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External financial control by the central government and provincial administrations over local government in South Africa

Cowden, John Williams

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Decisions given by the courts have nevertheless had important implications for local government, particularly in the sphere of finance. Many important decisions have been given on the laws relating to valuation, rating and licensing which have had important results for local government finance. The law has often been amended as a result of court decisions. There are other forms of judicial control such as injunction and indictment. Although these can be regarded as an additional form of external control over local authorities, they come more from the actions of persons than from statutory bodies. Similarly, there is an external form of control exercised by other statutory appeal boards and in this connection valuation appeal courts come readily to mind. The legislation clearly intended that the private property-owner should have a special right of appeal. There is also a powerful form of external control exercised by the compulsory appointment of Conciliation Boards under the Industrial Conciliation Act. The financial consequences for local authorities arising from decisions of Valuation Courts and from Industrial Conciliation Boards and from independent arbitrators have often been very considerable.

No consideration of judicial control would be complete without reference to the indirect control arising from the general operation of the doctrine of ultra vires. Although its influence is indirect, it has a profound effect on local government. A local authority may do only those things which are expressly authorised by law, or for which there are implied powers. The question which Ministers or Administrators or ratepayers will ask is, where does the law give the Town Council the power to do this? It is no defence for a Council to say, Where does the law state that we may not do this? The ultra vires rule has been the cause of a great deal of waste in local government in South Africa. "The fear of doing something ultra vires, with the concomitant threat of surcharge, slows down local administration considerably".(1) A good example of the effect of the ultra vires rule is the establishment of reserve funds in Transvaal. In 1932 the Provincial Auditor disallowed the creation of a reserve fund by the Brakpan Municipality on the grounds that it was ultra vires. Since then similar disallowances have been made in many local authorities. Treasurers, auditors, legal advisers and provincial officials have argued whether such funds are intra vires or ultra vires, and no action has been taken to resolve the issue.

(1) "WASTE in Local Government Administration" by E.B. Scott (I.M.T.A. Conference Proceedings 1937. Page 188)
(2) For latest position see Memorandum on Reserve Fund (1966) by the Treasurers' Association for the Reef and Pretoria (1966) submitted to the Local Government Advisory Board (Transvaal)

CHAPTER 16.

REVIEW OF STATE CONTROL.

It is now appropriate to summarise the nature of control by the Central Government in the light both of the controls themselves which have been described in earlier chapters and against the general nature of central control discussed in the previous chapter. Such a summary will afford a useful base on which to draw conclusions.

In addition to this, considerable attention will have to be devoted to one very important form of indirect control exercised by reason of central restriction over the sources of revenue of local authorities.

(A) SUMMARY OF LEGISLATIVE AND ADMINISTRATIVE CONTROL.

In South Africa legislative and administrative control by the State is limited in three important ways. Firstly, the Acts of Parliament which deal with the finances of local authorities and which are summarised in Annexure A are but a small proportion of the number of statutes passed by Parliament. Furthermore, the financial provisions of such statutes are in many cases not the most important aspects of the legislation. This is understandable when it is realised that the control of local government was handed over almost in its entirety to the Provinces in the South African Act 1909. Secondly, the absence of grants by the Central Government to local authorities for special services such as education and police eliminates the need for a great deal of Central control which exists in countries like Britain. Thirdly, much of the financial control imposed by the State arises after local authorities exercise permissive powers.

Nevertheless, State legislation has important consequences for local government finance. The main spheres of control are summarised below:

1. All financial accounts relating to Bantu in urban areas must be separated from the general accounts, and the Minister exercises direct control over revenue and expenditure.
2. Local authorities must take definite steps to combat infectious diseases in their areas, and when the State refunds a portion of local expenditure there is strict financial control.
3. The State controls the access of local authorities to the capital market.

4. Local authorities may borrow money from the State for housing purposes; if this is done there is strict financial control over the repayment of loans, the prices of houses, the income limits of tenants and owners and the provision of services by local authorities.

5. If a local authority operates a public transport service it must obtain authority from and have its routes and fares approved by a Board appointed by the Minister.

6. A local authority may borrow money from the State (Local Loans Fund) and strict financial control operates with regard to repayment.

7. Local authorities must take adequate steps to prevent the development of slums, and the State lays down a procedure for compensation and expropriation.

8. The State has appointed a Board and a Commission to develop abattoirs, and these bodies have power to control the finances of municipal abattoirs.

9. When national roads are built through local areas, the State determines what the local authority's share of the cost shall be.

10. The State controls the marketing of agricultural products, as well as sales by public auction, with a consequent impact on the finances of municipal markets.

11. Employers of Bantu labour in proclaimed local areas must pay a weekly levy towards the costs of services to Bantu Townships, and the use of the funds collected is controlled by the State.

12. The State prohibits the right of municipal employees to strike and compels local authorities and its employees to settle disputes by conciliation or arbitration.

13. The State controls the conservation and use of water with consequential financial implications for local authorities.

14. The State controls the establishment and development of areas for different racial groups with powers of control over local authorities.

15. A Board is appointed by the State to control the supply of electricity, and this Board has certain powers over the tariffs of local authorities.

16. The State controls commercial flying within the Republic and certain controls are imposed on local authorities regarding aerodromes.

17. Local authorities are subject to control by the State regarding the sale to Bantu of Bantu Beer and European Liquor.

18. The State issues licences for trades and occupations within urban areas, which has many financial implications for local authorities.

19. The State has passed laws regarding the prevention of the pollution of the atmosphere, and local authorities are subject to certain controls when steps are taken against nuisances.

20. The State has given wide powers to a Board to promote community development and urban renewal, with financial implications for local authorities.

21. Local authorities may train Bantu building workers, but the State controls conditions of employment, wages etc.

22. The State has given to a Board wide powers to resettle Bantu in Johannesburg, with powers over the local authority where necessary.

23. The State controls the extent to which financial and other institutions may invest funds in local government stocks.

24. The State controls the general development of physical resources, directly affecting urban planning.

The above controls are imposed directly and indirectly on local authorities. There are obviously many other controls imposed on local authorities, not as local authorities, but as employers of labour or the users of vehicles etc. There is clearly no point in bringing all this legislation within the ambit of financial control, notwithstanding that a great deal of control is exercised through the legislation which covers factories, workmens' compensation, office hours, unemployment insurance and third party insurance.

B. CONTROL OVER THE SOURCES OF REVENUE.

The Central Government accepts the full financial and executive responsibility for such services as the police service; it builds police stations in local areas and administers them and local authorities are not involved except with regard to the provision of normal services. If, however, the Central Government accepts the financial responsibility for housing and public health but leaves the executive responsibility for

the services to local authorities, and pays local authorities far less for the services than local authorities think they should receive, there are financial implications of a serious nature.

Local authorities, through the United Municipal Executive, have made frequent representations to the Central Government for greater financial assistance. Some of the history of the negotiations between the Central Government, the Provinces and local authorities has been covered in previous chapters when services such as public health, housing and Bantu affairs have been dealt with. The purpose in this current chapter is mainly to give a review and to consider what part the financial relations between the three tiers of government have played in central control.

Set out below is a brief recapitulation of the major items on which representations have been made by local authorities:

(a) The Government took away local revenues in respect of licences (1925) and rates on Government properties (1931) without granting further revenue raising powers;

(b) The State has over a long period granted local authorities inadequate financial assistance with regard to housing, public health, traffic control;

(c) Local authorities should be given a greater share in direct motor taxation;

(d) The State and not local authorities should pay for railway service lines in urban industrial townships;

(e) Income from trade licences should accrue to local authorities.

The United Municipal Executive, consisting of representative from the four Provinces and South West Africa, came into existence in 1931 as a result of the action of the Central Government in passing the 'Derating' legislation which exempted Government property from local taxation. Since that date, persistent submissions have been made for financial relief, culminating in a series of comprehensive memoranda to the Borckenhagen Committee.(1) The conclusions of this committee on certain specific services have already been given above. The final report, and possibly the most important report, has still to be tabled in Parliament. This report will deal with the adequacy or otherwise of local revenue resources.

Clearly, the adequacy of the local sources of revenues is

(1) The Committee of Enquiry into the Financial Relations between the Central Government, the Provinces and Local Authorities (Government Notice No. 1498 - 1956)

a most important factor to be considered in reviewing the nature of financial control by the State. Many of the representations made by the United Municipal Executive to the State would become irrelevant if the sources of revenue were adequate. Representations made by local authorities to the Borckenhagen Committee for additional revenue sources are briefly as follows:- (1)

1. Revenue from trading licences should be transferred from the Government to local authorities;
2. Local authorities should be permitted to introduce differential valuations.
3. Agricultural land in urban areas should be taxed on the same basis as other land.
4. Local authorities should receive higher amounts by way of endowments paid by township owners.
5. The use of Bantu Service Levy funds should not be restricted to services but should be used also for the construction of houses.
6. A services levy for Indians and Coloureds should also be introduced.
7. Restrictions on the use of revenue from parking meters should be removed.
8. Revenue from entertainment taxes should be transferred from the Provinces to local authorities.
9. Local authorities should be allowed on a permissive basis to levy sales and other taxes.
10. The State should make grants to local authorities in lieu of rates on government property.
11. The Provinces should transfer a portion of the income from motor vehicle licences to local authorities.
12. Local authorities should receive a portion of fuel taxes for road construction.

