

LIMITED HOME RULE **Report and Commentary**

As a candidate, Bob Riley condemned the practice in Alabama of effectively requiring that county governments seek legislative permission or local constitutional amendments before addressing many local concerns or providing new basic governmental services desired locally. He summoned the spirit of Thomas Jefferson in declaring that government closest to the people governs best. Moreover, he declared, the present practice of determining by local laws which counties may exercise which inherently local powers consumes too much of the Legislature's time and energy.

In Executive Order Number One, Governor Riley advocated pushing much more decision-making power to the local county level on issues such as zoning, economic development, and public safety. This constitutional reform would help those county governments whose voters opt for such powers to become more effective and more responsive to their constituents, while freeing the Legislature to address issues of general interest to the state.

Governor Riley also insisted, however, upon two key limitations to home rule.

First, citizens should have the right through referendum to decide whether they wished to pursue more local democracy or whether they preferred for their counties to remain subject to the present degree of legislative control. "The important point is that each individual county should have the choice," Governor Riley said.

Second, home rule must be limited in that no county could raise any taxes without a direct vote of the people. This was a critical matter for Governor Riley, in that he argued taxpayers should have the last word on matters relating to taxation at all levels of government in Alabama.

With Governor Riley's charge in mind, the Commission proposes constitutional language that would allow Alabama counties to exercise limited home rule powers, provided their voters chose this option. Voters also could select from a menu of powers the degree of local democracy their county could exercise. A proposed amendment embodying the Commission's proposal accompanies this Report and Commentary.

Currently a number of Alabama counties have the authority to exercise some of the powers proposed by this amendment. No county in Alabama, however, is authorized to exercise all of the powers.

For example, Jefferson, Mobile, Montgomery and St. Clair counties have the authority to levy any taxes not prohibited by the state's constitution. This ability was granted to each county through the passage of a local act, which could be amended or repealed by the Legislature. Three other counties -- Jefferson, Shelby and Baldwin -- are currently exercising some level of land-use regulation. Jefferson's authority is included in the general law relating to municipalities, which enables the county to exercise all land-use authority granted to the municipalities. Both Shelby and Baldwin counties have local acts establishing a land-use regulatory process in those counties. At least one other county, Macon, has land-use control authority but because of costs has not established such a process.

The third element of local democracy, the ability to exercise general police powers, is presently granted to a number of counties on a variety of subjects such as junkyard regulation, litter control, road regulation and other similar matters. These powers are also vested in local laws.

The Commission's Limited Home Rule Committee began on February 8 to deliberate on how to put these principles of limited home rule into fundamental law. Early in its discussions, the Committee adopted as a general guide the home rule article proposed in 1973 by the Brewer Commission, which the Legislature had created to recommend revision of the 1901 Constitution. That article granted local governing power to counties, subject to the general laws of the state and constitutional restrictions. The particular language of the 1973 article, however, did not suit the Committee's purposes under Governor Riley's charge. Accordingly the Committee instructed its technical advisers to draft the Committee's own amendment -- one that would address the specific issues that emerged in the Committee's deliberations.

Over the next four meetings, the Committee's members fine-tuned the language, while continuing to listen and comment on concerns and observations as they arose. Committee members who came to this work from the local government perspective wanted flexibility to deal with problems as they occurred in their counties, particularly those that are undergoing rapid growth. They also wanted assurance that any rights of local democracy guaranteed by the state constitution could be exercised by the counties if the Legislature failed to proceed in good faith to provide general laws to implement limited home rule.

Meanwhile, Committee members who reflected the concerns of landowners and farmers wanted assurance of protection for existing operations and businesses along with freedom from unreasonable regulations. They were particularly wary of the Brewer Commission's adoption of charter government as one option for home rule. This form of local government,

they feared, might go beyond the agreed-upon limits for exercising home rule.

The Committee also heard from citizens on our committee who wanted local government to work effectively and efficiently. In all its deliberations about prerogatives and limits, they insisted, the Committee and the Commission must not lose sight of making local government accountable and responsive to the citizenry.

