the Cape appointed a Valuation Committee to investigate the valuation of immovable property and in 1953 the Committee issued its report. It recommended that "the valuation of immovable property in the Cape Province shall continue to be wholly administered, directed and executed by the Provincial Administration."(1) This recommendation was made on the grounds, among other things, that "the right of the administration to exercise this authority flows from the Central Government having imposed upon the Provincial Administration the obligation to act as the custodian of the financial affairs of all local government bodies, and this being the case, it is its duty to see to it that each valuation roll depicts not only a true picture of the state of prosperity of the immovable property contained therein but also that the valuation rolls of all local authorities harmonise in respect of the basis on which rateable value is assessed."(2)

The control thus exercised over the conduct of valuations is an essential form of control, once the decision has been taken to grant the power to levy a tax on fixed property. The valuation of fixed property then becomes a matter of cardinal importance in local government finance. In order to levy a tax locally on property it is necessary to assess the value of property. The method of assessment is thus inextricably linked up with the general question of the equity of property taxation. The value of fixed property is the base on which local taxes are levied and it would be futile to embark upon an enquiry into any rating system unless the method of valuation is sound. James C. Bonbright, a former Professor of Finance, Columbia University states "In canvassing the literature of public finance, one looks in vain for any master principle of tax apportionment which can take the place of the indemnity principle under the laws of damage and eminent domain as the chief clue to the proper meaning of "value". Instead, one finds a variety of equally basic principles of "Just taxation", most of which are in conflict with each other, and no one of which, taken alone, would clearly settle disputes as to the ideal basis of valuation".(3)

Control over the making of valuations and the appointment of valuers, while not being a clear example of direct financial control, is vital to the process of taxing fixed property in local areas. This control imposed by the Province

(1) Report of the Valuation Committee 1953 (Provincial Administration Province of the Cape of Good Hope) Par. 348.
(2) Ibid. Par. 337.
(3) Valuation of Property Vol.I. Page 451.

is necessary, for it has already been indicated that inequities can arise if a system of taxation is super-imposed on a system of valuation which is fundamentally unsound or where values are allowed to remain unchanged for long periods.

No amount of tinkering with the principles of valuation can remove the fundamental defects of any tax on fixed property. It has sometimes been said that improvements in valuation practice do not assist as long as such a tax remains, and that the best thing to do is to sweep away the whole system of rating and replace it with some form of local income tax. If one accepts the inevitability of rates, however, one must also accept some form of provincial control and direction over the execution of valuations by local authorities. For this reason, the system of control which requires valuations to be conducted within minimum periods, and requires that competent valuers be appointed, can be regarded as a necessary form of indirect financial control.

2. The Compilation of the Valuation Roll.

All the provinces except Natal give fairly clear directives regarding the details which must be stated in the valuation roll. The valuation roll is, naturally, one of the most important records in the hands of a Town Treasurer. The full details to be recorded in the valuation roll are not laid down in the provincial ordinances, but would certainly be compiled by the valuer in consultation with the Town Treasurer, for the valuation roll contains the basic values on which rates are levied.

The requirement that valuation rolls must be prepared in a certain way is a form of control imposed by the Province and there is no doubt that it has proved of assistance to local authorities and auditors, inasmuch as minimum requirements are laid down which must be observed by the valuer who is formally appointed by the Council. One of the problems in legislating in this form is inflexibility, for certain valuers may adhere to the strict letter of the law and furnish only the details required by law.

3. The Basis of Valuation.

Having laid down that local authorities shall appoint valuers and prepare valuation rolls, the law then goes on

/to ...

to provide the basis on which valuations must be made. This is a most important form of control over local authorities. The method which must be followed by valuers when valuing property for rating purposes is laid down, and in all four Provinces the basis is the same. Very briefly, land must be valued at estimated market value, and improvements must be valued on the basis of reproduction cost, less a reasonable amount for depreciation. However, the method of expressing this in the four ordinances is far from uniform and this is clearly set out in Annexure B. A considerable number of legal cases have been heard on these sections of the ordinances and a uniform terminology in determining the basis of valuation would be of inestimable value to ratepayers and officials throughout South Africa. Additional complexities have arisen in the valuing of mining and power undertakings in the Transvaal.