It is of interest to note that with regard to two other important sources of revenue, the United Municipal Executive recommended against their introduction as follows:-

(1) Memorandum on "Other Possible Sources of Revenue for Local Authorities" (I.M.T.A. 1957) and "Sources of Income of Local Authorities and some more Property Taxes" (I.M.T.A. 1963).

(a) A full memorandum on the feasibility of introducing a local income tax was prepared by the I.M.T.A. S.A. (Inc.);(1) the United Municipal Executive decided not to recommend such a tax to the Borckenhagen Committee.(2)

(b) The Borckenhagen Committee asked the United Municipal Executive for its views on central grants by the State, and the United Municipal Executive replied that local authorities should have their financial resources strengthened by the creation of additional sources of revenue in preference to any extension of central grants.(3)

Some of the abovementioned issues regarding financial relations have been settled; other matters are unimportant in relation to the general principles of tax apportionment.

In addition to the submissions regarding specific categories of financial assistance as indicated above, the United Municipal Executive submitted a general memorandum to the Borckenhagen Committee entitled "The Problem of Local Financial Needs and Resources".(4) This memorandum drew the following conclusions:-

(a) although the direct burden of urbanisation fell mainly on the shoulders of local authorities, their share of the aggregate revenue resources of all levels of government declined between 1919 and 1952;

(b) Local Taxation has not increased with the growth in national income as in the case with national and provincial taxation;

(c) the consequences for local government were serious as local authorities had to go cap in hand to the Government and the Provinces for assistance which was "fraught with danger for the independence of local authorities and economically wasteful to the country as a whole".(5)

The representations of local authorities have been persistent and in addition to representations on specific issues such as Housing and the Bantu Revenue Account, there have been general submissions on financial relations, beginning with a comprehensive memorandum prepared by Mr. A.

(1) "A Local Income Tax" (1957).
(2) U.M.E. Minutes - 11th February, 1958. Page 31.
(3) See I.M.T.A. "Memorandum on Central Grants" - 31st October, 1957.(Adopted by United Municipal Executive on 11th February, 1958).
(4) See Agenda of United Municipal Executive - 26th February, 1957.
(5) Ibid. Page 7.

Graham-Cook , City Treasurer of Durban, in 1939. Since then several general memoranda were prepared by the Institute of Municipal Treasurers and Accountants S.A. (Inc,) and submitted to the Government. These memoranda have been referred to frequently above.

No attention will be devoted to submissions and replies regarding specific problems. Many of these submissions in previous memoranda have been cleared up, and disputes still continue with regard to other specific matters. Only principles need be considered and it is appropriate at this stage to refer to the points of view of the Central Government on general principles.

The first real indication of the Government's attitude towards financial relations between the Central Government, the Provinces and local authorities was given on the 9th of April, 1945, when a meeting was held at Capetown, attended by representatives of the Government, the Provinces and local authorities. The then - Minister of Finance, Mr. J.H. Hofmeyr. stated that he could only work on the basis of principles and the detailed items contained in the various memoranda would not assist him towards this end. He had drawn up certain principles, which should form the basis of discussion and these principles were:-

(1) The functions of an urban local authority, for which it should be regarded as financially responsible, are those which are consequent on the close settlement of a body of people in an urban area. Some of these functions will be purely local, others will be of a hybrid character. In respect of the former class the local authority should bear full financial responsibility : in respect of the second such responsibility should be shared by it with the Central or Provincial Governments.

The financial resources of a local authority should be either such as should accrue to/consequentially on the exercise of its functions or such as are associated with the benefits accruing to individuals as a result of the urban development of the area. Under the latter head the factor of primary importance is the locality value which fixed property in an urban area acquires as a result of such development.

(3) In relation to fixed property as a source of municipal revenues, it is appropriate not merely that a rate should be imposed on the present value of such property in the urban area, but also that the local authority should derive benefit from the capital gains of land-owners as they accrue.

The product of a tax on unearned increment would appropriately be used by an urban local authority for capital improvements, including works of post-war development.

Several further memoranda were prepared on the basis of these principles and Mr. J.H. Hofmeyr, the Minister of Finance, attached much importance to them. He obtained

an undertaking from the Provincial Administrators that the principles would be accepted. In the end, however, no progress was made because the Government and local authorities interpreted these principles differently, with the result that after a series of meetings the matter virtually lapsed.(1)

The main submission of local authorities at that time was that in view of all the differences which existed between the Central Government and local authorities, a commission should be appointed to examine all aspects of the case, but the Government would not agree to this. However, local authorities were adamant on one point, and that was the rejection of the third principle laid down by Mr. Hofmeyr, that local authorities should be permitted to tax the capital gains of land-owners as they accrue. Local authorities were not prepared to regard this proposal as meeting their main claims for additional financial assistance. One of the reasons was the relatively unsuccessful excess profits tax from a revenue point of view, and also the recommendation of the Social and Economic Planning Council, that the tax be repealed after the war.(2) The Institute of Municipal Treasurers and Accountants S.A. (Inc.) prepared a memorandum, listing several objections to the levying of such a tax by local authorities.(3)

Further meetings between the United Municipal Executive and the Government under the Chairmanship of Mr. N.C. Havenga, who was then Minister of Finance, took place on the 23rd of November, 1949. All the previous submissions were placed before the meeting at which the provincial administrations were also represented, and the Minister finally agreed to appoint a committee to investigate health matters only.(4) Local authorities were to receive later benefits from the report of the Havenga Sub-Committee, for the magnitude of government refunds to local authorities in respect of public health services were considerably increased. Other benefits also emerged, such as the partial removal of restriction on the use of Bantu Beer profits, and several other minor items.

Representations continued to be made to the Central

(1) For a precise indication of the points of view of the Government and local authorities on each of the major items see "Latest development regarding Financial Relationships in South Africa", S.A. Treasurer, June, 1947. Page 118 (By Mr. F.E. Jenvey, City Treasurer, Port Elizabeth).
(2) Report No. 7 "Taxation and Fiscal Policy". Op. Cit. Page
(3) "The Taxation of Capital Gains of Land-owners as they accrue". (6th January, 1947).
(4) This Committee came to be known as the Havenga Committee, referred to in previous chapters.

Government and finally the Minister of Finance agreed in 1956 to the appointment of a committee of enquiry into financial relationships between the Central Government, the provinces and local authorities, under the Chairmanship of Mr. C.L.F. Borckenhagen. The Committee was composed of representatives of the Central Government, the Provinces and Local authorities. The Committee has already dealt with a number of specific problems which have been the subject of special reports, all of which have been referred to in previous sections of this work. The last report of the Committee will deal with the adequacy of the sources of income of local authorities, and has not yet been published.

It seems unlikely, however, that any radical departure from the present sources of revenue of local authorities will be recommended. The Chairman of the Committee in a paper delivered to the Institute of Municipal Treasurers and Accountants in 1960 referred to the old adage that "an old tax is a good tax", and he questioned whether the pressure on local taxation is as great as it is on national taxation.(1)

It seems clear from this brief account of the discussions between the Central Government and local authorities, that the principles on which sources of revenue should be allocated between the Central Government and the Provinces on the one hand, and local authorities on the other, have not been dealt with thoroughly. There is an attempt to return to principles in the first interim report of the Borckenhagen Committee.(2) It now seems likely that the position will not be taken further until the final report of the Borckenhagen Committee is published.

It is appropriate, therefore, to study the sources of revenue available to local authorities in other countries, and the extent to which these could be applicable in South Africa. Towards this end, a brief account will be given of the position in other parts of the world. Thereafter the adequacy of local revenues will be examined in the light of the facts currently available for assessing the needs of local authorities.

The inadequacy or otherwise of local tax revenues to meet the increasing [illegible] which local authorities have to provide, is a subject which is world-wide. In the United

(1) "The Financing of Public Health Services in S.A." by C.L.F. Borckenhagen (I.M.T.A. Conference Proceedings 1960. Pages 102/3).
(2) Op. Cit. Paragraph 61.