This variety of perspectives and views within the Limited Home Rule Committee, along with vast experience on some members' part in government affairs, provided an extraordinary forum for working through difficult questions. Indeed, one observer complimented the members of the Committee for having shown how well democracy can function within a deliberative setting. In other words, the members of the Committee were able to talk with one another, rather than past one another.

After five Committee meetings and much midnight oil burned by its faithful advisers, the Committee's proposal for limited home rule was presented to the full Commission and, after discussion, duly adopted. It is submitted in the belief that it represents a significant step - as Governor Riley advocated -- toward returning power to the people from whom it is derived.

While the language of the proposal may still be more detailed than many constitutional authorities might prefer, there is considerable flexibility for citizens to choose from the menu of powers the level of home rule that best suits their needs. At the most basic level, for example, they may engage in economic development without having to seek a constitutional amendment to gain such power, as has been the case in dozens of instances before. At the other end of the spectrum, citizens may wish to empower their county governments to engage in land-use planning, local taxation, and other activities consistent with home rule. The proposed amendment does not dictate any of these powers to counties; rather it empowers citizens with the option of choosing what level of local democracy works best for their particular counties.

Again, the Commission emphasizes that citizens may also choose for their counties to remain just as they are now in relation to the Legislature. Nothing would change under our proposal unless the majority of citizens in a county voted to exercise more local autonomy.

Please note that along with this important local-option provision and flexibility is the absolute guarantee that no county government choosing to exercise home rule taxing powers under the proposed amendment could raise taxes without the approval of its voters. The Commission considers this right to be fundamental and inviolate, and thereby worthy of inclusion

in our state's constitution. This right also is consistent with the political culture of Alabama where citizens have long insisted on a direct say in many forms of taxation. The Commission's proposed amendment would apply this principle to all tax increases proposed by a county that elects to exercise home rule taxing power under the amendment.

The Commission believes that Governor Riley is correct to identify the lack of local democracy as a source of ineffective government in Alabama. Our neighboring states addressed this kind of deficiency years ago, with good results. If we wish to compete with them for better jobs and if we wish to match or exceed their quality of government, then now is our opportunity to join Governor Riley in promoting limited home rule for Alabama counties.

PROPOSED CONSTITUTIONAL AMENDMENT
REGARDING LIMITED HOME RULE

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SYNOPSIS: This bill proposes an amendment to the Constitution of Alabama of 1901 that would provide for limited optional home rule for those counties in the State, the qualified electors of which approve the same, in the areas of public safety and health, taxation and land use regulation and control.

A B I L L
T O B E E N T I T L E D
A N A C T

Proposing an amendment to the Constitution of Alabama of 1901 that would provide for limited optional home rule for those counties in the State, the qualified electors of which approve the same in a referendum held as provided therein, in respect of the areas of public safety and health, taxation and land use regulation and control, subject to the provision of such general laws as the Legislature may enact providing for the

1 exercise of said optional supplemental county governmental
2 powers.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. The following amendment to the Consti-
5 tution of Alabama of 1901 is hereby proposed, and shall become
6 valid as a part thereof when approved by a majority of the
7 qualified electors of the State voting thereon and in accordance
8 with Sections 284, 285 and 287 of the Constitution of Alabama of
9 1901, as amended.

10 PROPOSED AMENDMENT

11 "Section 1. Optional Supplemental County Govern-
12 mental Powers. Subject to the referendum provisions hereof,
13 counties in the State may exercise, in addition to all
14 governmental powers they may at the time of the ratification of
15 this amendment possess or have vested in them, the optional
16 supplemental county governmental powers hereinafter provided
17 for. The Legislature may enact general laws providing for the
18 exercise of said optional supplemental county governmental
19 powers.

