7. The Riotous Assemblies Act No. 17 of 1956 (relating to the prohibition of employees from breaking conditions of service).

8. The Public Health Act No. 36 of 1919 (relating to the control of emoluments of certain categories of health employees).

9. The Shops and Offices Act No. 75 of 1964 (relating to control over the conditions of service of workers in shops and offices.)

All local authorities in the Republic are controlled very directly by the operations of the above laws. The United Municipal Executive has for the past 30 years made representations to the Government in relation to various problems in the practical application of all the above laws. In general, the submission has been that local government is not similar to private enterprise, and that the diversity of local government activities requires either exemption from laws which are framed more for commerce and industry than for a public body, or special legislation for local government. In many instances local authorities have made representations regarding the operation of particular clauses in legislation from which anomalies arise. For example, certain public works of local authorities are deemed factories in terms of legislation, and town councils often discover conflict between their own conditions of service and those of the Factories Act or the Shops and Offices Act. There is also the strange case of the fixation of the salaries of public health officials by the Minister under the Public Health Act (1952 amendment) under which maximum salaries are laid down, and if these are exceeded local authorities receive no refunds from the Government. Yet, if under the Industrial Conciliation Act a conciliation board or an arbitrator fixes a higher salary than that fixed by the Minister, the Minister must accept the Industrial Conciliation Act agreement, for this takes precedence. Local authorities and their employees have accordingly in recent years, in order to secure the subsidy on salaries from the Central Government, simply 'arranged' conciliation boards at which agreement is easy, and thereafter the statutory agreement is binding. Many more examples could be given of the many conflicts which arise through the operation of State control under the laws defined above. This is direct control, and there is often conflict between the provisions of local government ordinances and statutes of the Government all of which deal directly with many aspects of staff administration. For instance, the Local Government Ordinance 1939 (Transvaal) gives the Administrator power to determine the salaries payable to Town Clerks and another ordinance states that the Town Clerk must always receive more in salary than any other employee.(1) In Johannesburg in 1966 an arbitrator appointed in terms of the Industrial Conciliation Act made an award which fixed the salaries of heads of departments much higher than the salary of the Town Clerk and because this award was made in terms of a statute, the provisions of the Local Government Ordinance are overruled, and there is deadlock.

As far as financial control is concerned there is both direct control and latent control. Financial control is direct when the State determines the minimum wages that may be paid in terms of the Wage Act, or the compensation an employee must receive for injury on duty in terms of the Workmen's Compensation Act, or the overtime rates that must be paid to the clerks in terms of the Shops and Offices Act, or to artisans in terms of the Factories Act. It is easy to discern the direct financial control prevalent in this type of legislation, even though the legislation embraces all types of industrial and commercial enterprises as well as local authorities.

With regard to latent financial control, there are several important aspects which must be considered. Unlike private enterprise, local government has been singled out for special treatment because it deals with essential services. Thus there is provision for the settlement of disputes in local government by compulsory arbitration. The right to strike was taken away from employees as a result of a long period of industrial unrest before the passing of the original Industrial Conciliation Act in 1924.(2)

If the State lays down how a town council must settle a dispute with employees, it is clear that the financial effects of any settlement would in a large measure depend on this control. The Industrial Legislation Commission of Enquiry devoted

(1) See Section 62 of the Local Government Ordinance 1939 and Section 62 of the Local Government (Administration and Elections) Ordinance 1960.
(2) For the historical details of the settlement of disputes by legislation see "The right to strike in South Africa" by Ellison Kahn (S.A. Journal of Economics - March, 1942). "Industrial Laws of South Africa" by A. de Kock, and Report of the Industrial Legislation Commission of Enquiry" (U.G. 620-1951). Chapter 6.

much attention to the question of collective bargaining and economic welfare.[1] The Commission stated that, "consumer interests, except in so far as they are controlled by the economic law of supply and demand, have almost entirely been overlooked when conditions of employment in any industry were agreed upon or imposed by means of arbitration."[2] The same could be said with regard to the interests of ratepayers, and local authorities have in the past complained about the system of appointing ad hoc arbitrators to settle disputes, and the ignorance of these arbitrators regarding the issues in question.[3] The Industrial Legislation Commission of Enquiry accepted this view, and the position today is that a special body, the Industrial Tribunal, has been set up to resolve disputes. However, the Tribunal only resolves a dispute if the parties do not agree on a single arbitrator or on arbitrators and an umpire.[4]

It is clear from this brief reference to industrial law that the settlement of disputes by compulsory arbitration can have far-reaching effects on the finances of local authorities. If an Industrial Tribunal is appointed by the State, and if the appointments of persons to this board are made with due regard to the need for expert knowledge, it is better that all disputes be referred to such a tribunal rather than to ad hoc arbitrators. "The role of the conciliation and its limitations should be plainly understood. Too much conciliation, a too ready disposition on the part of the conciliation service to intervene may impede the development of responsible collective bargaining. The expectation that the conciliators will intervene may lead each side to stick to extreme positions, counting upon the conciliators to save their faces by begging them to make concessions in the public interest."[5]

The direct financial control illustrated above in respect of several important Acts of Parliament is operative in most countries in the world, and the only question raised by local authorities is the question whether there should not be differentiation in control, or even exemption as is granted to the Provincial Councils and the Central Government.

(1) Op. Cit. Para. 332 - 357.
(2) Ibid. Para. 719.
(3) See "The Working of the Industrial Conciliation Act 1937". Memorandum prepared on behalf of the United Municipal Executive by the Institute of Municipal Treasurers and Accountants - March 1948.
(4) Section 46(3).
(5) "The Challenge of Industrial Relations" by Prof. S.A. Slichter.

To protect the interests of workers in industry, commerce and local government, the Government has laid down minimum remuneration and conditions of service for employees. In observing these standards local authorities are affected directly and financially. There is no reason why local authorities should not be required to apply the same minimum standards as is required in commerce and industry. Wage determinations, for example, which fix the minimum wages payable by local authorities to Bantu employees, may have a considerable impact on the finances of a local authority - but the Wage Board fixes its minimum wage levels after considerable investigation relating to cost-of-living and purchasing power, and the fixing of wages is in the public interest. It is a minimum wage - employers may pay more than the minimum. Therefore, the type of direct financial control here considered is important to local authorities, yet it is a necessary form of control. The latent control exercised by the control of employer - employee relationships and the compulsory settlement of disputes also has far-reaching effects on the finances of local authorities. Industrial peace is today the overriding consideration and it is the policy of the State to place industrial peace before the interests of the consumers or ratepayers. There are good reasons for this policy, and it could well be held that the interests of consumers and ratepayers benefit from peaceful employer- employee relationships. This would depend naturally on the sincerity of both parties in relation to collective bargaining. The financial effect of arbitrators' awards upon local authorities can be very great, and it is considered that this latent financial control can only be effective if the State alters the law to make necessary the decision of all cases by a permanent expert body rather than by ad hoc arbitrators.

2. Capital Issues.

Local authorities obtain their powers to borrow money under ordinances promulgated by the Provincial Administration, but there is one important aspect which falls under the State, and that is the control over capital issues.

In terms of Section 9 of the Currency and Exchanges Act No. 9 of 1933 the Government may make regulations with regard

to various matters, one ofwhich is the control over capital issues. The first Exchange Control Regulations were promulgated in 1942.[1] The regulations were amended from time to time and consolidated in 1951.[2] Section 15 dealt with the control of capital issues and provided among other things that Treasury consent was necessary for making an issue of capital exceeding R10,000, that the raising of loans by local authorities was deemed to be an issue of capital, and that local authorities were not permitted to raise any loans outside the Republic without Treasury consent.

The limit of R10,000 was progressively raised to R1,000,000 in January, 1957, reduced to R200,000 in May, 1958 and increased back to R1,000,000 in August 1959 at which figure it has since remained.[3]

Control by the Treasury was originally aimed at controlling access to the capital market by way of public issues, but control was later extended to cover all loans raised by local authorities from whatever source, and in the years 1952 until 1954 control was extended to include the scrutiny of all the capital programmes of local authorities and non-essential items were disallowed. This had the effect of retarding the extension of essential services. The expenditure of local authorities on physical capital assets for the years 1952, 1953 and 1954 was the lowest for the ten year period 1946 to 1956.[4] This decline in capital formation by local authorities led to a relaxation of control and in his budget speech for 1954/55 the Minister of Finance said "the Treasury will be compelled to relax somewhat the very tight control it has exercised over municipal borrowing for the extension of certain essential services which cannot be postponed indefinitely."[5]

From 1954 the Treasury, instead of disallowing items on the capital programmes of local authorities, fixed a globular sum which could not be exceeded, leaving local authorities to do the actual allocation within this sum. This is still the position today. Local authorities with capital programmes under R1,000,000 are not subject to any control; in the case of programmes over R1,000,000 the Treasury scrutinises the programmes and indicates a maximum to local authorities, which may not be exceeded. Although there have been strong infla-

(1) Government Gazette Extraordinary, 23rd October,1942 - Notice No. 266.
(2) Government Gazette 2nd November, 1951. Notice No. 2800.
(3) See respectively Government Gazettes and Notices 11th January, 1957 No. 36, 30th May, 1958 No. 766, 28th August 1959 No. 1348.
(4) See "Die Beleid van die Unie-tesourie ten opsigte van die Kapitaaluitgawes van Plaaslike Besture" by Dr. D.H.Steyn (I.M.T.A. Conference Proceedings 1958. Page 110)
(5) Budget Statements 1954/55. Page 14 (Cape Times Ltd. 1954)

tionary tendencies during the years 1964 to 1966 the State has not reduced the limit of R1,000,000, but has appealed strongly to local authorities to reduce capital expenditure on non-essential items.(1)

In addition to control by the scrutiny of capital programmes, there have been two other forms of control, namely control over access to the capital market and control over the pattern of interest rates.