States particularly, the subject has been given considerable prominence in most of the states. Dr. Mabel Walker, an authority on municipal finance in the U.S.A., considers that "The decade of the thirties witnessed a great upheaval in state tax systems, primarily as a result of depression impacts. During the forties important adjustments were made in the federal tax system in order to meet defence and war needs. Now in the fifties the tax spotlight is on the local governments. The current revolutionary tax changes are being made in this area, rather than in state and federal finance."(1) Nearly ten years later, there is much evidence to show that major changes are still taking place in the composition of local revenues in the U.S.A., and that the Federal Government recognises the need for change.(2) In other parts of the world investigation have been made into local revenues, in particular by the Royal Institute of Public Administration, whose two reports on "New Sources of Local Revenue (1956)" and "Local Revenues in Eleven other Countries (1956)" highlight the search for additional sources of local revenues in various countries of the world. In 1951 the International Union of Local Authorities at its annual congress in Rome devoted its entire proceedings to local finances, in which sources of revenue naturally played an important part. The published report of the proceedings "Local Government Finance and its importance for Local Autonomy" contains important general conclusions regarding sources of revenue of local authorities throughout the world.(3)

The search for additional sources of local revenue has also taken place in South Africa. Before dealing with this aspect, it is desirable to note one conclusion from the trends in other parts of the world, and that is the fact that many of the local taxes made available to local authorities in other countries are not available to local government in South Africa. In the U.S.A., for example, local authorities to varying degrees have power to levy motor fuel taxes, cigarette and tobacco taxes, an income tax in Philadelphia, vehicle taxes, amusement taxes and many others.(4)

(1) Municipal Finance - August 1956. Page 40.
(2) See for instance "Local Government Finance Reform: The National Viewpoint" by L.L. Ecker-Race (Municipal Finance August 1965).
(3) Page 80.
(4) See "Where Cities get their Money" by Hillhouse and Magelssen (1945 and annual supplements) and American Municipal Year Book , 1966.

In reviewing the position in South Africa against trends in other parts of the world, it is necessary to recognise the differences in constitutional framework. In a unitary state such as South Africa, where many of the services undertaken by the State are decentralised in other countries, it is natural that the State would not be anxious to vacate certain fields of taxation, such as sales taxes and excise taxes, in favour of local government. Furthermore, it is worthy of note that even though various taxes are imposed by local authorities in other lands, taxes on property still form the bulk of local tax revenues. For example, in the U.S.A. where the allocation of additional tax revenues to local government has proceeded further than in other countries, income from other local taxes represents only one seventh of that brought in by taxes on property.(1)

As the main purpose of reviewing sources of revenue of local authorities in South Africa is to determine the influence of central financial control, it is necessary to examine only the principles which lie behind the present allocation of tax revenues.

Without going too deeply into the history of the local tax on fixed property, it should be stated that it is strongly entrenched in the history of local government and when the first major legislation was enacted under the Cape Municipal Ordinance 1836, power to levy a tax on fixed property was incorporated. Local taxation in South Africa has been greatly influenced by the English system of rating to the extent that local authorities must rely primarily on this source of revenue for their local needs, though the system of imposing the rate on rental values has never found favour in South Africa; the system of rating in all Provinces is on the capital value and not on the rental value of property. The reliance of local authorities on this one major source of income has been examined by various authorities in South Africa. The Local Government Commission 1915 (Transvaal) considered that the system of taxing fixed property was satisfactory.(2) The Local Government Commission 1921 (Transvaal) was not in favour of a local income tax and thought the assessment rate on fixed property was the "best and fairest method of raising

(1) Local Revenues in Eleven other Countries. Op. Cit. Page 56.
(2) Op. Cit. Page 42.

the required revenue."(1) The Social and Economic Planning Council considered that the fixed property tax "in spite of the fact that it does not conform to a satisfactory pattern is considered the most practical source of tax available to local authorities."(2) In another report the Council stated that "while the Council finds that urban property rates are seriously defective in respect of impartiality and of its norms of social policy, it hesitates to suggest any drastic change in the present system. It would not be easy to devise a more satisfactory tax for local authorities.(3) Bastable considers that taxes levied locally on fixed property are "well fitted for local treatment".(4)

The Commission of Enquiry into Local Government in the Transvaal, however, considered that the sources of revenue of local authorities were inadequate and recommended that local authorities be given powers to levy entertainment and motor vehicle taxes.(5) Dr. D.G. Franssen in a study "Die Plek van Plaaslike Bestuursliggame in die ekonomiese lewe in die Unie" came to the conclusion that the property tax was sufficiently productive and elastic to cover adequately the financing of local government services.(6) Professor Gey van Pittius stated in 1959 that he considered the sources of revenue of local authorities in general to be adequate but that he would have to know what new outlays were contemplated before answering the question what the additional revenue sources should be.(7) Professor D.P.F. Norwood has pointed to the problems of introducing local sales, business and income taxes in South Africa, and considers that there is much to be said for the time-honoured device of raising the general rate.(8)

The tax on fixed property and profits made on trading undertakings are the two most important sources of local revenue in South Africa. The composition of rate fund income in respect of 51 of the larger local authorities in South Africa is set out in the table below. The figures in each case show the net income (after any expenditure directly incurred therewith has been deducted) as a percentage of total income.(9)

(1) Op. Cit. Para. 353.
(2) Report No. 8. Op. Cit. Page 51.
(3) Report No. 7 Taxation & Fiscal Policy (U.G. No. 48 - 1945. Para [illegible]3.
(4) Public Finance. Page 396 (Third Edition. Macmillan)
(5) Op. Cit. P[illegible] 1958/9.
(6) S.A. Journal of Economics (March 1957) Page 32.
(7) Beskouings oor Munisipale Inkomstebronne (I.M.T.A. Proceedings 1959. Para.14 and Page 162.
(8) "Local Government Finance in South Africa" (I.M.T.A. Proceedings 1965. Pages 194 and 195)
(9) Statistics made available by Secretary of the Borckenhagen Committee.

	1919	1929	1939	1949	1956
Rates	80.5	79.9	73.1	79.5	80.7
Licenses	5.5	5.7	7.0	4.7	4.3
Trading Surpluses	12.8	14.4	17.3	15.8	13.5
Other	1.2	-	2.6	-	1.5
	100.00	100.00	100.00	100.00	100.00

The next point to consider is whether these sources are sufficiently productive in meeting the growing expenditure requirements of local authorities. With regard to rates the following table indicates the increase in income from rates for all local authorities consequent mainly upon increases in the value of rateable property, and the percentage of rate income to net national income.(1)

Year	Value of Rateable Property (1,000,000)	Income from Rates. (1,000,000)	Net National Income. (1,000,000)	Percentage of Rates to Net National Income. (1,000,000)
1943	479	14	1,080	1.2
1953	1,395	33	2,599	1.2
1963	5,400*	61	5,103	1.2

* estimated

From these figures the conclusion must be drawn that the rate as a source of income is productive, and as the value of property rises, additional revenue accrues to local authorities.

The proportion of rate income to net national income is remarkably constant for the years mentioned. One of the points made by the United Municipal Executive to the Borchamhagen Committee was that Provincial and Central income rises at a faster rate than municipal income, and the following figures were quoted in support of this:-(2)

	1919	1929	1939	1949	1952
National and Provincial Tax Revenues as percentage of National Income.	12.4	13.2	14.2	19.5	18.6
Municipal Revenue as a Percentage of National Income.	1.9	3.1	3.5	3.1	2.7

The above figures for Municipal Revenue were based primarily on Rate Fund Income; profits on Trading Undertakings were added to income from rates and sundry revenue, giving a picture therefore of income accruing to general rate fund.

(1) "Union Statistics for Fifty Years" (1910-1960) and Statistical Year Book 1965, both by the Bureau of Statistics
(2) The Problem of Financial Needs and Resources. Op. Cit.

If gross-municipal revenue is taken, however, including all charges for municipal services and the gross revenues of all departments, a different picture emerges as follows:-(1)

Year	Current Revenues of all local authorities (a) (1,000,000)	Net National Income (b) (1,000,000)	Percentage of (a) to (b)
1943	54	1080	5.0
1953	142	2599	5.5
1963	311	5103	6.0

It is more appropriate to accept total municipal income as the basis for comparison because a great deal of expansion of municipal services takes place directly as a result of the activities of the major trading undertakings, such as water, electricity, [illegible].

[illegible], that the local rate on fixed property [illegible] to be a suitable and productive source of income to local authorities in South Africa. Furthermore, the availability of other sources of revenue to local authorities does not necessarily justify their introduction in a unitary state like South Africa because the central government itself executes and finances several important services. The proliferation of locally administered income, sales, excise or other non-property taxes could not be considered in South Africa unless regional areas broader than existing local areas could be established.

The history of local taxation in South Africa points to the fact that the allocation of the entire field of fixed property taxation to local government, leaving most other direct and indirect taxes to the central government, is a satisfactory basis. In spite of its regressiveness and other known disadvantages, it is productive, and as Shultz correctly observes "many a tax subjected to the tax scholars' barrages of criticism is levied and collected year after year because it forms a steady stream of dollars into local or state, or federal treasuries."(2)

The general conclusion, therefore, with regard to financial control is that the Central Government, by laying down the basis of financial relations between the three tiers of government, exercises considerable financial control over local authorities but growth figures show that local revenues have kept pace with the national income. Further reference is made to this in the last chapter.

(1) Source: "Union Statistics for 50 Years" and Statistical Year Book 1965. Op. Cit.
(2) American Public Finance by William J. Shultz. Page 259.

