

PROVINCIAL SUPERVISION OF LOCAL AUTHORITIES.

1. It is a matter of some difficulty to state whether the provisions of the Local Government Ordinance, 1939, and other provincial legislation for the exercise by the Provincial Administration of control over local authorities are of such a kind as necessarily to lead to the slowing down of the municipal machine.

2. Sir John Maud in his book "City Government The Johannesburg Experiment" which was published in 1938 expressed the following view:

"In organizing itself for action the council from the first was left for the most part to its own devices. A finance committee it was bound by law to appoint and to use in certain ways; but it was at liberty to appoint what other committees it liked and to delegate to them what powers it chose, and no administrative control whatever could be exercised by central government over the standing orders or other regulations which it might make for purposes of internal organisation. Further in the course of day-to-day administration there were only a few points at which it needed to obtain approval from central government. By-laws from the first required this approval; and even when approved they could in certain circumstances be revoked or amended by the central authorities. In practice Johannesburg has never had much difficulty

in obtaining the necessary approval for any by-laws that it wished to make, and only once has a by-law been repealed against its will.

The selling of municipal property in land is another form of action which the council has never been allowed to carry through without central approval; the closing of streets and the use of public land for the erection of municipal buildings are subject to similar control. Again, ever since 1912, when Johannesburg was brought within the general municipal code, she has normally been required to obtain the consent of the provincial authorities before starting important public works for such purposes as sewerage, drainage, tramways, or power-supply. But none of these limitations have materially affected her freedom of action. Nor has she been hindered by those obviously reasonable provisions of the law which prevent a local authority from going outside its area of jurisdiction (in order to establish cemeteries, for example) without first consulting the central authorities. The council's power to make grants of money to 'any national or public object, exhibition, organisation, or institution' is likewise subject to central approval, but this approval has been readily given when required." *

3. The opposite point of view was expressed by the Marais Commission (in its third and final report in 1957) which states in paragraph 2 (a):

* See Burger in I.T.C. Proceedings 1960 p283 paras 7-16 as to why controls with the Mand wrote have become more inksome especially paras 10 and 11.

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"The Commission is of the opinion that adequate supervision of municipal councils will be ensured if, broadly speaking, the Administrator has supervisory powers in respect of major land transactions, the borrowing of large sums of money and the appointment of a key officer to each municipality, and powers of inspection in respect of finance and administration. The Commission recommends that all other controls be greatly relaxed or abolished. All these recommendations are to be found in detail in the Draft Ordinance annexed to the Report." *

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p. 9 →

4. ^{Maurin} The Commission ~~does~~ ^{did} not specify any particular controls which it is

suggested were superfluous, but the following features of its brief recommendation may be noted:

- (a) The suggestion that the Provincial Administrator should appoint "a key officer to each municipality" involves a new form of control since, in terms of the Local Government Ordinance, 1939, the only clog imposed upon the employment of officials by local authorities was that which required the consent of the Administrator for the dismissal of a Town Clerk, Town Treasurer, Town Engineer, Town Electrical Engineer or Medical Officer of Health (Section 62(1)(a)). This recommendation of the Commission has since been embodied in Section 63 of the

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* For a good summary of the Commission's recommendations see Pristow in I.T.C. Proceedings 1960, p 254 para 19 (or p. 263)

Local Government (Administration and Elections) Ordinance

No. 40 of 1960, which will for convenience be referred to as the "1960 Ordinance".

(b) The phrase "The powers of inspection in respect of finance and administration" is a rather vague one but there is nothing in the report to indicate that the Commission ever contemplated the dismantling of the controls embodied in part 2 of chapter 5 of the Local Government Ordinance relating to accounts of the local authorities and their audit by auditors appointed by the Administrator. To disregard this form of control would be a serious step to take because it is only very rarely that a ratepayer applies to court for an interdict to stop a local authority from embarking upon illegal expenditure and audit offers an important safeguard ~~the sole guarantee~~ against the municipal funds being misapplied.

4.5. It is instructive to compare the state of the law which Sir John Maud found so satisfactory with that which the Commission considered ought to be changed. For purposes of this comparison the writer of this memorandum undertook a detailed comparison of the provisions of the Local Government Ordinance, 1939 at the time of the publication of the Commission's report with the law as it stood when Maud's book was published in 1938. The writer deliberately selected those controls which could most easily be represented as ^{of} a pettifogging

nature, although it is not difficult to see why the Provincial Council should have provided for consent in such a case. The presumed reason for requiring consent is given in brackets in each case.

- (a) Closing of streets, parks and other open spaces or the use thereof for public buildings (Sections 64 and 66 to 68 inclusive of the Local Government Ordinance).

(Safeguarding of property owners against loss of access to streets or loss of amenity through closing of parks and other open spaces).

- (b) The changing of names of public places (Section 69 of the Local Government Ordinance).