Control over access to the capital market is designed to avoid competition among public bodies in the raising of loans. An annual programme is designed by the Treasury and borrowers in the public sector are allowed access in accordance with this programme.

With regard to control over the patterns of interest rates, the Treasury in collaboration with the South African Reserve Bank endeavours to maintain stability in interest rates for borrowing in the public sector. The method of controlling interest rates has varied considerably. Originally the Treasury set a definite pattern for towns of different sizes according to population. After 1952 the control was made more flexible because of the great difficulties in the capital market, and the Treasury allowed local authorities to discuss and fix interest rates when applications for access to the capital market was made. In spite of control over the pattern of interest rates, the rate for long term loans in respect of large cities has risen steadily from 3% p.a. in 1946 to 6½% in 1966. Dr. G. Rissik, Governor of the S.A. Reserve Bank recently referred to the general tightening of market conditions, and indicated that the absolute yield on municipal stock (when adjusted to a uniform maturity of 20 years) ranged from 4.66 to 6.71 during the period 1955 to 1965.(2)

In July 1966 the Minister of Finance raised the Bank Rate from 5 to 6% and further increased the pattern of interest rates for Government Stocks to 6½% (long term) and removed all controls on interest rates on deposits with financial institutions.

There is certain other legislation which has an impact on the raising of loans by local authorities, and the acts

(1) See, for instance, Circular letter from the Secretary of Finance to local authorities - 22nd April, 1965.
(2) "The Financing of Municipal Expenditure in South Africa" (Paper delivered to 1966 Annual Conference, the I.M.T.A. - published in S.A. Treasurer June 1966. Page 125). See also S.A. Reserve Bank Annual Economic Report - August, 1966. Pages 30 and 31.

concerned are set out in Annexure A.

The Banks Act and the Building Societies Act were amended and consolidated in 1965, and the United Municipal Executive approved a memorandum prepared by the Institute of Municipal Treasurers and Accountants, drawing attention to the effect which the definition of "liquid assets" would have on the raising of loans by large local authorities.(1) This memorandum recommended that the definition of liquid assets in the draft bill should include the stocks of local authorities with a maturity of three years and less.(2) The memorandum was forwarded to the Treasury. No action was taken and the I.M.T.A. S.A. (Inc.) prepared a further memorandum in August 1966 urging that steps be taken to classify the short dated stocks and demand deposits of major local authorities and public institutions under the heading of liquid assets, and pointing out the extent to which the municipal stock holdings of financial institutions fell between March 1965 and January, 1966.

Further Bills were introduced in August 1966 requiring insurance companies, pension funds and unit trusts to hold a minimum of government stock in their portfolios. The Institute of Municipal Treasurers and Accountants S.A. (Inc.) submitted a memorandum to the Treasury urging that the legislation go further, and increase the percentages which the abovementioned institutions should hold in securities as listed in the Act (including local government stocks) and then compel the holding of at least 10% in Government Stocks.(3)

In considering the nature of control, it is clear that the Government exercises direct financial control over local authorities insofar as their capital programmes and access to the capital market are concerned. The intensity of control depends on general economic factors. The existence of inflationary conditions has led both to legislation in some of the forms mentioned above, and to various forms of moral suasion on the part of the Government to reduce capital expenditure in both the public and private sectors of the economy. Due to the necessity for providing basic municipal services, annual capital programmes below R1,000,000 are not

(1) Minutes of United Municipal Executive August 1963. Item 35.
(2) Memorandum on Proposed Amendment of the Banking and Building Societies Acts. Page 6.
(3) Memorandum on Proposed Amendments to Insurance, Pension Funds and Unit Trust Control Acts", August 1966.

subject to control; beyond this limit direct control over the total annual amount of the capital programme is applied.

There is also direct financial control in respect of both interest rates and the timing of loan flotations. With regard to the latter, local authorities have tended to accept control as desirable to avoid overlapping in the timing of stock issues. With regard to control over the pattern of interest rates, local authorities have often had disputes with the Government regarding the pattern of interest rates, and have at times had considerable difficulty in raising the money because investors consider the pattern to be too low. This aspect of direct control over interest rates is therefore of great importance to local authorities and immediately raises the question whether a controlled pattern is preferable to the determination of rates by the money market mechanism.

If interest rates move upwards, so should the cost of services, and the pricing policies of local authorities' undertakings should be seriously reviewed, with a consequent re-appraisal of the methods of allocating scarce capital to the various undertakings.(1)

The indirect control evident in amendments to the Banks Act, the Building Societies Act and other Acts does affect the support which institutional investors accord municipal stock issues. By means of such legislation certain financial institutions are obliged to invest a percentage of their assets in gilt-edged and semi-gilt-edged securities, and the Government has now legislated that a certain percentage must be in Government stock. Local authorities desire that the legislation should increase the total percentage which must be held in public stocks. This legislation is by no means an example of direct control over local authorities, but more an example of control by exception, whereby the finances of local authorities could be indirectly affected by the failure of the Central Government to secure by legislation an adequate investment in local government stocks. This also raises the question whether any such control is desirable, or whether other methods such as a more realistic pattern of interest rates coupled with a reduction in capital expenditure in the public sector could not achieve as much as legislation.

In concluding commentary on the nature of control, it is desirable to refer to the difference between provincial control and central government control over loans. The

(1) "See The Gilt-Edged Market in South Africa" by Professor L.H. Samuels (I.M.T.A. Conference proceedings 1953. Pages 89/90).

Provinces control borrowing powers to ensure the general soundness of local finances, but the Treasury is concerned with the financial and economic position of the country as a whole.(1)

3. Trade Licencing.

Major licensing powers are vested in the Provinces, and the only control over licensing at State level arises from the Licences Act 1962, which took the place of the old Licence Consolidation Act 1925. The legislation provided for the licencing of trades, professions and occupations and laid down the fees payable, which accrued to the Central Government. The main object of the legislation is to raise revenue for the State, which participates very little in the control over the licensing of trades and occupations. The Acts passed by the Government, however, have had important effects insofar as indirect financial control are concerned, as the following paragraphs show.

A great deal of discussion has taken place between local authorities and the higher levels of government regarding licensing, as it is one of the most important functions of local government. Licensing cases form a formidable part of municipal case-law. In view of the fact that two commissions have recently investigated the entire question of trade licences, it is convenient to examine their findings, instead of going back into the history of licensing, in order to discover the elements of control.

The Borckenhagen Committee investigated licensing, and issued a report on 20th May, 1963.(2) The Committee discovered that as far as the Licences Act 1962 and its 1925 predecessor were concerned the term licence is a misnomer, and the legislation is mainly a taxing measure. The Receiver of Revenue merely "collects the licence fees and the licence issued by him does not confer on the holder any authority to trade without the consent of the local authority."(3) The Committee drew attention to the curious anomolies under the present system whereby the local authority controls the issue of licences and charges inspection fees, but the State collects the actual licence revenues. The Committee recommended that the power to collect and retain revenues from the licensing

(1) For a fuller account see "Public Expenditure in South Africa" by T. van Waasdijk. (Page 229).
(2) Sixth Interim Report of the Committee of Enquiry into the Financial Relations between the Central Government, the Provinces and Local Authorities: Trade and other Licences, 1963.
(3) Ibid. Para. 25.

of trades and occupations as listed in the Licences Act 1962 be transferred from the State to local authorities.(1) This assignment of licence revenues to local authorities has been requested by the United Municipal Executive over many years.(2)

The Prinsloo Commission made a more detailed study of trade licensing, for its terms of reference embraced such subjects as monopolistic conditions and unfair competition, as well as the administration and legislation in respect of licensing authorities.(3) This Commission stated that the Licence Act was originally passes as a revenue producing measure, but has ceased to fulfill this purpose because of the relatively insignificant amount of revenue received from licences.(4) The Commission expressed itself strongly against the prevalent dual control, and recommended that "the existing power to collect and retain revenues from the licensing of trades and occupations of the types listed in the First Schedule and Parts I and II of the Second Schedule to the Licences Act 1962 be transferred from the Central Government to urban and rural local authorities......"(5) The Commission devoted considerable space to the law and practice relating to the issue of licences by local authorities but this falls more under provincial control than State control and in any case the control is more administrative than financial.