However, having allocated the property tax to local government, it is necessary to ensure that it is kept as productive as possible, firstly by improving the administration of the tax (which is a task for the provinces and local authorities) and secondly by preventing erosion of the tax base (which is partly a task for the Central Government inasmuch as increasing government activity in urban areas spells more exemption from rates and greater erosion).

Financial control in the sphere of financial relations is therefore not of a serious nature, and any financial disabilities of local authorities should be dealt with by (a) improving the rating system (b) the making of specific grants by the Central Government to local authorities for certain services. A great deal of fear has been expressed by local authorities regarding the loss of autonomy if the Central Government subsidises local services. Yet sometimes this is by far the best way of paying for a service, for the State is in the best position to raise the money with its more equitable tax structure, but the local authority is the best agency for executing the service.(1) This policy has received much criticism in South Africa from many people because (a) local authorities fear for their autonomy if the State pays for a service (b) the methods of subsidising by the Central Government are unsatisfactory.(2) Financial relations between the Central Government, the Provinces and local authorities could be greatly improved by (1) acceptance by all tiers of government of the present allocation of tax resources (2) the making of grants by the Central Government to local authorities for specific services of a national or hybrid character,(3) an improvement in the basis of making central grants on the basis of block grants, under an approved formula (4) the prevention of further erosion in the local tax base.

(1) For a cogent justification of the grant, see "State and Local Finance in the National Economy" by Alvin H. Hansen and Harvey S. Perloff (1944). Page 123 onwards.
(2) It is recognised on all sides, for example, that the present method of refunding expenditure on health services is a cumbersome and wasteful method of central assistance

CHAPTER 17.

REVIEW OF PROVINCIAL CONTROL.

1. Recapitulation of Powers.

The nature of financial control has been fully discussed in previous chapters, and it remains now to summarise the various types of control, as was done in the last chapter with regard to financial control by the Central Government.

Before reviewing Provincial financial control in general, it is desirable to recapitulate the various types of control which the examination of the various ordinances has brought to light. In order to obtain a general picture of Provincial financial control, many of the small differences between Provinces have to be ignored. For detail, reference must be made to previous chapters and to the summaries of the ordinances set out in Annexure B. The following pattern of Provincial financial control then emerges.

A. Accounting and Budgeting Control.

(a) The law determines what the revenues of local authorities shall consist of, and stipulates that special funds must be established for certain purposes;

(b) the law also stipulates that local authorities must keep proper books of account and close and balance the books within a certain period after the close of the financial year;

(c) Local authorities must prepare revenue and expenditure estimates in order to establish the basis of the rate levy. Such estimates must not be departed from except in accordance with the procedure laid down;

(d) Local authorities are given a general power to incur all expenditure necessary for carrying out any purposes authorised in the ordinances and they are also given specific powers to spend money for particular purposes as detailed in the ordinances.

B. Capital Finance.

(a) Local authorities are given powers to borrow moneys on a long-term or short-term basis, in accordance with the strict procedure laid down in the ordinances, and in most cases the powers are subject to further approvals being obtained from the Administrator. The law imposes on local authorities stringent conditions regarding the repayment of loans; investors in municipal loans are given wide powers of remedy against defaulting local authorities.

(b) Local authorities must invest their surplus funds in the types of securities and institutions laid down in the ordinances, or as approved by the Administrator;

(c) Local authorities must keep adequate records of their plant and movable assets, and must ensure that adequate sums are set aside annually for depreciation.

C. Fixed Property Taxation.

(a) Local authorities must take steps to appoint valuers and compile valuation rolls to serve as the tax base;

(b) The ordinances lays down the basis on which properties must be valued;

(c) The law affords owners of property the opportunity of objecting to the valuations and also provides for an appeal to a higher court;

(d) The rates which may be levied are laid down in the ordinances and limitations are imposed on the quantum of the levy. Provisions are also made for exemptions from rating and for the recovery of arrear rates.

D. The Statutory Audit.

(a) The accounts of all local authorities must be audited by the Provincial Auditor or by somebody under his control. Clear duties are imposed on local authorities regarding the production of all necessary information to the auditors, together with the steps that have been taken to see that the auditors' reports receive proper publicity;

(b) Duties are imposed on the auditors regarding reporting and the certification of accounts and they are given wide powers of inspection and examination, as well as the important power to surcharge illegal payments on the persons responsible.

E. General Controls.

(a) There is a strict Provincial control over contracts for the supply of goods, and over the remuneration that may be paid to elected representatives;

(b) Finance and Management Committees to deal with financial matters, and Treasurers, must be appointed;

(c) There is strict control over the acquisition and disposal of fixed property;

(d)The Administrator may appoint a commission to investigate the financial affairs of local authorities.

The above recapitulation of provincial powers over the finances of local authorities gives a clear indication of the main centres of control, and it is now possible to review this control in the light of the general principles of central control. For this purpose it is desirable to divide the review into the two distinctive spheres of legislative control and administrative control.

Nothing need be said in connection with judicial control for the commentary previously given on judicial control in the chapter dealing with the general nature of central control is applicable to ordinances as well as to Parliamentary Statutes.

2. Legislative Control by the Provinces.

The importance of Annexure B in the discovery of financial control is now evident, for it has formed the basis on which the nature of control under each heading has been described. The recapitulation of these controls in summary form above gives a concise picture of legislative financial control by the Provinces.

The first impression gained from Annexure B is the cumbersome and haphazard nature of the financial provisions in the provincial ordinances. While some concession must be made to the special position of the Provincial Councils in a unitary state such as South Africa, this cannot be a justification for the unsatisfactory nature of legislative control revealed in Annexure B. The passing of laws by a legislative body in a matter such as financial control should be dealt with on broad and general lines, with proper attention to drafting. A glance at Annexure B will make manifest the different approaches to legal drafting by different law advisers in each province. There are two other major defects. Firstly, there is a considerable infiltration of ordinary administrative and accounting routine into the laws which deal with financial control. Secondly, amendments have been made by the simple device of tacking the new on to the old, without any desire for a general revision of the entire law to incorporate the old and the new. The section dealing with authority for special expenditure clearly illustrates this point. In the Cape Province the original local government ordinance covering most of the major points of financial control was passed in 1912 and it was not until 1951 that there was a consolidation of all the laws into a new ordinance, and local

government officials were forced to compile a comprehensive index of the law, particularly on rating. Consolidation does not always improve the position, for there is a reluctance on the part of provincial law advisers to make any general revision of the law on the grounds that case-law already built up around the existing wording of the ordinance is so useful.

Unsatisfactory legislative control leads in turn to waste and inefficiency on the administrative side. In seeking reasons why no purposeful action has been taken to streamline legislative control over local government, why no steps towards uniformity have been taken where this is advantageous and why the Provinces have not reacted to the many suggestions made for reform, one has to glance into the past history of Provincial control.

One finds there several references to the anomolies of Provincial control in a unitary state, and the advantages which would have flowed from the direct control over local government by the Central Government rather than by Provincial Administrations.

Federalism was seriously considered at the National Convention in 1909, but the advocates of the unitary principle finally triumphed. However, important concessions had to be made to federalism because Natal and the Orange Free State wanted certain definite powers to be retained by the Provinces, and so there was a compromise. Although Parliament was recognised as the supreme and sovereign body in the state, and although the powers of the provinces were restricted, important concessions were made towards semi-independence such as a popularly-elected Provincial Council, an Administrator appointed by the Central Government, and an Executive Committee. Considerable powers are exercised by these organs of government, particularly over rural and urban local government, and it is in this sphere that most criticism against Provincial Government has been made.

Not long after Union the Murray Commission reported on the financial relations between the Central Government and the Provinces, and it is clear from its report that a great deal of uncertainty existed regarding the powers of Provincial Councils, and the Commission "found it difficult to ignore the possibility that the Provincial Council may virtually be replaced by some other form of government."(1)

(1) First Report of Financial Relations Commission(U.G.11 - 1912) Par. 8.

The Jagger Commission in 1916 was forthright, and stated "we recommend that the Provincial system should be abolished and a system of local government built up on the lines laid down in the subsequent part of this report."(1) Other views expressed against the Provincial system are as follows:-

(a) The National Health Services Commission 1955 considered that Provincial Councils stood in the way of organising a satisfactory nation-wide health service;

(b) J.P.R. Maud in "City Government - the Johannesburg Experiment" refers to the confusion of responsibility between the Provincial and Central Government as far as local government is concerned;

(c) J.H. Hofmeyr, in "Coming of Age : Studies in S.A. Citizenship and Politics (1930)" says that the chief reproach against Provincial Councils was their failure to do more to develop local government;

(d) Mr. P. Guenalt in "The Future of Local Government in the Post-War World" (Paper to I.M.T.A. Annual Conference 1946) stated that Provincial Councils should be abolished and replaced by a Ministry of Local Government. Dr. I.Q. Holmes in his work on "Local Government Finance in South Africa" expresses the same view.