It is open to doubt whether the laying down of a basis for valuation by the Provinces is a form of financial control. It is, nevertheless, a form of control which has a very important indirect effect on the finances of local authorities. The normal practice adopted by valuers in ascertaining the market value of land, is to take the sales of similar property in that area over a period and use such sales figures as guides to the determination of present market value. With regard to the valuation of buildings, the practice is to apply estimated unit values of construction to square footage or cubic footage areas and then deduct a certain amount for depreciation. Considerable difficulties have arisen due to the fact that when sales of property take place, neither the seller nor the buyer are interested in any breakdown between land and buildings, and valuers for rating purposes often assign arbitrary figures in establishing the breakdown for record purposes in the valuation roll. This has lead to a great deal of controversy in the courts with regard to the valuation of land compared with the valuation of buildings, particularly where rates are imposed on the site value of land only.

The type of provincial control here discussed would therefore seem to be straightforward inasmuch as it is clearly stated that market value and reporduction cost must be the determinants for valuing property. In practice, however, a great deal has been left for the courts to interpret, and it is considered that in the spheres of legislative control, this is a good example where clear and precise directives could be given in the valuing of fixed property for rating purposes.

The main requirement in valuing property for rating purposes is equity; each property must be fairly and competently assessed.

In all the Provinces certain formalities regarding the duties of valuers are written into the ordinances. The valuer, duly appointed by the Council, must obviously be clothed with the necessary power to inspect premises and call for records. He must furthermore make a declaration before a Commissioner of Oaths or Justice of the Peace that he will to the best of his skill and knowledge impartially appraise the value of rateable property for the purpose of assessment. The valuer also needs powers, as indicated in Annexure B, to amend the roll where mistakes are made or where additions have to be made.

4. The Right to Object before Valuation Courts.

The procedures laid down under these headings are broadly similar in the four Provinces. When the valuation roll has been completed by the valuer, it must lay open for inspection at a public office. If any owners are aggrieved by the new valuations placed on their property, they may lodge an appeal to a valuation court.

There are numerous small differences in the actual procedure to be followed and Annexure B should be consulted to obtain a clear picture of these. The most important differences lie in the constitution of the valuation court. In Natal, the council may itself hear appeals or it may appoint a board to hear appeals; no qualifications for board members are laid down in the ordinance. In Transvaal the valuation court must consist of not less than three persons who may or may not be members of the local authority. The members of the court shall appoint a president from among them, except that in the Reef Municipalities and Pretoria, the Administrator after consultation with the municipality concerned appoints a further member who shall be chairman and he must have been a practising advocate, attorney or chartered accountant of not less than 10 years standing, or a retired magistrate. In the Orange Free State the Council must appoint a valuation court of three members, consisting of (a) a magistrate or retired magistrate or a person who has had at least five years experience as a legal practitioner other than a councillor who shall be chairman (b) a member of the council concerned (c) a person other than a councillor or employer. In the Cape Province, the court shall consist of the Magistrate, or a person appointed by the Administrator (who shall be chairman), a further member appointed by the Administrator and a third member appointed by the local authority. For details regarding the procedure at valuation courts, reference should be made to the summaries of the ordinances in Annexure B.

As a check on the valuations carried out by the valuer, the law thus provides strict rules whereby the owner of property may appeal to a specially constituted court. The question whether these courts should be independent of the local authority has frequently been raised.(1) In Natal and Transvaal, for example, it is possible for a majority of councillors to be appointed, and individual owners have sometimes felt that the local authority tends to be biased against reductions in the valuations assigned by valuers, for the rate income of the local authority is directly affected. The constitution of the courts in the Orange Free State and Cape Province appear to be the most equitable, and are in line with the constitution of courts in other parts of the world.(2)

Control over the constitution of valuation courts by the Provinces has little to do with financial control. Notwithstanding that valuation court decisions do have an effect on the rate income of local authorities, control should not be looked upon in this light. Control is to ensure the equitable treatment of appeals, and neither the valuer nor the valuation courts should be associated with the rate income of local authorities. Most of the appeals that come before the valuation court are appeals against the high valuation of property because this usually means a greater tax burden if the quantum of the rate remains unaltered. Most owners would prefer high valuations, which enhance selling prices and loanraising potential. Owners assume, and assume rightly on most occasions, that however much the valuations on their properties increase, there will be no adjustment by the local authority in the quantum of the tax. The whole system of rating and valuation would work better if local authorities were to obtain additional income by regular adjustments to the quantum of rates per pound of valuation, rather than by relying on triennial valuations for increases in revenue. If control could be imposed in such a way that adjustments in the quantum of the rate must be made at each revaluation of property, it

(1) See, for example, Transvaal Rating Commission 1950. Op. Cit. Para. 85. Municipal Commission (Tucker) Transvaal Op. Cit. Para. 345.