All direct control over trade licensing as well as over other forms of licensing such as motor vehicles, dogs, and bicycles is carried out by the Provinces; there is no direct financial control exercised by the State under the Licences Act 1962.

With regard to indirect control, the taking away of licence revenues by the State from local authorities under the Licence Consolidation Act 1925 had an effect on the income of local authorities. In all four provinces, systems of trade licensing were well established before 1925, and the principle had been established that licence fees should accrue to the authority exercising control. The Licences Consolidation Act 1925 introduced the principle that licences are primarily a source of revenue. After the passage of this Act Provincial Councils all passed ordinances at various times authorising local authorities to impose inspection and supervision fees in respect of trades and occupations, and also

(1) Ibid. Para. 77
(2) See Memorandum on Financial Relations.Op. Cit. 1944,Page 47; 1949 Page 88; 1955 Page 46 and separate memorandum on Trade Licences dated 1st November, 1957.
(3) Report of the Commission of Enquiry into Trade Licensing and allied problems.(G.P. S-6085755 1964-65 - 2000).
(4) Ibid. Para. 114.
(5) Ibid. Para. 116.

to issue municipal licences in respect of those trades and occupations not covered by the Licences Act. There are therefore three types of licence documents (a) Government Licences issued by the Receiver of Revenue (b) municipal certificates of authority which must be produced to the Receiver of Revenue before he issues a licence (c) municipal licences issued for trades and occupations not covered in the Act.

Indirect financial control over local authorities by reason of the State keeping to itself an important source of revenue is an extremely important form of control. Both The Borckenhagen Committee and the Prinsloo Commission have criticised the complexity of control with regard to trade licences and they have recommended that the State vacate this field of taxation in favour of local authorities. This is recommended on the principle that "the public authority which receives the proceeds of any taxation should accept the responsibility for its imposition."(1) It is of interest to note, however, that the Borckenhagen Committee goes further and recommends that individual local authorities should be permitted to fix their own levels for licence fees, subject to the normal control over by-laws by the Administrator. This is a clear indication that the Committee considers not only that local authorities should assume full regulatory control over trade licensing in the interests of administrative and public convenience, but that local authorities are entitled to regard trade and business licences as a legitimate additional source of revenue. The Prinsloo Commission, while agreeing that "an increase in licence fees is justified both on the ground of changed economic circumstances and in order adequately to compensate local authorities for the upward trend in overhead costs", is against the fixing of the fees by local authorities and considers that these should be fixed uniformly in each province, and possibly uniformly throughout the Republic.(2) The Commission is totally opposed to a system whereby "local authorities could endeavour to secure as much revenue as possible from licensing and perhaps using it for the purpose of balancing their budgets."(3)

Irrespective of the method finally adopted for fixing licence fees, it appears that local authorities may acquire a source of revenue hitherto reserved for the State, and an important form of indirect control over the finances of local authorities will have been removed.

(1) Borckenhagen Committee. Op.Cit. Para. 77(iv).
(2) Prinsloo Commission. Op. Cit. Para. 126.
(3) Ibid. Para. 124.

4. Physical Resources.

In 1967, the Physical Planning and Utilization of Resources Act was passed giving extensive powers to the Minister of Planning in respect of the zoning and subdivision of land for industrial purposes. This legislation replaces the former Natural Resources Development Act 1947. The Minister must approve all new factories and extensions to existing factories, and an extension to a factory means any increase in the number of Bantu employees.

There is clearly no direct financial control in such legislation, notwithstanding the far-reaching nature of control over local planning. There is a form of direct control inasmuch as long-term financial planning is affected by the Physical planning of publi [illegible]s, which would be influenced by the location of industrial areas. This type of direct control would be disadvantageous insofar as it affects the optimum economic planning of local communities, but advantageous where there is proper co-ordination of physical planning and the utilisation of resources. Unlimited influx of unskilled labour into local areas is against the national and local interest, because of the vast housing and group areas problems involved. On the other hand the balanced growth of local communities requires a proper assessment of industrial, commercial and domestic needs and a veto on industrial development in certain local communities may have profound consequences on the tax base and financial resources generally.

ASJ.

CHAPTER 9.
CONTROL BY THE PROVINCES: I.

General.

Provincial control over the finances of local authorities is in nearly all cases direct. There is a large field to be covered in discovering and indicating the nature of control in such important spheres as audit, the raising of loans, rating, valuation and many others.

It has already been indicated above that in terms of the South Africa Act 1909 and the Republic of South Africa Constitution Act 1961, the four Provincial Councils have power to pass laws on local government matters. These powers are clear and definite. "Within the limits of the subjects entrusted to it a Provincial Council, although a subordinate lawmaking body, has full power to legislate as effectively as the Union Parliament."[1] The ordinances passed by Provincial Councils in respect of local government have been numerous, and in the sphere of financial control they are far-reaching; they greatly restrict local authorities in their financial affairs. The degree of financial control varies from province to province. A study of the relevant legislation in the four provinces (See Annexure B) will indicate the extent to which Provincial Councils do in fact impose financial control in relatively insignificant matters. The laws passed by the Provincial Council have been assented to by the State President and they are then effective instruments of control in the form of original legislation, and they are in no way delegations by the Central Government. "Ordinances are classed as statutes, not as by-laws or regulations"[2]

In addition to the direct financial control enforced by way of ordinances, as indicated in Annexure B, there are the powers imposed by Administrators under powers granted to them in the ordinances. A Provincial Council has power to delegate any of its powers to the Administrator unless any empowering legislation clearly provides that the Provincial Council itself has to exercise a discretion.[3]

(1) Municipal Law by Dönges and van Winsen. (Second Edition) Page 8

(2) Statute Law and Subordinate Legislation by the Hon. L.R. Caney, Q.C. Page 41. See also the South African Constitution by H.J. May (Chapter 4) and the Finance and Revenue Laws of the Union of South Africa by Manfred Nathan (Page 419

(3) Ibid. (Caney) Page 60.

In this sphere a great deal of provincial financial control takes place, and the phrase "a Council may with the consent of the Administrator" abounds in Provincial Ordinances. The Administrator delegates many powers to officials and thus much financial control is exercised directly by Provincial Administrations.

The commentary on provincial financial control given in the previous paragraphs is intended to be no more than introductory, because the nature of provincial control has first to be discovered, as has been the case with legislation by the Central Government. Analysis of the various types of provincial control will take place in later chapters.

In view of the fact that Provincial Councils pass laws which directly control local authorities in numerous spheres of activity, the nature of control is not so difficult to discern as was the case with many types of central control. In spite of this, the degree of control exercised, and the different methods adopted in the four provinces is of great importance. There is a broad similarity in the method of financial control in the four Provinces, but considerable differences in the legislative enactments for bringing about control. These differences are revealed in the comparison of the legislation of the four provinces set out in Annexure B, which is of great importance in any commentary on the specific types of financial control exercised in the four Provinces.

The procedure for dealing with Provincial financial control, therefore, is to set out the financial provisions of the ordinances concerned (as has been done in Annexure B) and then compare the methods and nature of financial control in each province. For this purpose, the Natal local government ordinance is taken as the base in the left-hand column, because most of the financial provisions in that ordinance are placed in one chapter. In the other three columns, the relative provisions from the Transvaal, Orange Free State and Cape Province ordinances have been juxtaposed.

In the chapters which immediately follow, the specific types of control will be covered in the order in which the subjects are set out in Annexure B.

CHAPTER 10.

CONTROL BY THE PROVINCES II : ACCOUNTING AND BUDGETING CONTROL.

1. Revenue Funds

In the three provinces of Natal, Transvaal and Orange Free State, the ordinances list certain heads of income which form the revenue of the Council. The Cape Ordinance contains no such list.

In Natal there have been amendments to the law in recent years providing for (a) the establishment of separate funds for trading undertakings as distinct from the borough fund revenue account (b) for the opening of banking accounts, and (c) for the establishment of revenue reserve funds.

In Transvaal the law now provides for the separation of the market fund from other funds and in the Orange Free State the ordinance contains a provision that interest may be charged on all arrear accounts (and not only on arrear rates, as is the case in all Provinces).

The listing of heads of revenue in Natal, Transvaal and Orange Free State does not serve any particular purpose as far as financial control is concerned. The ordinances merely say that the revenue of the Council shall consist of rates, charges, fees etc. but the power to impose such charges is contained separately in the local government ordinance or in other ordinances. Some revenue heads receive special mention such as the unimportant estreated bails and the out-of-date tolls, while an important source of income such as State refunds is not mentioned. In view of the fact that considerable progress has been made in the standardisation of accounts(1), the sections of the ordinances relating to the revenues of local authorities are relatively unimportant as far as financial control by the Provinces is concerned.

In several spheres, however, there is direct financial control, namely, the obligatory opening of banking accounts in Natal, the restriction on the transfer of profits out of the market revenue account in Transvaal, and the obligatory charging of interest on arrear accounts in the Orange Free State.