(e) The President of the United Municipal Executive in his address to the Annual Meeting in February, 1966, raised the question whether the time had not arrived for the establishment of a Ministry of Local Government.

On the other side of the picture there are many who believe that the Provincial system is satisfactory. The Roos Commission, for example, thought that the Provincial system could be made an effective arm of government, and that most difficulties have arisen because of uncertainty since the Act of Union.(2) Other views expressed in favour of the Provincial system are as follows:-

(1) Reports of the Provincial Administration Commission (U.G. 45 - 1916) Par. 50.
(2) Report of the Provincial Finances Commission (U.G. 46 - 1934) Par. 278.

(a) Mr. G.H. Randell, a Member of the Cape Provincial Council, stated that although reform of the Provincial system may be necessary, it lies not in the establishment of a Ministry of Local Government but in the retention of an improved and revitalised Provincial system;(1)

(b) Mr. E.A. Bouchier, Assistant Provincial Secretary of the Cape, disagreed with the views of Hofmeyr and Guenault, and believed that the Provinces had done all they could with the limited resources placed at their disposal. All aspects of local government should have been left to the Provinces, and they should have been given resources with which to subsidise local government;(2)

(c) Senator S.I. Senekal, a former member of the Executive Committee of the Orange Free State Provincial Council, and former President of the United Municipal Executive, stated that the existing system of Provincial Councils and their control over local governments is sound and it is not certain whether the establishment of a Ministry of Local Government would bring any advantages.(3)

Most of the criticism of Provincial government has been against the inefficiency of the legislative and administrative control over local government. At various local government conferences the criticism have in the past been severe, and it was a common experience for delegates to give examples of the long delays in obtaining the Administrator's consent for the raising of loans, the purchase of ground, and so on. This will be dealt with later under administrative control, but is mentioned here because many have questioned whether it is necessary in the sphere of legislative control to require the Administrator's consent for so many routine matters, and whether legislative control should not be greatly streamlined. In view of its general importance to both the legislative and administrative control this subject will be dealt with in the final chapter on proposals for reform.

In previous paragraphs there have been many indications by various authorities that Provincial control has failed.

(1) Municipal Affairs, July 1946. Page 9.
(2) A Provincial Official looks at Local Government - (I.M.T.A. Conference Proceedings 1951 - Page 81).
(3) Regeringsbeheer oor Plaaslike Bestuur: Sentraal of Provinsiaal (Municipal Affairs - October 1958 Page 25).

It is appropriate to ask, however, Failed to do what? From the facts given in previous chapters and in Annexure I, the answer could be that the Provinces have

(a) failed to compile a coherent code of law for financial control;

(b) failed to co-ordinate the law-making process so that officials at all levels of government, and citizens who move from one Province to another, can have the benefit of reasonably uniform laws.

Reference has already been made to the inadequacy and disorder existent in the existing financial provisions of ordinances. Attention can now be given to the failure of the four Provinces to co-ordinate their law-making.

The following extract from the report of the National Health Services Commission is in point:

"..... attempts to impose uniformity or even coördination of policy in respect of provincial functions, either by the Central Government or by consultation between the Provinces themselves, has not met with much success in the past."(1) The National Health Services Commission was faced with the problem of recommending a health service for the whole Country. Because of the powers possessed by the Provinces this was difficult, and little hope existed that anything could be achieved by a uniform Provincial policy because Provincial differences were entrenched and there appeared to be no permanent machinery whereby policy could be co-ordinated. This problem still arises and although there exists a Provincial Consultative Committee, it is not an effective body and has never devoted itself to any major task such as the compilation of uniform ordinances. For a period it did not meet at all.(2)

There have been strong views expressed on the desirability of uniformity and the manifest advantages to be obtained from a uniform set of financial laws.(3) Even if one were to accept the propositions (a) that Provincial uniformity in principle is undesirable (b) that the control over local government by four separate Provincial Councils over local government is enshrined as an essential part of our constitutional framework, there is no reason whatever why Provincial co-ordination could not be stretched to the point where in simple and straightforward matters, such as the certificate which must be given by a valuer, uniformity could not

1. Op. Cit. Page 123.
2. See Uniformity in Provincial Legislation in regard to Financial Matters by J.W. Cowden (I.M.T.A. Proceedings 1957. Page 16)
3. Ibid. Pages 3 to 20.

be achieved. There is natural antipathy to the idea of uniformity and regimentation in democratic states. There is, nevertheless, no reason why efficiency in legislative control should be sacrificed. In the statutory world, the failure to modernise and standardise laws can create bewilderment for the individual. This was clearly expressed by the President of the United Municipal Executive (Mr. J.C.K. Erasmus) as follows:-

"Why, for instance, should the Transvaal local authorities be able to invest in the Rhodesian Local Government loans, whereas Cape local authorities cannot? Why should the Natal local authorities have a five-year claim for arrear rates, when Cape local authorities have only two or possibly three? Why should block owners in the Cape be able to hold up the sale of properties by a local authority whose desire it is to collect arrear rent because the block owners made too large and injudicious an investment, when they are not so protected in the other provinces? Why should the Transvaal local authorities receive reports on local taxation and the other provinces not? Why should the consent of the enrolled voter be required for loans in the Cape and not in the other provinces?"(1)

A certain amount of diversity is not only desirable but necessary. There are gold mines on the Witwatersrand, and harbours at the coast; differences in laws would be quite natural. But if an auditor gives a certificate in Capetown, there is no reason why he could not give the same kind of certificate in Johannesburg. Is there any reason why a Council should be permitted to set aside money in a revenue reserve fund in Natal, but not in Transvaal, or why a valuer must value property in Natal only in the daytime but in the Cape Province at any reasonable time? These are simple differences and could be multiplied a hundred-fold.

The easiest way of achieving uniform legislation would be to place control of local government under the Central Government, and there would then be uniformity in accounting, budgetary control, auditing just as there is now uniformity in housing, finance, the Bantu Revenue Account etc.

An alternative would be the voluntary acceptance by the Provinces and local authorities of a standard ordinance covering certain financial subjects. Within the Provinces the

(1) I.M.T.A. Conference Proceedings 1951. Page 85. Other views in favour of uniformity are expressed in the annual conference proceedings of the Institute of Town Clerks in 1948, 1951, 1955 and by Mr. P.R. Joubert in a paper "A comparison of the main provisions of the Local Government Ordinances of the Cape, Natal, Orange Free State and Transvaal (Paper to Annual Conference of the Institute of Town Clerks, 1952)

procedure for promulgating standard by-laws for adoption by local authorities has proceeded far. Furthermore, great strides have been made in co-operation between local authorities on the one hand, and the Central and Provincial Governments on the other. With certain exceptions, the United Municipal Executive is consulted on State legislation and the Provincial Municipal Associations are consulted on Provincial legislation. It would be quite feasible to extend these spheres of co-operation and co-ordination to embrace a uniform ordinance for local government under most headings.

2. Administrative Control.

An indication has already been given of the importance of administrative law in the sphere of direct financial control over local authorities, in matters such as Housing, Bantu Affairs etc. An Act of Parliament sometimes sets out the powers of local authorities in much detail, but in other cases control is greatly extended under the powers delegated to Cabinet Ministers. Regulations made in terms of the main Act are often formidable, to which is added a regular stream of circulars from state offices to local authorities.(1) The circulars which go to local authorities abound with phrases such as 'local authorities must ensure', 'it is desirable that local authorities should', 'a local authority may not without the prior approval of the Minister', 'a local authority should in the first instance endeavour'. A great deal of this government by circular is done with the object of assisting local authorities in the interpretation of statutes and to ensure a uniform policy throughout the country, and its importance in the realm of financial control should be clearly understood.

In the Provincial sphere this type of administrative control is greatly intensified. It is necessary only to page cursorily through the summaries of the financial laws in Annexure B to observe how often it is necessary to obtain the Administrator's consent. These pages abound with such phrases as 'the Administrator may determine', 'provided that with the Administrator's approval', 'shall not without the Administrator's approval', 'the Council may with the prior approval of the Administrator'. Just as local authorities deal with a Department of State in order to obtain the necessary authorities to proceed with Housing or Slum Clearance or Capital Issues, so local authorities deal with

(1) For example, see Housing Code (1st October, 1964) prepared by the Department of Community Development, containing 144 pages of detailed requirements.

the Provincial Administrations for similar authorities, but on a very much greater scale. The Administrators-in-Provincial-Executive-Committee have extensive powers of control over local authorities, but many of these have been delegated to officials in the Provincial Administrations. The Provincial Departments of Local Government have power to grant many of the financial consents necessary in the Ordinance, usually up to a maximum figure laid down by the Administrator-in-Executive-Committee. Financial control by a Provincial Council over local authorities usually takes the following distinct form:-

(a) Original control is contained in the ordinance itself on such lines as 'the net proceeds of the sale of land shall be paid into a Lands Trust Fund' Administrative control is exercised in these cases by the Provincial auditor who must ensure that the financial requirements of the law are carried out;

(b) Control is imposed generally by means of circulars to all local authorities by the administrator under powers granted to him in the ordinances on the lines 'The Administrator-in-Executive-Committee has decided .....' It may also take place by proclamation in the Provincial Gazette, usually on the lines 'the Administrator has in terms of Section A of Ordinance B determined that';

(c) Control is imposed directly on individual authorities as a result of applications made for specific approvals, on the lines 'In reply to your letter of - I have to advise you that the Administrator has in terms of Section A of Ordinance B approved your application.....'. In many cases such as this, consent is given subject to certain conditions;

(d) There is also a negative type of control. This operates when the Provincial Council takes no action to grant additional powers to local authorities in certain financial matters, or when a Provincial Council takes away existing powers without counting the cost to local authorities.(1)

(1) Two examples are (a) the failure over a long period by the Cape Provincial Council to grant local authorities power to operate Consolidated Loans Funds (b) the action by the Transvaal Provincial Council in taking away the power of local authorities to levy re-inspection fees at abattoirs.