(Preventing of prejudice to the postal authorities in the carrying out of their functions through excessive readiness on the part of the Council to commemorate local celebrities in the naming of streets etc.).

- (c) Power to accept animals from outside the municipal area in municipal pounds (Section 71).

(Confining local authorities within their areas.)

- (d) Making of advances to consumers for installation of plain wiring electrical gas fittings (Section 83(4)).

(Preventing unbusinesslike trade practices or unfair competition with private enterprises.)

- (e) Making of grants for national or public objects (Section 79 (14)(b)).

(Confining local authorities to financing voluntary societies in their own area save under special circumstances.)

- (f) Fixing of allowances for councillors (Section 19(4)).

(Preventing Councillors from voting themselves allowances from public funds which are disproportionate to their services or the resources of the local authorities.)

- (g) Remitting of surcharges raised against councillors or officials, (Section 60(1)).

(Avoiding hardships to individuals who may have been imprudent but not dishonest in public office or employment.)

(h) Fixing of fees to be paid to auditors (Section 58(1)).

(Preventing of corruption of auditors by the voting of excessive remuneration.)

(i) Use of proceeds of sale of municipal lands (Section 79(18)).

(Removing the temptation to dispose of capital assets ^{to make good a budgetary deficit or} as a means of finding funds for ill-conceived schemes.)

(j) Approval of expenditure incidental to carrying out municipal functions (Section 79(33)).

(Making it possible to obtain the prior approval of the Administrator for expenditure ^{of} doubtful legality instead of having to obtain ex-post-facto remission of a surcharge - see (g) above.) *

5. It is to be regretted that ^{the} Commission was not a good deal more specific in the examination of these powers since it would be possible to argue that they are one and all of ^a salutary nature in the case of a small local authority but that they are in varying degrees inappropriate in the case of larger authorities. For example that mentioned under (d) above might well be indispensable in a small local authority which had no officials with experience

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Burger in ITC. Proceedings p 283
para 19-22 where he suggests a
more convenient test ~~that~~ than whether
you can find of some possible justification for a control.

~~of~~ trading undertakings but it is quite ridiculous in the case of a local authority of the size of Johannesburg. Controls such as those referred to in (f) and (i) above presuppose something of a "small town mentality" and again one wonders whether a city such as Johannesburg would be likely to need a control of this sort. The restrictions mentioned under (e) and (j) have given rise of recent years to a great deal of correspondence with the Province and they certainly work a good deal less satisfactorily today than at the time Maud wrote. ~~It would seem that there is definitely room here for greater recognition of such facts as that many worthy causes require a local organisation and also that a local authority cannot function satisfactorily unless the boundaries between municipal functions and those normally left to bodies other than local authorities can be suitably lured of the remaining controls discussed above.~~ It would seem that ^(a) ~~this~~ could more suitably be left to a body such as the townships Board than to the Provincial Administration ~~since~~ ^{being} it relates ^{essentially} ~~especially to~~ a town planning matter and finally (b) is something which local authorities could well be left to settle in direct consultation with the postal authorities since the Province is not directly involved and it tends to be a spare wheel in the process of decision.

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7. It may be noted that none of the controls discussed above really go to the root of municipal administration and it seems unlikely that effectiveness

of municipal management would be seriously threatened by sluggishness on the part of the Province in deciding whether to give or withhold consent. The worst that can be said is that the need of the local authority for seeking consent, and of the Province for giving or withholding it, tends to distract ~~energies~~^{attention} from more important tasks. To this may be added the petty vexation of long delays over ~~trifles~~^{trifles} and the growth, because of such delays, of a fatalistic attitude on the part of municipal officials. For example the writer of this memorandum recently applied on behalf of his local authority for the consent of the Administrator to an alteration of the conditions of sale of certain electrical fittings under Section 83(3) of the Local Government Ordinance: this is a form of consent which did not exist in Maud's day and was one of the few introduced between the date of publication of his book and the coming out of the Commission's report in 1957. The Provincial Administration took a whole year to deal with this very simple matter and a beneficial scheme was held^{up} during this interval. *

[Insert as para 7 existing para 4 as amended: see p 3]

8. The greatest irony of the report of the Commission is that there has been a decided tendency to increase provisions~~and~~ controls since its report was published. Mention has always been made of control ^(which it recommended) over the appointments

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* See also Prinsloo op. cit. para 13
but note that that case relates to something relatively complicated whereas my example has to do with something as simple as pie.

of Town Clerks: under Section 63 of the 1960 Ordinance this in effect requires the approval of the Local Government Advisory Board, the first appointments to which included a majority of active party politicians.

Other controls since introduced relate to:

(a) **Separate Amenities:** Under Ordinance 8 of 1958, which is of doubtful validity, local authorities are deprived of the discretion given them by Act of Parliament in 1953 to reserve separate amenities such as office counters, park benches and seats on vehicles for members of different races, and may be compelled by the Administrator to make such separate reservations.