(2) See "Valuation of Property for Rating Purposes" by J.W. Cowden. Op. Cit. Appendix D.

would have two important effects (a) local authorities would be compelled t increase their income by specific increases in the rate at the time of each annual budget (b) there would be little objections to the valuation of properties on the basis of full market value - this would eliminate much of the legislative control, as well as the work of valuation courts and courts of review, and in addition it would give rise to the compilation of valuation rolls which more accurately reflect market values. This is important, for valuation rolls are used not only for rating purposes but for multifarious other purposes.(1)

5. The Right of Appeal against Decisions of Valuation Courts.

The lodging of objections before the valuation court, as indicated in the previous section, does not end the right of the owner to appeal, for the law in each Province provides that if he is not satisfied with the decision of the valuation court, he may appeal to a higher authority. There are important differences, however, in the appellate bodies.

The Cape Province limits appeal to the Supreme Court on points of law, and therefore in reality the owner would not be able to appeal solely on the grounds that the valuation determined by the valuation court is too high or too low.

In Natal an appeal may be made to a competent court of law; in Transvaal an appeal may be made to the local magistrate. In both Provinces there is no limitation of appeals to points of law.

In the Orange Free State the right to appeal from the valuation court goes further than other provinces. A person dissatisfied with the valuation court's decision may lodge an appeal to the Administrator, who shall refer the matter to an appeal board, consisting of one member appointed by the Administrator. If still not satisfied, the m[illegible] may be reviewed by the Supreme Court.

6. The Rates that may be levied and limitations on Rating.

The powers given by the Provinces to local authorities to levy rates are among the most important powers conferred and reference to the summaries of the ordinances in Annexure B will give an indication of the financial control exercised in this sphere. The right to tax the inhabitants of a local

(1) The Report of the Cape Valuation Committee. Op. Cit. lists 17 important uses of the valuation roll. (Para. 43)

area is clearly a subject where higher control can be expected, and in the case of local rates the powers given by the Provinces to levy fixed property taxes go back far in history.[1]

There is considerable diversity in the powers given by the four provinces to levy rates. Much of this diversity is born of clear local differences e.g. the prevalence of gold mines on the Witwatersrand and in the Orange Free State. In other cases the diversity arises from a strong preference of one province, or a part of a province, for a particular form of rating. In Transvaal there is a strong preference for levying the local rate only on the site value of fixed property, in the Cape the preference is for rating on the combined value on site and improvements, and in Natal the system tends towards a middle course, of levying a higher rate on the site than on improvements.

In Natal, a council may levy a general rate and a water rate upon all immovable property; the rate may be levied on the property as a whole, or the land and buildings may be separately rateable, or the rate may be levied on land only. There is no limitation on the amount of the ratelevy that may be imposed on the value of immovable property.

In Transvaal no rate may be levied on improvement rate until an original rate of one half cent in the Rand is levied on site value. An additional rate may then be levied on site value not exceeding 2½c in the Rand without the Administrator's consent. Local authorities are empowered to levy the additional rate in part on improvements, but it is subject to certain procedures and limitations (See Annexure B). An extra additional rate may also be levied on the site value of land occupied by power undertakings, and an additional rate may be levied on certain improvements situate on mining property. Special rates may also be levied to cover the cost of special services.

In the Orange Free State local authorities may levy a town rate on the total municipal valuation of all rateable property not exceeding 2 cents in the Rand, unless authorised to levy a higher rate by a meeting of owners of rateable property. The basis of rating may be altered to the rating of site value only, or partly on site value and partly on improvement value, with the approval of a meeting

(1) In 1682 the Heemraden of Stellenbosch were given power to levy a tax for road and water purposes (History of Local Government in South Africa by L.P. Green - Page 3)

of the owners of rateable property. A council may levy a town rate on industrial property different from that on other property. A council may also impose a sanitary rate not exceeding $\frac{53}{100}$ c in the Rand without the consent of the owners of the property.