The question how legislative and administrative control could be improved will be dealt with in the final chapter. Although legislative control by the Provinces has often been criticised in the past, the criticisms against administrative control have been far more severe. At many conferences of municipal officials from traffic to finance, from firefighting to administration, the complaint of Provincial delay has been heard.(1) Dr. H.J. van Eck has said that it should be possible for Provincial authorities to approve townships within 3 months from the date the application was lodged.(2) Local authorities will find this remarkably unrealistic, for many Councils consider themselves fortunate if all the formalities for township establishment have been completed within 3 years. In the case of Wright Park Township, Springs, the application by the Town Council to establish a township was made 10 years ago in 1958 but it has not yet been formally proclaimed. It is true that there are many authorities to control in establishing a township such as the Electricity Supply Commission, School Boards, the Post Office etc. This is clearly necessary in view of the fact that the proclamation of a township is the signal for the granting of freehold rights to individuals. Few would question the exercise of proper care in such matters. The problem lies in the quality of administrative control. The intangible cost to the nation in delays, reminders and references back is enormous, and local government itself plays a not unconsiderable part in such inefficiency. One reason for delay is the fact that it is easier to say no than to take positive administrative action. An application for borrowing powers or an application to alienate land becomes sometimes a ball to be passed willy-nilly from one person to another; matters are referredback for further information or passed unnecessarily to another section. A great deal of this has happened at Provincial level because officials are transferred frequently, and matters are delayed until the new incumbent learns the work.

During the past decade Provincial administrative control has been greatly improved. Most of the problems arose previously because, as Mr. J.H. Hofmeyr and others have stated, the Provinces took little interest in local government,

(1) Councillor C.M. Payne of Roodepoort stated that it took 10 months to receive a reply to an application for an authority to sell land (I.T.R.C. Conference Proceedings 1951, Page 93) Dr. H.J. van Eck has stated that Provincial authorities take far too long to approve townships due to cumbersome procedures in the ordinances.(I.T.C. Conference Proceedings 1962. Pages 104/5)

(2) Ibid. Page 105.

and the result of this was the allocation of inadequate staff to deal with the applications by local authorities for the various powers required by law. On one occasion the writer interviewed a provincial official to ascertain why certain applications for borrowing powers could not be dealt with. He was told, in all seriousness, that they would be dealt with if only the Council would not send reminders. When this happened, the filing clerk came and removed the file from the 'for attention' heap in order to file the reminder, and when he returned the file it went to the very bottom of the heap to find its way slowly up until the next reminder arrived! That does not happen today for large local government departments have been built up in the Provincial Administrations, usually under a Director of Local Government or an Assistant Provincial Secretary. Not only are local government matters being more expeditiously handled, but there is personal co-operation of a high order between provincial and local government officials. In fact, there is a tendency in the other direction, and whereas there was a feeling before that the Provinces did too little for local government, there is a feeling today that they are doing too much and asking for too much detail when applications for borrowing powers are made. The growth of Provincial Local Government Departments has certainly dispelled the old complaint that little is done for local government, and recent developments point to still further administrative control. The Administrator of Transvaal now determines the salaries of Town Clerks.(1) The Administrator of Natal would like to see a Municipal Service Commission on the same lines as the Public Service Commission.(2) These tendencies require a growing number of officials in the Provincial administrations: administrative control is therefore likely to increase in volume.

As far as quality is concerned, there have also been certain significant improvements in the administrative methods of imposing financial control. In the spheres of audit, loans and expenditure there were often cumbersome methods by which Provincial officials exercised their powers. In the Transvaal, for instance, no records whatsoever were kept of borrowing powers already granted to local authorities, and the Province surmounted this difficulty by the simple device of requiring that each new application be accompanied by a complete schedule

(1) See 4 of Ordinance 24 of 1965.
(2) Address to the Annual Conference of the I.M.T.A. 1966.

of all previous powers granted, together with the powers exercised and unexercised and this thrust a great deal of extra administrative work on the shoulders of local authorities. The Provinces before 1950 were simply not equipped to exercise financial control on any sound basis, and many different yardsticks were used. There was no clear attempt to work out formulae or devise standard tests whereby applications for financial powers could be expeditiously handled. The Assistant Provincial Secretary (Cape) said in 1951 "official duties have not allowed much time for research on local government problems in general. The pressure of work and the shortage of staff which invariably exists have limited one most of the time to the problems which arise from day to day."(1)

CHAPTER 18.
PROPOSALS FOR REFORM

The field so far covered in the sphere of external financial control has been as follows:- Acts of Parliament which control the finances of local authority were summarised in Annexure A and discussed at length; the same procedure was followed with regard to the Provinces; parliamentary and provincial control were then reviewed in the light of the principles of legislative, administrative and judicial control, and financial independence.

Conclusions can now be drawn on the information so far presented, and the procedure will be adopted of restating opinions already expressed in the form of six proposals for reform. Each proposal will then be discussed and weighed against the general principles of central control.

1. There should be a differentiation in the powers granted to local authorities according to size:

The financial provisions of the Local Government Ordinance 1939 in Transvaal apply equally to Johannesburg the total population of which is 1,152,525, and to Rustenburg, the total population of which is 21,016.(2) In several previous chapters the desirability of external financial control

(1) I.M.T.A. Conference Proceedings 1951. Page 76.
(2) Statistical Year Book 1966.

was acknowledged. External control of local debts for example is everywhere deemed to be desirable in order to protect the ratepayers and investors.(1) There should, however, be recognition of the fact that the borrowing of R100,000 by Johannesburg does not have the same financial impact as it would in Rustenburg. Yet both local authorities must apply in terms of the same section of the Local Government Ordinance 1939. There is a clear need to grade local authorities according to size and grant relief to the larger and medium authorities from the administrative burdens which arise from the necessity for making thousands of annual applications to the Administrator. Taking the example of borrowing powers still further, the policy could be followed of stipulating that borrowed moneys must be used only for capital assets with a life longer than five years,(2) and requiring applications for borrowing powers to be made only above a certain amount, determined by the magnitude of total annual income. This would eliminate a great deal of administrative work at all levels of government and the same principles could be extended to other spheres of control. It should not be necessary, for instance, for a city the size of Johannesburg to obtain external authority to incur expenditure on presenting a formal testimonial to a Councillor.(3)

It will be observed from an examination of Annexure B that there are a few examples where a differentiation is already made in certain laws. In the Orange Free State, for example, under General Authority for Expenditure, in Annexure B, a differentiation is made between local authorities with incomes over and below R150,000 per annum. In the case of Transvaal and Cape Province there is little differentiation.(4) In Natal, differentiation is achieved by granting extended powers to particular authorities by special ordinances. Durban enjoys very considerable extended powers, and if all the special laws were coherently condensed in one document, it would amount virtually to a charter. There are advantages and disadvantages in the Natal system, which need not be discussed here.(5)

(1) See surveys on loan procedure - International Union of Local Authorities 1955 and 1960. Op. Cit.
(2) Such a provision is contained in the Philadelphia Charter (Planning Municipal Investment. W.H. Brown and C.E. Gilbert) Page 27.
(3) See memorandum on "Differentiation of powers between different local authorities" prepared by Town Clerk, Johannesburg, for Borckenhagen Committee. Page 9.
(4) The only cases worthy of note are (a) Differentiation between the rating provisions on the Witwatersrand and elsewhere and (b) differentiation in the Cape Ordinance in certain rating provisions.
(5) For further detail, see Uniformity in Provincial Legislation by J.W. Cowden. Op. Cit. Pages 7/8.

The practice of differentiation could be taken a great deal further by the Provincial Administrations than has been done so far. Much has been written on the subject of granting charters to the larger cities, a practice followed in several countries. The facts already given above regarding external control in the financial sphere lead to the conclusion that a great deal of detailed legislative and administrative control could be eliminated by granting charters to the larger local authorities. The wider political and constitutional implications of granting charters are beyond the scope of this work. Whether differentiation is achieved by charter, or under the Natal system, or by specific legislation, it is desirable for eliminating detailed administrative control. External financial control over local government could thus be greatly strengthened and improved.