(b) **Bilingualism:** Local authorities are no longer to be judges of proficiency in English and Afrikaans required by their employees for the discharge of their duties but may appoint or promote only such officers as may have certificates of linguistic proficiency approved by the Administrator: This restriction is enforced as a system of appeals by the Administrator who can in effect allow the appointment to stand by dismissing an appeal or allowing it to fail within two months. The restriction does not apply to certain persons already in Local Government services who thus require a vested right to be promoted despite lack of language qualifications.

Apart from the interference in internal management which the Ordinance

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involves, it also interferes with the public relations between local authorities and the residents in their area by imposing upon them petty restrictions regarding the language in which correspondence is to be addressed to individual members of the public.

(c) Delegation of Powers to Committees.

The ordinance of 1960 strikes at the root of one of the most important freedoms of local authorities which is mentioned by Maud in the very first sentence of his summing up. Under the Local Government Ordinance, 1939 the only Commission which the Council was allowed to appoint was a Finance Commission but now the position is that the Council -

- (a) must appoint a Management Committee with powers which include those of the old Finance Committee, and
- (b) may only delegate additional powers to the Management Committee or any functions to any other committee with the consent of the Administrator.

In effect this tends to result in a high concentration of ^{power in} the Management Committee since -

- (i) the Council cannot effectively function by means of decisions taken in public debate, except where the number

of Councillors and the volume of work is small; it must of necessity delegate the supervision of its departments to one or more standing committees;

- (ii) the policy of the Administrator is to permit freely the delegation of responsibility to the Management Committee and restrict delegation to other committees; Johannesburg has had to struggle to retain in a modified form the old multiple-committee structure; ~~the~~ the Management Committee *is now* pre-eminent but with some real responsibility left to ~~the~~ other committees.

9. The restrictions on delegation mentioned in the previous paragraphs are all more serious because the changes which they bring about in Local Government do not appear to rest upon any clear and distinct ideas. The Commission favoured the concentration of the Council's powers in a single committee, ^{than} rather/its dispersal over a number of committees because it thought that:

- (a) This would serve to counteract the tendency to fragmentation in ~~Local Government Administration~~.
- (b) It would make ^{be} sacrifice ^{involved in} of serving as a councillor ~~less~~, since the Councillor ~~was~~ was not a member of the Management Committee

would only be required to attend a Council meeting approximately once a month (see paragraph 5 of the Commission's final report.)

Whether or not these are valid reasons it would appear that the ~~Province~~ *underlying purpose has now undergone a complete change.* ~~has now completely changed its mind.~~ The Chairman of the Local Government

Advisory Board, Mr. J.S.S. van der Spuy who may fairly be taken as the mouth-
the Provincial Administration for
piece of this purpose made the following comments at the Annual General Meeting

(proceedings, page 113) on complaints made by the President (Mr. J.W. Cowden)

about the new system:

"You complain that the Administrator's consent is necessary in so many respects even with regard to less important matters such as delegation.

It is true that in quite a number of cases it is provided that the

Administrator's approval must or may be obtained and I emphasise

the word "may" but I would certainly not admit that it is in respect

of matters of minor importance so far as this legislation is

concerned. In some cases a matter is placed under the Administrator's

approval so as to put him in a position, for valid reasons, to exercise

necessary control. One of these cases is precisely that which has

section 58.

to do with delegation i.e./ This provision in connection with

delegation is, in my humble opinion, one of the most important contained

in the Ordinance. Judicious delegation lies at the root of effective

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management. If delegation is put on a conservative footing it can happen that a Council is overwhelmed with a mass of work, of which a great deal/^{is}unimportant, with the result that it cannot find the time to give attention to the important matters which belong to it. If on the other hand delegation is carried too far it can well happen that the Council as such becomes a farce because all functions and powers are left in the hands of a small Management Committee. In order to exercise control in such an extremely important matter the consent of the Administrator has to be obtained. This matter is to my way of thinking so basic, that it just cannot be left to the mercy and whims/^{of a local authority.} There are also cases where the Administrator's consent must be obtained for another reason and this reason serves on the motive which lies at the root of it is to make the legislation as far flexible as possible. In other words, however paradoxical it may appear to you the Administrator's approval is required not to restrict but in order to give greater movement of freedom. The position which I shall illustrate in a moment with references from the Ordinance has to do precisely with one of the more frustrating problems which a local authority has to attend to namely the application of the same laws to all local authorities without respect of size. This is a problem of which the Administration is all too well aware, and before

we enter the era of city charters or go over to special ordinances for the setting up of larger local authorities we are making use of the Administrator's consent in order to bring about the necessary freedom of movement or elasticity.

10. It may certainly be hoped that some of the new restrictions imposed upon local authorities ~~since the publication of the recommendations of the Commission~~ will disappear once the Province agrees to city charters for the larger local authorities, since it may otherwise happen that the new restrictions prove to be more vexatious than those ^{that} ~~that~~ the Commission wish to see swept away.

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