In the case of permissive power given to open separate trading accounts and establish revenue reserve funds in Natal, control by audit would operate once these funds have been established. The clear authority given to establish revenue

(1) See Report on Standardisation of Abstracts of Accounts of Local Authorities in S.A. (I.M.T.A. Publication 1951) and pro forma accounts prepared by Provincial Auditor of Transvaal (1961).

reserve funds in Natal is an example which could well be followed in other provinces. In Transvaal, for example, the Provincial Auditor has consistently held the view that the setting aside of revenue in any reserve fund which is not specifically sanctioned by law, is illegal and he has commented to this effect in his reports on the annual accounts of local authorities, and required the amounts to be written back. This is control by audit, based on the law of ultra vires i.e. that the council may not do anything for which it has no positive legal power, yet the extension of this doctrine has been challenged for the past 30 years in Transvaal.(1) This is a case where a positive power given, as in Natal, would eliminate the unsatisfactory and uncertain indirect control conducted by the Provincial Auditor.

2. Capital Funds.

Natal requires that loan moneys must be paid into the account for which they were raised and used only for the purpose for which they were raised. The ordinance also sets out a detailed procedure to be followed when a capital asset is sold. Transvaal and Natal give authority for the establishment of capital development funds. Transvaal and the Cape Province authorise the operation of consolidated loans funds. The Cape Province requires the keeping of a separate banking account for loan monies, and the use of such moneys solely for the purpose for which they were borrowed. Orange Free State has no provisions whatsoever relating to capital funds. The Provinces have always been anxious to ensure that moneys raised by way of loan are used only for capital purposes and in accordance with the original purposes. Direct control is evident here but it is doubtful whether the control is effected by requiring the opening of separate banking accounts. Orange Free State had this requirement previously but dropped it in the 1962 ordinance.

The accounting records are sufficient to indicate for what purposes the funds were raised, and from these the auditor could comment on any irregular use.

The authority to establish capital reserve funds is permissive, but once having been established, control is strict, and the Administrator's authority is necessary to

(1) See Memorandum to Local Government Advisory Board on "Reserve Funds" by J.W. Cowdan - June, 1966.

apply such funds for other purposes. This direct financial control is necessary because reserve funds could easily be squandered on unnecessary projects. "Each department of the city government knew of the existence of these reserves. They were anxious to spend them each in his own direction."(1)

The power given to operate Consolidated Laons Funds is permissive, but the Administrators do not lightly give this power to local authorities, for sound financial management of such funds is important. Once having been established, control by the Provinces is strict. Because of the many advantages of consolidated loans funds, most of the larger towns and cities operate them today.(2)

It is curious that some Provinces introduce a high degree of control in a matter such as capital funds and the sale of assets (e.g. Natal) whereas other Provinces (e.g. Orange Free State) have no restrictions at all. However, this can be explained partly by the fact that many of the detailed provisions of the Natal Ordinance are dealt with in financial regulations.

3. Land Trust Funds.

There is general Provincial uniformity in the principle of requiring that the proceeds from the sale of land be paid into a special fund. (See Annexure B) The former Orange Free State Ordinance expresses this principle as follows:- "all immovable property vested in the Council shall be deemed to be held in trust for future generations."(3)

Control over the alienation of land in general is dealt with in later chapters - this chapter deals only with land trust accounts. There is uniformity among the Provinces in principle, but a study of the schedule of provisions in Annexure B indicates a lack of uniformity in other respects. In Natal the account is called the Public Improvement Fund, in Transvaal it is called a Special Account (although most local authorities have called it a Lands Trust Fund), in the Orange Free State it is the Erven Trust Fund, and in the Cape it is the Revolving Fund (note, however, that this account is not created solely to receive the proceeds of land sales, and is more in the nature of a general capital reserve fund). There is also a variation in use of moneys standing

(1) "Use of Capital Reserve Funds for New Improvements" by Carl W. Clepper (Municipal Finance, August 1954).
(2) See "Memorandum on the Proposal that the Administrator of the Cape be requested to promulgate a Municipal Consolidated Loans Fund Ordinance" (I.M.T.A.1954); "Consolidated Loans Funds of Local Authorities" (Drummond and Marshall); "The Theory and Practice of the Consolidated Loans Fund" (E.N. Penrose, South African Treasurer, February, 1953); "Loans of Local Authorities" (J.R. Johnson).
(3) Section 61(1) Local Government Ordinance 6 of 1946.

to the credit of these land sales funds. In Natal, monies may be used only in the form of repayable advances, but in the other provinces the money may be appropriated for certain specific purposes, e.g. for the purchase of further land.

There is direct financial control in all Provinces regarding the treatment of proceeds from the sale of land, and the legal provisions are strictly watched by the Provincial Auditor. The purpose of this control is "the preservation of the corpus or body of the municipality for the use not only of the present generation, but future generations."(1) In a memorandum on this subject, the Institute of Municipal Treasurers and Accountants affirms the necessity of preserving the value of land trust funds intact, but considers that certain types of development work should be allowed as a charge against the fund to bring the land into a saleable state.(2)

. Books of Account.

In all provinces, local authorities are required to keep proper books of account. All the provinces except Transvaal lay down that capital and revenue shall be treated separately. In Transvaal, Orange Free State and the Cape it is the Council that must cause proper books to be kept, but in Natal the responsibility is placed directly on the town treasurer. Natal also sets out in detail what are permissible charges to capital works (e.g. salaries of supervisory staff) - in the Transvaal, policy in this connection is laid down in a circular from the Director of Local Government after consultation had taken place between town treasurers, and the Provincial Auditor.(3) This matter has consistently been a source of dispute between treasurers and auditors, and even between the United Municipal Executive and the National Housing Office.(4)

These sections of local government ordinance deal only in general with the necessity for keeping books, but elsewhere in the ordinances there are various provisions relating to special books of account. For example, there are in the Cape Province other provisions relating to repairs fund accounts, sinking fund accounts, a loan account and others. Furthermore,

(1) "A survey of Local Government" by H.B. George, Provincial Auditor, Transvaal (address to the Transvaal Municipal Association 1947).
(2) "The Utilisation of Land Sales Moneys" July, 1956.
(3) Circular letter No. 11 of 1958 TALG 7/5.
(4) See "Memorandum - Administration and Professional charges in connection with selling and loan schemes approved under the Housing Act" (1957) (I.M.T.A. May 1960).

the Cape audit regulations lay down rules for the keeping of cash books, bank deposit books and so on. There is one other interesting provision in the Cape Ordinance, namely the power given to Councillors, ratepayers or voters to inspect and take extracts from the Council's main books of account.

Dönges and van Winsen state that "what books of account are to be kept is principally an accounting matter and will be dictated by recognised and accepted principles of accounting."(1) The provisions in the various ordinances regarding the books to be kept are no more than general safeguards; there is more direct financial control in the requirements laid down by the Provincial Auditor, a sphere in which there is often considerable difference of opinion in regard to accounting principles.(2) These differences sometimes reach the stage where the law has to be amended to provide a detailed procedure to be followed (e.g. in Natal in respect of charging salaries to capital account) and it raises the whole question whether external financial control should take place by filling the local government ordinance with unnecessary accounting details, or whether it should take place by the promulgation of regulations. A great deal of control also takes place neither by ordinances nor by regulations but by directives issued by provincial auditors to keep books in a certain way. This is particularly so as far as small local authorities are concerned, and it has been justified on the grounds that accounting methods are so bad in certain small local authorities that a standard basis must be insisted on.(3) In certain cases auditors must actually close off the books before they can commence their audits.

The power given to the public to inspect the Council's books of account would fall more under the heading of popular control. It is a democratic right granted to the public and councillors. It is unlikely, however, that laymen would get far unless accompanied by an accountant. The editor of "The Accountant" observed many years ago in an editorial: "Most people never see the published accounts of their local authorities and if they did they would most likely be little the wiser."(4) There is little harm in the retention of a traditional

(1) Municipal Law (Second Edition) Page 142.
(2) See "Recent Trends in the Standardisation of Accounts" by J.W. Cowden, Town Treasurer, Springs (S.A.Treasurer, October, 1956).
(3) "Local Government Audit in the Orange Free State" by Mr. A.D. Malan (I.M.T.A. Conference Proceedings 1936 Page 128)
(4) July 16, 1955.

democratic right such as this as long as it does not prove too irksome to town treasurers, ratepayers would be well advised to ask for information rather than to seek for it.

5. The Closing of Books.

The ordinances in all provinces except the Cape Province give specific directions to local authorities to close their books after the close of the financial year. The financial years close on different dates in the four Provinces as follows:- Natal on the 31st July, Transvaal on the 30th June, Orange Free State on the 31st March and Cape Province on the 31st December. There is also lack of uniformity with regard to the closing of books. In Natal and the Orange Free State the books must be closed and balanced, in Transvaal they must be balanced, but in the Cape Province no directives to close and balance the books are given, but instructions are given to prepare a balance sheet and income and expenditure account. Natal and the Orange Free State also require balance sheets and income and expenditure accounts to be prepared after the closing and balancing, but Transvaal is silent on the question of the accounts to be prepared.