20 Section 2. Referendum Elections Required for the
21 Exercise of Optional Supplemental County Governmental Powers.
22 Any county in the State may, in accordance with the provisions
23 hereof, adopt and exercise any or all of the optional
24 supplemental county governmental powers hereinafter specified

1 through the affirmative vote of the qualified electors of the
2 county voting in a referendum election held on the question of
3 whether such optional supplemental county governmental powers
4 shall be exercised. Such referendum elections shall be
5 conducted in accordance with the election laws of the State,
6 provided that any such election may, however, be held only in
7 conjunction with a general election held in the State not less
8 than three months following (a) the affirmative vote of the
9 majority of the members of the governing body of the county in
10 favor of a resolution proposing the authorization of the
11 exercise of one or more of the sets of optional supplemental
12 county governmental powers hereinafter provided for and as
13 hereinafter specified, or (b) the filing with the county
14 governing body at a regular meeting thereof of a petition
15 requesting the authorization of the exercise of one or more of
16 the sets of optional supplemental county governmental powers
17 hereinafter provided for and as hereinafter specified and
18 containing the verified signatures of at least twenty percent
19 (20%) of the total number of qualified electors of the county
20 who cast a ballot in the then immediately preceding
21 gubernatorial election held in the State.

22 Upon the favorable vote of the qualified electors of
23 the county at any referendum election held as provided in this
24 section, such set or sets of optional supplemental county

1 governmental powers thereby authorized for the county shall take
2 effect and the powers thereunder shall become exercisable on and
3 after the October 1 next following the date of such election.

4 Any county authorized to exercise any optional
5 supplemental county governmental powers hereunder may thereafter
6 be authorized to exercise a different or additional set or sets
7 of optional supplemental county governmental powers as described
8 herein, or repeal an authorization of the exercise of any such
9 set or sets of powers, in like manner as that described above
10 for the authorization of the exercise of such powers. In no
11 event, however, shall any referendum election on the question of
12 the authorization of the exercise of any set or sets of optional
13 supplemental county governmental powers as herein provided for,
14 or on the question of the repeal of any thereof, be called or
15 held in any county except (i) upon adoption of a resolution by
16 the governing body of the county or the filing therewith of a
17 petition as described above in regard to the authorization of
18 the exercise of optional supplemental county governmental powers
19 and (ii) in conjunction with a general election held in the
20 State.

21 Section 3. Optional Sets of Supplemental County
22 Governmental Powers. In addition to all other powers that it
23 may have under the laws and Constitution of this State, any
24 county may exercise, not inconsistent with the laws of this

1 State and such rules and regulations as may be adopted pursuant
2 thereto, any or all of the following sets of optional
3 supplemental county governmental powers as such county may be
4 authorized to do pursuant to the provisions of this amendment as
5 hereinabove provided.

6 Set 1 Powers. A county authorized to exercise Set 1
7 Powers hereunder shall be empowered, (a) the provisions of
8 Section 94 of this Constitution to the contrary notwithstanding,
9 to lend its credit or to grant public money or thing of value in
10 aid of or to any individual, association or corporation, by
11 issuing bonds or otherwise, for the purpose of promoting
12 economic development and tourism in the county, and to exercise
13 such legislative powers and to adopt such resolutions, orders
14 and ordinances as shall be necessary to carry out such
15 functions, and (b) any other provision of this Constitution to
16 the contrary notwithstanding, to provide for public health and
17 safety services throughout the unincorporated areas of the
18 county in which and to the extent such services are not
19 otherwise generally provided by another governmental authority,
20 and through its governing body to exercise such legislative
21 powers and to adopt and enforce such resolutions, orders and
22 ordinances as shall be necessary to carry out such functions.

23 Set 2 Powers. A county authorized to exercise Set 2
24 Powers hereunder shall be empowered, any other provision of this

1 Constitution to the contrary notwithstanding, and except as
2 hereinafter provided, to levy for county governmental purposes
3 and to set the rates of (a) taxes on the assessed value of
4 taxable property in the county, (b) business license and
5 privilege taxes on persons having sufficient nexus with the
6 county to permit the lawful imposition of such taxes, (c) sales,
7 use and other excise taxes on transactions and events occurring
8 in the county, (d) taxes on incomes earned in or occupations
9 performed in the county, and (e) taxes on such additional
10 subjects of taxation as the Legislature may by general law
11 provide that counties may impose, provided that the imposition
12 of any taxes to be levied pursuant to the authorization herein
13 contained or the increase in rate of any thereof shall not be
14 made or levied except following a public hearing conducted by
15 the governing body of the county respecting such imposition or
16 increase and the favorable vote by a majority of the qualified
17 electors of the county voting at a referendum election held
18 thereon. The provisions hereof shall not affect the rates, the
19 validity, the imposition or the duration of any taxes or fees
20 being lawfully imposed by any county in the State on the date of
21 the ratification of the amendment to the Constitution of which
22 this provision was a part. Any provision hereof to the contrary
23 notwithstanding, no levy of any ad valorem property tax made by
24 any county pursuant to an authorization hereunder to exercise