A local authority does not necessarily become more efficient as it increases in size and there has certainly been much evidence of maladministration in some of the larger cities of the world. On the other hand the complexity of local government in larger units tends to compel the setting up of adequate technical and professional steps for the scrutiny of proposals and the duplication of scrutiny at Provincial level results in additional administrative work. By introducing general instead of detailed methods of external control (a subject elaborated below) the officials engaged in this detailed work at all levels of government could be released for more constructive tasks. "The less home rule a state allows its local units, the more the state legislature must divert its time and energy from state-wide concerns to the details of local problems."(1)

2. Legislation should be cleared of the Minutiae of Control.

Reference has already been made to the unnecessary small detail which permeates the laws on financial control. Reference to the summaries of these laws in Annexures A and B will reveal the extent of detail. A good example is the law in Natal which sets out in detail what categories of expenditure may be charged to capital account (e.g. the salaries of technical staff, the operating costs of vehicles etc.) with a considerable list of conditions to be observed; in Transvaal this detail is set out in Provincial circulars.

(1) U.S.A. Commission of Intergovernmental Relations (1955)

The primary laws should remain instruments of policy and a great deal of accounting and administrative control at present contained therein should be consigned to regulations or circulars. The question then arises whether control is not still control whether it is contained in a statute or a regulation or a circular. However, the plea being made here is for an improvement in legislative control. The desirability of greater local autonomy and decentralisation is not relevant at this stage.

Anybody contemplating the Provincial laws in Annexure B would soon conclude that a most unsatisfactory exposition of external financial control is revealed. A competent law adviser with advice from financial and administrative experts would find it a simple task to relegate a great deal of minutiae to the financial regulations and to mould the remainder into a worthwhile instrument of external control.(1)

An examination of certain regulations, such as the standard financial regulations for local authorities in Transvaal, will reveal a wide range of control in the financial procedures of local authorities. In matters such as stores control, control over income and expenditure and the invitation of tenders a comprehensive and detailed procedure is laid down. However, many of these regulations should be seen more in the light of internal than external control. The Province merely lays down a standard code which may be adopted by local authorities. It is desirable that local government should have strict rules governing the handling of its finances, and most local authorities have already promulgated detailed financial regulations. The preparation of standard regulations for adoption by all local authorities is an instrument for ensuring that certain standards of financial discipline are maintained by local authorities.

The Administrator has strong power to investigate the finances of local authorities when things go wrong and the preparation of standard financial by-laws is a form of preventive control. When enquiries into the financial affairs of local authorities have been conducted in the past, it has

(1) Several authorities have recommended control on a broader basis e.g. the Jagger Commission 1916 stated that central control should be defined on certain broad principles and not take the form of interference in the detailed work of the local authority (Op. Cit. Par. 225). The Marais Commission 1957/8 went much further and except for control over a few major subjects, recommended that "all other controls be greatly relaxed or abolished"(Op.Cit.Par.2)

frequently been found that the absence of strong internal financial control is a potent factor in the breakdown. Consequent upon this, there has been a tendency to amend ordinances generally, bringing in details of control which belong in regulations or accounting manuals.

It is good policy therefore, to purify legislative control by removing as much detail as possible. Administrative control is, according to Schultz, the most appropriate form of central control for promoting the proper use of local powers, and it has many advantages over legislative control.(1) It has flexibility, and the officials wielding administrative control are experts in their fields of government, and there is continuity in policy.(2)

It is appropriate at this stage to consider a proposal for reform that has sometimes been made, and that is drastically to reform the doctrine of ultra vires, which is the cause of many of the haphazard powers added in Annexure B.(3) This doctrine did not emerge in its modern form until 1843 in Great Britain and it was designed, not to curtail the powers of local authorities, but to limit the powers of the new joint stock railway companies. There was no appreciation of the far-reaching effects it was to have on municipal government.(4) It has been the cause of a great deal of doubt in the spheres of judicial and legislative control, a subject ably explained by Jennings.(5) Professor Burchell considers the law of ultra vires to be a relic of the past and legislation should lay down rather what local authorities should not do rather than what they should do.(6) This is the basis on which the Constitution of the State of New York was established, and the formula is stated in the single sentence "Legislative power, except as limited by the general statute of local governments, is vested in every county, city, town and village."(7)

(1) Essentials of Government by Ernst B. Schultz. Page 484.
(2) Ibid. Page 485.
(3) Bastable is a critic of this 'haphazard method of expansion' (Public Finance. Page 115)
(4) 'The Development of Local Government' by William A. Robson. Pages 242/243.
(5) Century of Municipal Progress 1835 - 1-35. Pages 415-418, and Law Relating to Local Authorities.
(6) 'Some Observations on the Legal Position of Municipalities' Councillors and Town Clerks' Page 1 (Institute of Town Clerks Conference 1955).
(7) "A New Formula for Local Government" by Francis Bergan. International Union of Local Authorities Quarterly Review. Spring/Summer 1961. Page 113.

The Marais Commission went so far as to recommend the abandonment of the ultra vires doctrine, and stated, "The Ordinance should tell municipalities what they may not do rather than prescribe in elaborate circumlocation what they may do."(1)

The Provinces have always been opposed to frequent revision of the law because of the many decided law cases which interpret the existing laws. Local authorities might also find difficulty in coming to decisions where positive powers are not laid down, and judicial control would then tend to transcend in importance other forms of control. Where councillors are elected by popular vote for relatively short periods there is always the possibility that political survival will take precedence over the public interest. For this reason permanent officials have often expressed satisfaction with the positive powers laid down in statutory law, and are opposed to too much local autonomy.

Differentiation of powers between large and small local authorities would first have to be undertaken in South Africa before consideration could be given to any new formula on the New York pattern. The most practical proposal for reform at this stage would therefore appear to be a complete review of the existing laws relating to financial control. By review is meant a complete reforming process whereby laws are re-written in the light of modern financial and accounting principles, with all finer detail being embodied in subordinate legislation.

3. <u>Administrative Control should be modernised</u>.

Inefficiency arising from the methods of legislative control was discussed under the previous two headings. There are in addition many restrictions imposed on local government by administrative officials in the Central Government and Provincial Administrations. The law itself may require that the approval of the Minister or the Administrator must be obtained, but the administrative procedures laid down for obtaining such consents is often detailed and cumbersome; the application of general rather than detailed controls would not necessary weaken administrative supervision.

Restrictions are severe when financial assistance from the Province and the Government is required. Attention has already been given to the detailed procedures which have to

(1) Op. Cit. Par. 2.

be followed when housing loans are sought or when subsidies for public health are required. The State has a duty to ensure that public monies are not squandered by local authorities and strict control normally follows in the wake of specific grants. There is, however, a need to revise the basis on which financial assistance is given. It was observed above, for example, that the Central Government became convinced that under the National Housing Formula certain local authorities after 1950 were wasting money on non-essential items instead of devoting the funds to housing. Accordingly, the policy of granting housing loans was revised and the formula abandoned, and there was a return to the straightforward method of granting loans and leaving the rest to local authorities. The important point to note here is that once a loan has been approved the Government accepts financial certificates on the progress of the scheme, without detailed checking of expenditure, leaving the Provincial Auditor to sound the alarm if any of the funds are not spent on housing.

At the other extreme, it was observed that the expenditure by local authorities on health personnel where the State refunds a portion of the costs is subject to the closest administrative scrutiny.(1) The detailed administrative control which has followed in the wake of financial assistance has been so severe that many local authorities have forfeited subsidies rather than suffer the delays and inefficiency arising from such detailed control. It was noted above that Schultz has commented favourably on central administrative control in preference to detailed legislative control.(2) However, he is also quick to note that administrative control can lead to unwarranted interference. Administrative officials of the Central Government and Provincial Administrations move from one post to another, and seldom become experts in any one field. Local experts thus become intolerant of what appears to be interference in irrelevant detail by external administrators. There is the further point that the Central Government and the Provincial Administrations take on vast programmes of control without having an organisation adequate for the task.(3)

(1) If a relieving allowance is paid to a Bantu midwife, the prior approval of the Department of Health must be obtained.
(2) See above pages 134/195.
(3) 'Dangers to Local Government' by Professor G.H.L. le May. (Municipal Affairs - August 1954. Page 33)

The most important form of Provincial control is the detailed audit carried out by the Provincial Auditor and because of this many other administrative controls should be relaxed. There is seldom any quarrel with the essentiality of some form of Provincial control over the financial conduct of local authorities, and the post-audit of accounts remains the best weapon for accomplishing this. The report of the Provincial Auditor to the Administrator is an effective check on local authorities. In public administration the popular demand for accountability makes audits more necessary in this sphere than in the private sector. The lack of continuity in management is one important reason for this. Entrenchment in power may sometimes seem more important to elected representatives than financial strength, and because external control ensures that the public interest must take precedence, it is necessary.