It is a pity that more uniformity could not be introduced into provincial laws of this nature, for the varied use of accounting terms and the different financial years causes problems in the sphere of audit and the publication of comparative statistics.(1)

The injunction to local authorities to close their books after the close of the financial year, and to prepare balance sheets and other final accounts is a clear case of direct financial control. Failure on the part of local authorities to act in accordance with this injunction would invoke action by the Administrator. It is in the public interest to ensure that proper books are kept and that certain periods should be laid down for completing the task of balancing and preparing the balance sheet. This is clearly essential before any of the audit functions can be performed, and it is desirable that the law is clear on this point. Accountability to the public on all financial matters is of great importance, and the matter of finalising and balancing the books of account is rightly a subject of clear and direct control by a higher level of government.

(1) See comment by the Director of Census and Statistics in "Memorandum No. 22: Financial Statistics of Local Authorities 1956-57 and 1957-58" Page 2.(G.P. S. 8196453 1960/61 - 350)

6. The Preparation of Estimates.

All local authorities in South Africa must prepare estimates of revenue and expenditure; a reference to annexure B will reveal the different procedures laid down in the four provinces. In Transvaal and the Cape Province, the estimates must be prepared before the commencement of the financial year which they cover; in Natal and the Orange Free State the estimates may be finalised after the commencement of the financial year. In Natal and the Cape Province an abstract of the estimates and the rates to be levied must be published in the press; in the Orange Free State a notice must be published saying the estimates are open for inspection, but in Transvaal there are no obligations to publicise the estimates.

There is a limitation in the Orange Free State on the estimated deficit for which a municipality may budget. In the Cape Province a certified copy of the estimates must be submitted to the Provincial Secretary.

The obligation to prepare estimates of revenue is a form of direct control imposed on local authorities, and is a necessary form of external financial control. The estimates of revenue and expenditure form the base on which the rate levies for the following year are determined and are therefore of fundamental importance. For this reason the Transvaal and Cape Province laws requiring the preparation of estimates and the determination of the rate before the commencement of the financial year reflect better financial control than when the estimates are prepared later, for a great deal of expenditure has already taken place in the financial year before the estimates are completed, and there is consequently a lack of financial control during this period.(1)

The necessity to publish summaries of the estimates in the press represents an additional form of public control. When drastic changes are contemplated this extra control serves to alert the public, for example when a substantial increase in the rates is contemplated. Yet the layman who studies a short extract of the estimates in the press is not likely to understand its full implications; the council has had the benefit of the full reports of heads of departments, in particular those of the Town Treasurer.

The limitation in the Ora[illegible]ee State on the estimated deficit is a very definite meta[illegible] financial control, for

(1) See "Municipal Budgeting Procedure in South Africa" by A.D. Edge (I.M.T.A. Conference Proceedings 1950).

it compels a local authority to increase its rate impost or tariff charges to reduce the deficit to a reasonable figure. It prevents the elected representatives, who are elected for relatively short periods, from continually increasing the estimated deficit and failing to face up to an increase in the rates, a step necessary in the interests of prudent finance but unpopular in the proximity of the ballot box. This is a sound financial provision, and a similar restriction was recommended by the Marais Commission in Transvaal,(1) but it has not been implemented. There is a similar provision in Natal, but it is not in general terms and is therefore dealt with under Excess Expenditure below. This provision is also linked with limitations on the amount of the rate which may be levied, which is dealt with separately in a later chapter.

Only in the Cape Province is it necessary to send a copy of the estimates to the Provincial Secretary who is given no powers with regard thereto. This is of particular interest in the realm of financial control, for it has been noted above that complete control is exercised by the Minister of Bantu Administration and Development over local authorities through the machinery of sanctioning the estimates of revenue and expenditure. In none of the four provinces does the Administrator approve the estimates of revenue and expenditure. Municipalities are free to prepare their own estimates, subject to the provisions set out in Annexure B, and subject to certain specific requirements (e.g. in the preparation of Market estimates in Transvaal, no surplus may be transferred to another fund; in Natal there are similar restrictions on trading funds, and there are the specific limitations on rating dealt with below etc.) In certain other countries of the world, senior authorities have to approve the estimates of local authorities, and this aspect is covered in the general chapters on financial control which follow.

7. Excess Expenditure.

After the estimates have been prepared and approved, and the rate for the year duly levied in terms of the previous sections, some control is necessary to ensure that expenditure takes place in accordance with the approved estimates. As was the case with the preparation of estimates, the provincial ordinances vary considerably in the imposition of control.

(1) Third and Final Report of the Commission of Enquiry into the System of Local Government in the Transvaal" (T.P. 5/1957. 178).

In Natal there is the specific provision that in the preparation of estimates no excess of expenditure over income is permitted unless provision is simultaneously made for the excess expenditure to be met. The Natal Ordinance also goes much further than the other Provinces with regard to excess expenditure, and a report must be submitted to the Administrator if at the end of the financial year a deficit is revealed in the rate fund. The ordinance also contains more detail than other provinces regarding authority to do such things as purchase consumable stores, contribute sums from rate funds to liquidate deficits or other funds, and make contributions from other funds to the rate funds in relief of rates.

The Transvaal ordinance contains merely an outright provision that no expenditure should take place except in accordance with the estimates, but the Council may approve excess expenditure on the recommendation of the finance committee (or management committee).

The Orange FreeState makes provision for the revision of estimates during the year, together with an increase or decrease in the town rate. Whenever during the year the treasurer considers that a deficit equal to more than the amount of 1/5c per rand of rateable property is likely to accrue, he must report to the Council, and the estimates must be revised.

In the Cape Province the Council shall not depart from the confirmed estimates, but in special circumstances they may be exceeded on the specific authority of the Council, up to an amount not exceeding 1/8c per rand, and by a further amount with the approval of the Administrator who may direct that an extraordinary rate be levied to meet the excess. Also, if the final accounts reveal a deficit, the Administrator may direct that an extraordinary rate be levied.

Control of excess expenditure is a necessary form of
direct control to ensure that once estimates have been pre-
ured and once the rate has been levied, no excess expenditure
all take place otherwise than in accordance with a set pro-
ure laid down in the ordinance. The degree of control varies.
In Transvaal, a Council could go on approving excess votes and
end the financial year with a very large deficit, and only
when the financial position becomes unsound is the Adminis-
trator empowered to take action in terms of section 170 of
the ordinance (see below). In the other provinces there are
more definite restrictions on excess expenditure. In Natal
the requirement that no deficit may be shown is too inflexible,
for there is nothing intrinsically unsound in the practice

of budgeting for a reasonable deficit and in this connection the Orange Free State method of stipulating an overall general control is preferable.

It is desirable that the Province impose direct financial control in so far as excess expenditure is concerned, but an examination of the various ordinances indicates confusion of thought between the authority for excess expenditure and the authority to incur deficits. A Council may authorise many excess votes during a financial year, yet incur no final deficit because of the buoyancy in revenue. There is room for considerable improvement in the legal approach to excess expenditure; in Natal special authority is given to make contributions from other funds to the rate fund, and vice versa, whereas the authority to do this is taken for granted in other provinces and a question such as the specific authority to purchase consumable stores is better dealt with in financial regulations rather than the Provincial laws.

All that the provinces need to ensure in this sphere of direct control is that excess expenditure must be restricted by the Council and if the Council cannot restrict it, it must take steps to see that any resultant deficit is met by increases in income (i.e. by tariff or rate increases). The deficit at the end of the financial year is the important factor, and control over this aspect is far more important than imposing limitations on estimated deficits at the beginning of the year. Direct financial control over those local authorities which fail to take steps to reduce accumulated deficits is clearly necessary, and it has been necessary in the past for the Administrators to force local authorities to take these unpopular steps.

8. General Authority for Expenditure.

The Natal, Transvaal and Orange Free State ordinances contain a general authority for expenditure on works authorised in the ordinances. In the Cape Province specific authority is given to incur expenditure on a comprehensive list of specified works, and a general limitation is placed on the total expenditure on such works. In the Orange Free State this general authority is limited to items not exceeding R400, beyond which a report must be submitted by the Finance Committee to the Council.

It is necessary for the Provinces to give this general power to spend. Where powers are given to local authorities to do certain things in terms of the ordinance it is clearly necessary to give general authority to incur a reasonable cost in the exercise of such powers.

The general powers given under these sections are often the subject of dispute between town treasurers and auditors regarding the question whether certain types of expenditure fall within the ambit of these powers, or whether the expenditure is reasonably incidental to the exercise of its powers. For instance an opinion was given by the Provincial law advisers that the presentation of an illuminated address to an official for distinguished service was not an incidental power.(1)

Financial control in this instance is incidental to the authority given in other sections of the ordinances. In addition to an express power to establish a park, for example, there is the implied power that expenditure reasonably necessary may be incurred on such park.

