

the only way effectively to exclude this 100-year-old restrictive rule is to provide shared powers. But why do so?

One benefit of this would be to revitalize and stimulate county initiative to perform new functions and to exercise powers in local affairs to the extent that the General Assembly has not preempted the field. It will make home rule more effective.

There is another reason. The General Assembly's involvement in local matters will be reduced. Much of the General Assembly's time and attention is now devoted to county affairs either through enactment of local legislation or, more relevant to this discussion, through the repeated demand to grant specific additional powers to counties.

Although mandated home rule will itself reduce the quantities of local legislation, shared powers will lessen the need to grant additional powers to counties.

This should result from each county's ability to act unless a general law has denied all counties the right to act.

Moreover, under a shared powers approach the General Assembly must act positively and visibly to preempt some activity for the State or to deny counties the right to act in some field. The legislature cannot deny a power simply by turning a deaf ear on county governments when the representatives ask for the power.

There are other benefits. One is that the county solicitors will know the law more precisely. We have had a number of complaints from county solicitors testifying before the Committee to the effect that they are unclear as to whether or not they can act in an area. We discuss this in the Committee report. I will not dwell on it.

Greater flexibility will also result if we adopt the shared powers approach. When express powers first were used, the powers of local governments were more capable of division along functional lines because governmental functions were less complex.

For instance, traffic was looked upon as a purely local function. There was then no difficulty in making that judgment. Now, obviously, it is an area-wide function and no one would say traffic should be handled solely by a municipality or county.

Another example is the health function which used to be simple but now is not. The shared powers approach is more flexible in avoiding attempts to allocate powers

to local units along functional lines. It will permit the General Assembly to act by general laws to deny counties the right to perform specific functions which at any given time could better be performed on an areawide or statewide basis.

Let's turn to section 7.06, General Application of Laws. This section provides that with certain exceptions the plenary legislative power of the General Assembly which is granted through section 3.01 shall be exercised through general laws. These are defined as laws which apply throughout the State.

The intent of this section is to limit the situation heretofore existing when in many cases public local laws regulating local matters were made applicable to a single county or to a selected group of counties.

In addition, this section prevents the General Assembly from achieving the effect of a public local law by enacting a general law and then saying it does not apply at all in certain counties. This is specifically prohibited.

I think that you can only look at this section in context with what we have now, so let's examine limitations on public local legislation under the existing Constitution very briefly.

Except with respect to charter counties and Baltimore City, the General Assembly can now pass public local laws for each county virtually without restriction. Today, the General Assembly is also free to exempt any number of counties from a general law.

The present Constitution purports to limit public local legislation with respect to charter counties and Baltimore City in these words:

"No public local law shall be enacted by the General Assembly for said city or county on any subject covered by the express powers granted as above provided."

It then says:

"Any law so drawn as to apply to two or more of the geographical subdivisions of this State"—meaning the counties or Baltimore City—"shall not be deemed a local law, within the meaning of this act."

The effect of this is that a law providing for Baltimore County and Baltimore City is a public general law even though it relates to the internal affairs of each unit. Even this ineffective limitation has been watered down by law.