend to fill it with their own perceptions."

Or as the Bible puts it in First Corinthians 10:12: "Wherefore let him that thinketh he standeth take heed lest he fall."

THE END

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