It will be noted that in the next section the question of specific authority for specific types of expenditure is dealt with. But if local authorities were required to obtain specific authority for every item of expenditure incurred, the list would be large and cumbersome. The principle of implied powers indicated in this section is therefore more in the nature of general indirect control over expenditure, not specifically dealt with elsewhere in the ordinances.

9. Authority for Special Expenditure Grants and Loans.

There is direct financial control over certain categories of specific expenditure which local authorities may incur. Of major importance are the grants and loans which may be made by local authorities to certain institutions and organisations. A reference to the schedule in annexure B will indicate how haphazardly the powers granted under this heading have developed. There is general uniformity in the four Provinces regarding the making of grants to charitable, religious, educational and cultural organisations. As against this, there is a lack of uniformity regarding certain powers which are granted in one province and not in another. The differences in this connection are considerable, and because the principles of financial control are not effected, no analysis of these differences will be made. As an example of these differences it can be mentioned that the granting of locomotion allowances to officials is covered in some provinces in the ordinances but not in others; to present a

(1) See Opinion No. 59 of 1950 (Potchefstroom Municipality).

medallion to a retiring mayor is legal in one province, but not in others; total expenditure on grants is limited in some provinces but not in others; there is specific authority for expenditure on public functions in some provinces, but this is only an incidental power in others.

When the powers contained in this section were originally granted to local authorities, the powers to make grants and loans was limited to a few recognised institutions but with the development of local government there has arisen the need continually to extend these categories of expenditure. This extension has taken place usually by a mere addition to the existing powers without any attempt at coherent listing.

A great deal of time has been spent in obtaining authorities and in getting legal opinions in order to avoid disallowances by provincial auditors under this section. Provincial auditors observe the ultra virus rule strictly, and disallow any expenditure for which there is no positive legal power.

External financial control by the Provinces in this regard is very direct. There is a positive restriction on the types of expenditure a local authority may incur, particularly with regard to grants and loans to certain institutions. Unfortunately the external financial control under this heading has been conducted haphazardly, and where provincial auditors have disallowed expenditure under this heading the law has merely been altered by adding to the pile of existing authorities instead of introducing a coherent list of expenditure which may be incurred by local authorities.

Provincial control over the making og grants and loans to institutions is necessary, but in accepting this principle criticism must be made of the method adopted by the provinces in legislating for this control. Reference to the schedule in annexure B will make this point clear. One is forced to wonder why the four provinces have not collaborated in the preparation of a uniform list of institutions and other specific authorities under this section of the ordinance.

CHAPTER 11.

CONTROL BY THE PROVINCES III : CAPITAL FINANCE.

The Provinces exercise control over the capital finance of local authorities by controlling the powers to borrow, both short-term and long-term. The law also imposes clear obligations on local authorities regarding the security for loans, the investment of sinking funds and the depreciation and renewal of assets.

1. Short Period Loans and Bank Overdraft.

In Transvaal the position is more restrictive than in other provinces, because the Administrator must determine the terms and conditions of bank overdrafts and short period loans, and only the larger local authorities may raise short term loans. Furthermore, he restricts his authority normally to the period of one year, and application has to be ma e annually. In the Cape, Natal and Orange Free State, councils are free to obtain bank overdrafts or short-term loans without the Administrator's sanction, but the total amount is subject to the general limits laid down in the ordinances. Other minor restrictions are also incorporated in the Orange Free State and Cape ordinances (for details see Annexure B). In the Cape Province the aggregate of loans is restricted to "total income" whereas in the Orange Free State it is narrowed to "revenue from rates" and in Natal to "borough fund income". In Transvaal the Administrator sets the limit each time in granting his approval. In view of the wide powers which the Administrator possesses to take steps where the financial position of a local authority deteriorates, it is questionable whether restructions on the mechanics of short period loan finance are really necessary.

Control over short-term borrowing is a clear case of direct financial control by the Provinces over the amounts which local authorities may raise. The provisions of the Orange Free State and Natal ordinances are clear and simple and from the point of view of the law, rate income is a more definite yardstick than total income. The method of external financial control adopted by the Transvaal with regard to short period loans and bank overdrafts is not satisfactorily because a considerable amount of additional and unnecessary administrative work has to be performed at local authority level and provincial level every year in obtaining and granting loan authorities. The Transvaal Municipal Association has recently recommended to the Director of Local Government that a general limit on the lines of the Cape Province be introduced in the Transvaal.

In all Provinces there is a relaxation of formalities where a council desires to renew a loan. In the Cape Province a council may convert from a higher to a lower rate of interest, and "only lighten its obligations but not increase them."(1) In Natal, Transvaal and the Orange Free State only the amount and period are restricted, and in Natal the law goes further and states that the Administrator may authorise a rate of interest higher than that stipulated in the special law.

2. Long-term borrowing.

Provincial control over long-term borrowing by local authorities is strong, and before the Provinces will consider applications for borrowing powers certainly preliminary steps have to be taken in terms of the law.

In Natal a special ordinance has to be promulgated and before such ordinance is introduced into the Provincial Council preliminary steps such as advertising, preparation of a treasurer's report, and submission of certificates by the town clerk, have to be taken.

In the Orange Free State notice of the council's intention to raise a loan must be given in the Gazette and the Press, together with any objections and representations submitted to the Administrator with the Council's resolution to raise the loan. The Administrator may on receipt of the documents require the council to submit the resolution to a meeting of owners of rateable property.

In the Cape Province the Council must give notice of its intention to raise a loan in the Gazette and in the Press.

In the Transvaal, no preliminaries are required before the council passes a resolution to borrow. It is of interest to note that the Director of Local Government requires a copy of the Town Treasurer's report on borrowing powers which was considered at the special council meeting.(2) The preparation and submission of the treasurer's report are therefore necessary preliminaries.

The main purpose of control here is to ensure that members of the public are aware that a local authority intends to borrow money. Previously, meetings of registered owners had to approve any application to borrow in the Cape Province and Orange Free State. These provisions were abandoned because

(1) Municipal Law - Dönges and van Winsen. Second Edition. Page 170.
(2) See Circular No. TALG 7/1 - 1963B.

of public apathy and severe criticism of the nature of these meetings. At one meeting in Capetown called to pass a R12,000,000 loan only two ratepayers attended.(1) At another meeting, the town clerk had to call in taxi drivers to obtain a quorum, and at another a militant group of ratepayers turned down the entire loan programme because the streets in their wards were full of potholes.(2) In the Orange Free State the Administrator still has the power to refer a loan proposal back to a meeting of owners, but this is a safeguard and not a preliminary requirement.

The nature of control in respect of the preliminaries to borrowing powers is an interesting form of control, for the Provinces compel local authorities to draw the attention of the public to the fact that the borrowing of money is contemplated. In this way, a democratic right is extended to any individual to object. This is wise and necessary when a local authority contemplates closing a road near a ratepayers house, or a park, but it is seldom that a ratepayer [illegible] in a position to lodge a sound objection against the [illegible]ing of loans for municipal purposes without a great de[illegible] of study of the overall financial position of his local authority. The raising of loans and the annual impact of loan charges is but one aspect of municipal finance. External control over local debts is desirable for the protection of future ratepayers, but it is better carried out by the Administrator in accordance with proven formula, without any recourse to outside agencies which are unlikely to pass sound judgment on any loan proposal without expert advice.

When the preliminari[illegible] described above have been complied with the council m[illegible] make application.

Financial control by the Administrator over the power of local authorities to borrow is direct. In all the provinces the Administrator must authorise [illegible]rrowing by local authorities but there is a considerable variety in the method adopted in each province. In Natal a council may borrow money only under authority of a special ordinance (the Administrator may authorise borrowing for specified works up to an amount and period as set out in the ordinance). In the Cape, Orange Free State and Transvaal a special council resolution and the Administrator's consent is required before borrowing may take place. Only in the Cape is there a statutory limit to long term borrowing for unremun[illegible] work, namely 1/6th of total

(1) "The Raising of Lo[illegible] [illegible]ler Local Authorities" by R.S. Walker (I.M.T.A. Conference Proceedings 1959. Page 168)
(2) "Uniformity in Provincial Legislation in regard to Financial matters" by J.W. Cowden (I.M.T.A. Conference Proceedings 1957. Page 231).

rateable value.

With regard to the actual raising of loans, local authorities are free to negotiate private loans or issue stock.

Only in Transvaal and Natal are there detailed requirements to be followed regarding the issue of stock. In Transvaal the provisions of the Johannesburg Municipal Borrowing Powers Ordinance 1903 apply when loans are raised by way of stock issues and the provisions are comprehensive. The provisions are similar to the standard Stock Regulations applicable to local authorities in the United Kingdom. In Natal there are certain provisions in the Local Government Ordinance detailing certain requirements, but these are not as detailed as the Transvaal provision.