Yet it is precisely because the provincial audit of local government accounts is necessary and has become so accepted, that there could with advantage be a considerable relaxation of detailed control by administrative officials elsewhere. There has been criticism of provincial audit, firstly on the grounds that the reports are submitted far too late for effective action to be taken and secondly that they are financial audits and not efficiency audits. It does not follow, however, that Provincial audits cannot be improved to achieve some of the objects set forth above.

Unfortunately, there is an apparent lack of understanding of the main objects of financial control. It would be advantageous if the Provinces would accept the views (a) that once effective systems for the audit of accounts, the granting of borrowing powers and control over taxation have been built up and taking into account the fact that the Administrator possesses a far-reaching ultimate power to conduct an enquiry, the other spheres of financial control are relatively unimportant (b) that where it is necessary to retain financial control, this should be done by the establishment of clear formulae and broad consent rather than by detailed checking. "Management decisions must be dispersed while essential controls are maintained."(1)

What, for example, is the object of financial control over the borrowing operations of local authorities? It is to ensure that local debt does not rise to a point where the national economy may be adversely affected, to ensure that local authorities do not default in loan repayments (as happened in some

(1) Report of the Committee of Inquiry into the Electricity Supply Industry 1956 (CMD 9672. Page 139)

American cities in the 1930's) to ensure that an unwarranted debt burden is not placed on the shoulders of future generations. It was observed in the above discussions on loan finance that many general tests are used in other countries. In the United Kingdom and South Africa, however, local authorities must submit full details of cost, plans and other details whenever an application is made to finance the purchase of capital works by way of loan.(1) The main purpose of financial control is thus lost in a welter of administrative detail.

4. Uniformity in financial legislation should be promoted.

The analysis of Provincial financial laws conducted in previous chapters has indicated the advantages of uniform financial legislation. There should be some machinery for promoting uniform ordinances and regulations for the conduct of financial affairs. In the western democracies there is antipathy to the word uniformity when used in reference to an omnipotent State on the "Big Brother is watching you" pattern.(2) The uniformity being here suggested with regard to Provincial legislation, however, has nothing to do with the freedom of the individual nor the autonomy of local government. It would not impose any further restraints on local government than exist at present but would lighten the general administrative burden. Where local differences require different laws, this can easily be catered for.

> "To achieve inter-state tax uniformity it is not necessary that every state impose exactly the same taxes at exactly the same rates. Each state has its own particular revenue needs, and its own special choice as to the distribution of tax burdens among economic and social groups. Uniformity could not extend to identity of tax rates and exemptions, or even to identify in the taxes imposed. If a state chooses to levy a regulatory chain store tax, and the courts approve, it should be free to impose the tax. But the basis of any one kind of tax should be uniform from state to state, and included and excluded elements should be reasonably uniform, the language of the laws should be identical, the regulations should be identical, and the tax returns forms should be identical in all points, except the calculation of the tax on the basis of the statutory rate." (3)

The compilation of Annexure B has made it possible to draw the clear conclusion that uniformity would be advantageous, a conclusion which has beenreached elsewhere.(4)

(1) In England this method is considered by some to be outmoded; see for instance the views of H.R. Page, City Treasurer of Manchester in "Capital Finance of Local and Public authorities"(I.M.T.A.-U.K. 1959)
(2) George Orwell in "Nineteen Eighty Four".
(3) W.J. Schultz in "American Public Finance".
(4) See Uniform Legislation. Encyclopedia of Social Sciences.

Experience in the past has indicated the difficulties of achieving uniform provincial legislation on a voluntary basis.(1) Principles of financial control have universal application, and the field covered in this work could form a starting point. The introduction of a uniform central financial policy in respect of native affairs, housing and public health at national level has already been noted. This has led to the view that a Ministry of Local Government may be better than the Provincial control revealed in Annexure B.(2) It is "easier to make a single solution and apply it wholesale than to make a variety of solutions and have them applied piecemeal."(3)

There has been a thirst for uniform legislation in local government spheres in South Africa.(4) The question whether this could better be achieved under Central Government than under the existing Provincial Government involves constitutional problems which are not relevant here. For instance the system of having a general Ministry of Local Government as in Great Britain, has been criticised on the ground that separate specialist State departments would better be able to control local government in their specialised spheres e.g. finance, housing, health.(5)

The main conclusion to be drawn here is that external financial control could be greatly improved by drafting uniform financial laws for use in all Provinces, where this is so clearly possible in the many examples given in Annexure B.

5. The Financial relations between three tiers of government should be revised.

Much has already been said in connection with financial relations and the importance of the subject in the field of financial control. Rapid urbanisation has caused the boundaries between purely local and national services to be considerably blurred. Adam Smith stated that it was proper that the lights of London should be provided by the local authority and paid for by the citizens who benefit thereby.(6) Mr. J.H. Hofmeyr, when Minister of Finance, stated that local authorities should be responsible for services the necessity for which arise

(1) For example, in the case of Uniform Road Traffic Ordinances.
(2) See Local Government Finance in South Africa by Dr. I.Q. Holmes. Chapter XI.
(3) Grammar of Politics by H.J. Laski (4th Edition) Page 413.
(4) For a review of statements to this effect see "Uniformity in Provincial Legislation". Op. Cit. Page 202 et seq.
(5) Grammar of Politics. Op. Cit. Page 419.
(6) Wealth of Nations. Book V. Chapter I Part III.

as a result of the close settlement of people in communities.(1) The Borckenhagen Committee also accepted the principle that urban local authorities should be responsible for functions and services, the need for which is consequent upon the close settlement of a body of people or the benefit of which is substantially or wholly enjoyed by persons residing in the area.(2) However, neither the final report of the Borckenhagen Committee nor the report of the Schumann Commission have been released by the Government, and it is possible that when they are released, the Government will review the functions and financial relations fully. So far local authorities, the Provinces and the Central Government have tried to discuss the allocation of functions on the basis of principles without a great deal of success. It has not been found easy to reach agreement on how local services should be financed, for as Dr. D.H. Chester states "what is generally required of the Central Department is not coercive action nor even any publicity campaign but help in making it possible or easier for the local authority to carry through the policy on which both sides are in full agreement" and "there still remains the problems created by local authorities being confined by Parliament to an extremely narrow source of local taxation."(3)

The adequacy of the sources of revenue of local authorities was examined in previous chapters, and the conclusion reached that the property tax, in spite of its regressive nature, was a suitable tax for local government.(4) In South Africa, local authorities do not have to finance the education, police or welfare services. In the case of many other services which are not purely local such as housing, health and national roads, special formulae for financial assistance have been devised. In Great Britain local authorities depend on the Central Government for fifty per cent and more of their income.(5) In South Africa the subsidies received

(1) See Page 170.
(2) Op. Cit. See Page 172.
(3) 'Central and Local Government'. Pages 95/6.
(4) In addition to the norms of convenience, stability and certainty, Ursula Hicks also stresses the importance of localising the base within the area of the taxing authority. ('Public Finance'. Page 271 and Development from Below. Page 347)
(5) Financial Administration in Local Government by Dr. A.H. Marshall. Page 15.

from higher authorities amount to 3.7% of total expenditure and 14.1% of net expenditure.(1)

The restriction of local authorities to one major tax does not impose the same measure of restraint as is the case in Great Britain and certain other countries. It is true that urban local authorities now perform a much wider range of intangible services which must be met from local taxation, but the productivity of the local tax due to steadily rising property values has so far proved sufficient to meet increased expenditure. The rate income of South African local authorities was 1.25% of the gross national product in 1942, and 1.24% in 1962.(2)

In recent years and particularly in the U.S.A. there has been a tendency to press the advantages of diversifying the local tax basis. Local authorities in the U.S.A. have been afforded access to the non-property tax field, although the property tax still accounts for over 70% of local tax revenues.(3) Problems have arisen by the proliferation of non-property taxes at State and local level. In South Africa, the property tax is left entirely to local government and this field is not invaded by the Provinces or the Central Government. It seems appropriate to reserve sales, excise and income taxes for the growing needs of the Central Government and the Provinces.(4)

In certain specific spheres local authorities can make out a strong case for either increased financial aid for example through-roads and health services, and this problem will be dealt with in the White Paper in the course of preparation on the findings of the Borckenhagen Committee and the Schumann Commission. In particular a decision will have to be taken whether to give greater subsidies for arterial road construction (as recommended by the Borckenhagen Committee) or to meet the local authorities' submission for a share in the proceeds of the fuel tax.

(1) Statistical Year Book 1966 and obtained from 51 local authorities by the Borckenhagen Committee (See I.M.T.A. Memorandum. Op. Cit. Pages 15/16.)
(2) Figures calculated from Union Statistics for 50 Years, and Statistical Year Book 1965.
(3) Municipal Year Book (U.S.A.) 1966. Page 257.
(4) T. van Waasdijk shows that in the last 35 years there has been a twelvefold increase in Central Government expenditure (excluding subsidies to Provinces) a fifteenfold increase in Provincial expenditure and an elevenfold rise in that of local authorities ('Public Expenditure in South Africa'. Page 227)

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