1 Set 2 Powers shall result in the amount of ad valorem taxes
2 payable to the State and to all counties, municipalities and
3 other taxing authorities in the State with respect to any item
4 of taxable property exceeding the limits thereon provided for in
5 subsection (i) of Section 217 of this Constitution, as amended.

6 Set 3 Powers. A county authorized to exercise Set 3
7 Powers hereunder shall be empowered, any other provisions of
8 this Constitution to the contrary notwithstanding, to regulate
9 and control the use of land through zoning and other similar
10 land use control measures in the unincorporated areas of the
11 county not otherwise subject to the zoning powers and land use
12 planning controls of any municipal corporation exercising such
13 powers in such areas pursuant to applicable law, and to
14 exercise, pursuant to such general laws with respect thereto as
15 the Legislature shall enact for counties so empowered, such
16 legislative powers and to adopt such resolutions, orders and
17 ordinances as shall be necessary to carry out such functions,
18 provided that (a) if the Legislature shall not, prior to October
19 1, 2007, enact a general law uniformly governing the exercise of
20 zoning and land use planning powers by counties, then the
21 exercise by counties of such powers as herein provided shall be
22 carried out consistently with such general laws of the State as
23 are then applicable to municipal corporations generally, (b)
24 such regulation and control may not commence in any particular

1 area or portion of the county in which such powers may be
2 exercised pursuant hereto unless the commencement of said
3 exercise shall be approved, at a referendum election held in
4 conjunction with a general election held in the State and called
5 by the governing body of the county, by a majority of the
6 qualified electors voting in such referendum election and
7 residing in the area or portion of the county in which
8 commencement of the exercise of such powers is proposed, and (c)
9 in no event shall any county establishing a planning commission
10 or other similar body for the administration of county zoning
11 and land use planning powers pursuant hereto provide for the
12 membership on such commission or other body other than of
13 persons residing in the unincorporated areas of the county.

14 Any county in the State authorized to exercise any of
15 the hereinabove described optional supplemental county
16 governmental powers pursuant to the provisions hereof shall
17 retain all such powers as it shall otherwise have pursuant to
18 this Constitution and the laws of this State, but in the event
19 the authorization of the exercise by any county of any set or
20 sets of optional supplemental county governmental power
21 previously authorized pursuant hereto is subsequently repealed
22 pursuant to the provisions hereof, the powers of the county with
23 respect to the subject or subjects of any such optional
24 supplemental county governmental power so repealed shall

1 thereafter revert to those powers with respect thereto that the
2 county would then have otherwise had as if no such set of
3 optional powers had been previously authorized hereunder,
4 provided that such repeal shall in no circumstance effect the
5 impairment of any contract entered into by the county while it
6 was authorized to exercise such power."

7 Section 2. Unless otherwise provided by the
8 Legislature, an election upon the proposed amendment is ordered
9 to be held on the date of the first statewide general or special
10 election held in the State after the expiration of three months
11 from final adjournment of the session of the Legislature at
12 which the act proposing the amendment hereinabove proposed is
13 adopted. The election shall be held in accordance with the
14 provisions of Section 284 and 285 of the Constitution of Alabama
15 of 1901, as amended, and the general election laws of the State.

16 Section 3. Notice of the election and of the
17 proposed amendment shall be given by proclamation of the
18 Governor, which proclamation shall be published once a week for
19 four successive weeks next preceding the day appointed for the
20 election in a newspaper in each county of the State. In every
21 county in which no newspaper is published, a copy of the notice
22 shall be posted at each courthouse and post office in such
23 county.