Only the major local authorities in South Africa raise their loans by way of stock issues. The amounts normally required by the smaller authorities do not warrant the expense of stock issues. These latter authorities usually obtain their loan requirements from pension funds, insurance companies, other institutions and other local authorities. The detailed control over stock issues in Transvaal is not necessary form of control, and does not afford greater security than exists elsewhere in law. In other Provinces this subject is covered by financial regulations or ordinary accounting routine.

There were previously in the Cape Province and Orange Free State, provisions in the ordinances whereby the consent of a meeting of the registered owners of property in the municipalities had to be obtained before application for the Administrator's consent could be made. These provisions have now been eliminated.

With regard to the special borrowing powers ordinances required in Natal, the system is claimed to provide a check on rash schemes because a strong case has to be put before a select committee. On the other hand the system is slow and it is costly and there tends to be a lack of uniformity in the granting of authorities because the personnel of select committees changes. (1) Although a ratepayer has the democratic right to appear before a select committee it is doubtful whether he could bring better judgment to bear on the wisdom of raising a loan than the councillors who participated in the original council decision, having at their disposal the views of experts on this matter. Previous

(1) See "Natal Provincial Audit" (I.M.T.A. Conference Proceedings 1930 by Powell Morgan. Page 126).

experience with regard to meetings of ratepayers in the Cape Province and Orange Free State showed that there was seldom a well-informed discussion at the ratepayers' meetings called to sanction an application for borrowing powers.

The direct control by the Administrator over the raising of loans by local authorities has been a feature of local government in South Africa almost since its inception, and this particular control is regarded as necessary where elected representatives of the people control the affairs of local authorities for a limited period only. There exists a temptation on the part of councillors to raise large loans, for this will create immediate assets which the electors desire and the financial consequences of loan finance can be considered by their successors in office. In most countries of the world limits are imposed by higher authorities on local borrowing.(1)

There must be external control over the power of local authorities to raise loans and it is for the Administrator, in imposing this form of external control, to apply proper tests in the interest of ratepayers.(2) The financial advisers to the Administrator can also apply standard tests as the net loan debt per head of population, or the ratio of net loan debt rateable valuation or the percentage annual increase of net loan debt over the past ten years or the ratio of remunerative to unremunerative debt, together with other indicators such as the volume of reserves, rating potential, ratio of current assets to current liabilities and so on.

Dr. I.Q. Holmes has stated that "the most important aspect of the loan policy of local authorities is whether they are spending at too fast a rate, having regard to the ability to face up to the consequent cost involved in the form of loan charges."(3)

(1) See survey by International Union of Local Authorities Quarterly Journal. Autumn 1960. Vol. XII No. 3 also "Local Government Finance in South Africa" by Dr. I.Q. Holmes. Pages 143/4.
(2) Mr. Powell Morgan when he was Provincial Auditor of Natal stated in a paper to the 1930 Conference that he drew attention to cases where the loan debt exceeded 25% of rateable value. Mr. H.B. George when he was Provincial Auditor of the Transvaal stated in an address to the Transvaal Municipal Association that the Administrator must satisfy himself that (a) the object is necessary (b) the cost is reasonable and (c) the revenue is available to meet loan charges and maintenance expenditure.
(3) "The Trend of Local Government in S.A." (I.M.T.A. Conference Proceedings 1950. Page 133)

In 1930 Councillor A.L. Berman made the remark that the burden of municipal loan debt is exaggerated and that it is not debt at all but capital. It is the working capital of the undertaking and one does not refer to the Standard Oil Company as having a debt of so many hundreds of millions.(1) This view is unacceptable in the field of public finance for it is necessary to subject the elected representatives of the people to some form of control in so far as the borrowing of money is concerned. The sanction of the Administrator to the raising of loans is considered to be a satisfactory form of control and as long as the Administrators in the four provinces sanction borrowing powers with expedition and with due regard to the requirements of local authorities, this form of direct financial control is in the interest of ratepayers.

3. The Redemption of Loans.

Local authorities in all four provinces are compelled to make adequate provision for the redemption of loans. The ordinances require, in varying ways, that sinking funds be established for the redemption of loans, and restrictions are imposed on the use of moneys accumulated in sinking funds. The Natal and Transvaal laws contain far more detailed requirements in this regard than do the Orange Free State and Cape Province laws.

There are no maximum periods laid down for the redemption of loans in Natal and Cape Province. In the Orange Free State the period of 50 years is laid down, and in Transvaal 30 years in the case of stock issues. These are legal maxima, and in all provinces the actual loan period is fixed when the terms of the loans are approved either by the Administrator or by a special law.

In the Transvaal and Cape Province, the provisions of the ordinances relating to the redemption of loans do not apply where local authorities operate consolidated loans funds, in which cases it is not necessary to build up redemption funds for specific loans. Loans are pooled in a consolidated fund and the local authority concerned must

(1) "Municipal Enterprise" by A.L. Berman (I.M.T.A. Conference proceedings).

"so administer the capital moneys of the Loan Fund as to secure that at the date when the holders of any stock or other security become entitled to claim redemption thereof, moneys sufficient for such redemption are available for the purpose."(1)

The statutory obligation to provide for the redemption of loans is a direct and necessary form of control exercised by the Provinces. Clearly, the ordinances can indicate only the main lines of control; the most important form of control rests with the Administrator, who determines the terms under which loans may be raised. Control over loan periods is all-important, for it would otherwise be a simple matter for councils to mortgage the future by raising loans for longer periods than the lives of the assets justify. Control could best be exercised by stipulating that the loan period must not exceed the life of the asset, but this is administratively cumbersome, for then a sinking fund would have to be built up for each of the numerous loans. Control is usually exercised by requiring that if the life of the asset is less than the period of the loan, a seperate renewals fund must be built up to renew the asset, in addition to the normal loan redemption fund.(2) There is an additional form of control over loan redemption, and is dealt with later under Provincial Audit because in certain provinces the auditor is specifically directed to report on the adequacy of redemption funds. The problem is best overcome, however, when a consolidated loans fund is in operation, for loans are raised at a time most favourable in the money market and pooled; thereafter advances are made to municipal departments for periods allied to the lives of the particular assets. Provincial control over the repayment of loans in this case is exercised through the Provincial Auditor who must conduct a particular audit of the consolidated loans fund.(3)

4. Remedies for default and security for loans.

Control over local authorities with regard to the

(1) Municipal Consolidated Loans Fund Ordinance No. 9 of 1952 (Transvaal) Section 8.
(2) See, for instance Local Authorities Depreciation Regulations (Transvaal) - Administrator's Notice No. 506 - 25th August, 1937, Regulation No. 5.
(3) See, for instance section 3(4) of Municipal Consolidated Loans Fund Ordinance 1952 (Transvaal).

repayment of loans is clear and direct, and lenders are granted considerable powers to ensure that there is no default. This is in line with the strong provisions in various Acts of Parliament regarding the security for loans.(1)

In Natal the lender may appeal to the court, which has power to levy a special rate for the recovery of interest. In the case of a failure to repay the principal, the court may cause a sale of municipal lands to be made. In Transvaal loans are secured on the whole of the land, rents, property and revenue of the Council. A court may order a rate to [illegible] ed, and in addition it may order the [illegible] e of any [illegible] which the loan is secured. In the [illegible] ge Free [illegible] inistrator may appoint a personal [illegible] to the financial position of a [illegible] satisfied that a council cannot pay [illegible] This personal representative is given power, wit[illegible] roval of the Administrator, to impose a special rat[illegible] may collect the proceeds and pay the debts.

[illegible] Cape Province no specific mention is made of security for loans. The provision of the Public Bodies Debts Act 1867 are applied to all debts due by a local authority, and "a loan is also secured by the revenues of the council raising such loan."(2)

If local authorities are given power to borrow money, it is a logical consequence that lenders should be granted security for their loans, and the direct financial control in this sphere is understandably far-reaching. Financial control is complete when a court or a financial representative is empowered to impose a special rate in the event of failure by a local authority to meet its debts. The strong control imposed by the provinces over the repayment of loans is naturally necessary for public accountability and has the advantage that local government securities are classified with gilt-edged stocks with consequent lower debt servicing costs.

(1) Public Health Act 1919 (Section 11(1)(d); Local Loans Act 1926 (Section 13); Housing Act 1966 (Section 16); Natives (Urban Areas) Consolidation Act 1945 (Section 16(1)(d).

(2) Dönges and van Winsen "Municipal Law" Second Edition Page 170.

5. The Investment of Sinking Funds, Renewals Funds and Trust Funds.

The institutions and types of securit in which local authorities may invest their sinking, renewals and trust funds are clearly stated in the ordinances of all four Provinces, and are summarised in Annexure B. There is room for considerable improvement in these sections of the ordinances, particularly in Transvaal where the provisions of the old Johannesburg Municipality Borrowing Powers Ordinance 1903 as originally drafted still apply, with the exception of two amendments in 1940. The ordinance still refers to the Trustee Securities of England, and corporations within the British Empire. Similarly in Natal, investments may be made in the Treasury Bills of governments which comply with the "Colonial Stocks Act".

There is considerable lack of uniformity, for the Orange Free State goes against the general trend of investment in government and municipal securities, and permits investments in first mortgage bonds. Furthermore, Transvaal has entirely separate provisions for redemption fund investments and renewals fund investments. (See Annexure B). The investment of redemption funds is limited strictly to government and municipal stocks and trustee securities, but surpluses in renewals funds may be invested not only in the securities approved for redemption funds, but in a wider type of security (See Annexure B). In this connection it should be observed that one of the provisions includes investments in institutions approved by the Administrator, and he has approved a list of banks, building societies and other institutions,(1) in which local authorities may invest not only surplus renewals fund monies, but also surpluses on other funds.(2) In other Provinces there are specific provisions in the ordinances for investments in banks and building societies.

The control by the Provinces over the investment of funds by local authorities is one of the clearest forms of direct financial control, for it precludes the investment of funds by local authorities in other than the approved types of security. On the other hand, this method of control merely limits local authorities in their fields of

(1) Circular letter No. 13 of 1966 TALG 7/7 - 29th Sept. 1966.
(2) These are the Lands Trust Fund (Section 79(18) of the Local Government Ordinance 1939), Consolidated Loans Funds (Section 7 of the Municipal Consolidated Loans Fund Ordinance 1952) and Endowment Funds (Section 76(2) of the Townships and Town Planning Ordinance 1965)

investment; it does not guarantee the safety of the funds invested. In the Orange Free State investments may be made in any building society registered under the Building Societies Act, and even though this act contains many safeguards, the onus is still on the local authorities to satisfy themselves on the financial soundness of any institution in which funds are invested. In the Transvaal the Administrator's list of approved institutions limits the field of investment, but the local authorities must themselves ensure the safety of the capital investments, and where public funds are concerned this desideratum transcends in importance the rate of interest received. Certain institutions approved by the Provinces in the past have proved risky fields for the investment of public monies.

There is thus direct control over the field of investment, and it is a type of control which is necessary. There might otherwise be a danger that elected representatives might commit public moneys to various ventures regardless of the safety of capital. The legislative control illustrated in the schedule is clearly in need of revision; some of the laws are very old and should be refurbished in the light of modern requirements. For instance, the Trustee Investment Act 1961 of Great Britain permits the investment by local authorities in a wider range of securities i.e. equities. It also permits the establishment of Local Authority Investment Trusts. This is a departure from the traditional method of control which restricts to a limited field the securities in which funds may be invested.

In Britain, where investments in the 'narrower' range of securities is contemplated there is little control, for these are mostly gilt-edged. Where, however, investment in the 'wider range' is contemplated advice must be obtained. Proper advice is "the advice of a person who is reasonably believed by the trustee to be qualified by his ability in and practical experience of financial matters; and such advice may be given by a person notwithstanding that he gives it in the course of his employment as an officer or servant".(1) Advice can thus be given by the Town Treasurer, or by a stock-broker, or by an investment advisory panel and this is an interesting development in the method of control over investments.(2)

(1) Section 6(4) Trustees Investment Act 1961 (Great Britain)
(2) For a concise account of this legislation see "Memorandum on the Trustees Investments Act 1961" of the Chartered Institute of Municipal Treasurers and Accountants in the United Kingdom (1961).

9. Depreciation and Renewals.

The Transvaal has the most comprehensive provisions for depreciation. The Administrator has framed a comprehensive set of regulations and these are applied to all local authorities who do not frame their own regulations.[1] Pretoria and Johannesburg have framed their own regulations, but other local authorities apply the standard regulations which contain detailed directives regarding the establishment of renewals funds.

The Natal ordinance has certain details written into the ordinance regarding the establishment of renewals funds, how balances in the fund are to be dealt with, and the keeping of adequate assets registers.

The Orange Free State ordinance contains concise injunctions to establish renewals funds, to invest balances as for sinking funds (See Section 84 summarised in Annexure B) and to keep assets registers.

In the Cape, the ordinance contains only provision for a "repairs fund" to provide for the repair of assets but there appears to be no specific power to build up renewals funds to 'replace' assets. The audit regulations, however, stipulate that provision must be made for deterioration of assets acquired from revenue funds.

The type of control evident under this section covers two main aspects, namely, the compulsory setting up of a fund to renew an asset which has a life shorter than the loan from which it was financed, and the compulsory establishment of an asset register to record the assets of the Council.

The legislative requirement that assets registers must be kept is sound enough, but the provisions relating to the establishment of renewals funds in the four provinces are far from satisfactory. They could be regarded as a rough but satisfactory guide to an auditor who has to certify that adequate provisions for renewing assets has been made, but are of little use as an instrument for better financial management. In the terminology of the ordinances, depreciation and renewals are used without an understanding of the difference between the two.[2] Dr. I.Q. Holmes also considers that the statutory provisions relating to depreciation are unsatisfactory.[3]

(1) Administrator's Notice No. 506, 25th August, 1937, and Section 55 (1) of the Local Government Ordinance 1939.
(2) See "Depreciation and Renewals Funds" by O.D. Sorven (S.A. Treasurer, August, 1955 - Page 147) for a critical review of this aspect.
(3) Local Government Finance in South Africa. Page 173.

Then again, redemption of loans and renewal of assets are separated in the ordinances, whereas they should be linked. When a Consolidated Loans Fund is in operation, these aspects are combined, for loan advances for assets are made to coincide with the life of the asset.(1) None of the ordinances have any provision for extraordinary depreciation or obsolescence. Professor K.F. Byrd does not consider these necessary.(2) However, in 1949 the I.M.T.A. S.A. (Inc.) made representations for local authorities to be given the power to create reserves for unanticipated depreciation.(3) The advent of nuclear power generation and rapid changes in the field of electronics, particularly computers, may well render the creation of obsolescence reserves financially desirable.

These comments lend further force to the view that the legislative financial control can rapidly become out of date in the light of recent accounting and economic concepts of depreciation. Much good could come from the composition of a modern, uniform set of depreciation regulations which could be applied in all four provinces.

CHAPTER 12.

CONTROL BY THE PROVINCES IV : FIXED PROPERTY TAXATION.

In South Africa local authorities are virtually limited in the field of taxation to the tax on fixed property or rates. The only onther spheres of taxation worthy of note are certain licence fees on trades and occupations, and the indirect taxation involved in the profits made on trading enterprises.(4)

Provincial legislation controls both (a) the determination of the tax base through control over valuations, and (b) the imposition of the tax itself through control over the levying and collection of rates. The legislation is summarised in Annexure B and commentary on the various sections follows below.

(1) See relative chapters in "Bookkeeping and Accounts" by Spicer and Pegler and "Municipal Bookkeeping and Accounts" by Henry Brown.
(2) "Principles and Practice of Municipal Trading" (I.M.T.A. Conference Proceedings 1947).
(3) "Memorandum on Renewals and Obsolescence Funds"(1949)
(4) In 1956 the net income from licensing was 4.3% and from net trading profits 13.5% of net Rate Fund Income (Borckenhagen Committee - Survey of 51 Local Authorities)

1. The Making of Valuations and the Appointment of Valuers.

In all four Provinces local authorities are given the power to levy rates, based on the value of fixed property, and it follows that close control should be exercised over the methods of valuing property. Towards this end, every Province gives a very clear injunction to local authorities to prepare proper valuation rolls in which the values of properties are recorded. The valuation roll itself is dealt with in the following section; the present section deals with the general principles of making valuations and appointing valuers.

There is a distinct difference in the method of making valuations in the Cape Province compared with other Provinces. The Cape Province through a Director of Valuations carries out the entire function of valuation for local authorities whereas in the other provinces municipalities are free to appoint their own valuers. There are also important differences regarding the regularity of valuations. In Natal and the Orange Free State a valuation must be made of all immovable properties at least once during a cycle of five years. This is also the case in Transvaal except that the Reef municipalities and Pretoria must cause a valuation roll to be prepared not less than once in every three years. In the Cape Province is is laid down that a general valuation shall be made in every local authority if the Administrator so directs, but it must be done at least once in every ten years.

The Cape principle that the valuing authority should not be the rating authority was introduced as a result of the 1912 Valuation Commission. Reference should be made to a paper prepared in 1948 entitled "The Valuation of Property for Rating Purposes" in which the incredibly long delays experienced in carrying out valuations in the Cape Province were detailed.(1) At that time there was no compulsion to conduct a valuation at least once every 10 years, and the long delays, caused by the fact that the Director of Valuations in Capetown had to carry out all valuations in the Province, and the fact that he was unable to cope with the work, caused grave problems to local authorities. A new requirement that valuations must be conducted at least once in every ten years is a considerable improvement, however, but not as satisfactory as the shorter periods which operate in other privinces. In 1948 the Administrator of

(1) "The Valuation of Property for Rating Purposes" by J.W. Cowden (I.M.T.A. Conference Proceedings 1948. Par. 195 to 203.)