In the Cape Province, every council must levy a general rate on all rateable property once a year, not exceeding 1¼ c in the Rand but a higher rate up to 2½ c in the Rand may be levied after submitting the proposal to a meeting of enrolled voters and the Administrator. A council may also levy a health rate not exceeding one half of the general rate, and a water rate not exceeding certain amounts (See Annexure B). A council may also levy an extraordinary rate, and a special rate, subject to certain additions and limitations. (See Annexure B). The rate shall in all cases be levied on the valuations of property, but with the consent of the voters and the approval of the Administrator, it may be levied on site value only, or partly on site and partly on buildings.

Control over the methods of taxation which local authorities may adopt is all-important. In South Africa, power has been given to local authorities to levy direct taxes on fixed property only, and not on property in general, and the sections of the various ordinances referred to above and in Annexure B indicate what form these direct taxes (or rates) take. The base of the tax in South Africa is the capital value of the fixed property, made up of land and buildings. In Great Britain the rental value and not the capital value forms the basis. The method of valuing property for rating purposes is thus important, and this aspect has already been covered.

A great deal has been written on the advantages and disadvantages of taxing fixed property, but as the present subject deals only with legislative external control, the economics of rating must be referred to only briefly. The tax on fixed property as levied by local authorities throughout the world is probably the most criticised form of taxation. When it was first introduced in Britain in the Elizabethan era there was some relationship between the property a man held and his ability to pay. The evolution of industrial society has blurred this relationship, and economists have criticised the tax mainly on the grounds that it fails in two of the most important criteria, namely the revenue norm of impartiality and the social norm of the alleviation of inequalities.

(N. Page 130)

Taken as part of a system of taxation, however, the rate is a satisfactory local tax, and it does meet the criteria of being levied on a tangible and visible asset, of being simple to administer and collect, of being relatively elastic, of being reasonably productive and of being easy to calculate.

There has been a great deal of searching for new sources of local revenue in the past two decades, and in the U.S.A. in particular there has been a movement towards granting local authorities power to enter the field of sales and income taxes. In South Africa, the United Municipal Executive has made representations to the Borckenhagen Committee to allocate to local authorities additional local sources of revenue, mainly on the grounds of the inadequacy of the local rate as the sole tax available to local government.(1)

The Marais Commission (Transvaal) recommended that local authorities be given the power to enter the field of vehicle and entertainment taxation, but no action has been taken to give legislative effect to such proposals.(2) In fact the Transvaal Province has abandoned entertainment taxation without any consideration of its being reallocated to local government.

Provincial control over rating, and the particular forms of rates which local government are empowered to levy, is a form of direct financial control not likely to be changed to any karked degree. Rating systems are constantly in need of adjustment and legislative control by the Provinces plays an all-important rôle where local authorities seek to alter their systems. How ver much a local council may consider the local rate to be regressive or unfair in its

(1) See following memoranda prepared by the Institute of Municipal Treasurers and Accountants S.A. (Inc.) on behalf of the United Municipal Executive:-

(i) The Problem of Local Financial Needs and Resources (1959);
(ii) Central Grants to Local Authorities (1957);
(iii) Other Possible Sources of Revenue for Local Authorities (2 memos) 1953 and 1957;
(iv) Sources of Income for Local Authorities and some non-property taxes (2 memos - February 1963 and September 1963)
(v) A Local Income Tax (1957)
(vi) The taxation of peri-urban fringe areas (1957)."

(2) Commission of Enquiry into the System of Local Government in Transvaal. Third and Final Report. Op. Cit. Par.168 and 169.

incidence, the system cannot be altered otherwise than with the approval of the Provinces. The Provinces therefore exercise a very important and far-reaching method of financial control, legislating a they do that local authorities may tax the people only in accordance with the strict letter of the law as set out in the ordinances which determine what rates may be levied and how they shall be levied. In view of the extent to which taxation impinges on the public interest, the type of control exercised by the Province is direct and comprehensive, and this additional scrutiny of proposals to vary the form of local taxation is considered to be a valid form of control, and a means of appeal by taxpayers to a higher authority.(1) Where particular interests are affected, the Provinces have usually referred the questions to Commissions of Enquiry.(2)

There is direct financial control in yet another aspect and that is the limitations on the quantum of the rate. This applies in all provinces except in Natal, and the authority of the Administrator or of a meeting of ratepayers must be obtained to levy a higher rate. The exercise of this control by the Provinces has hadvarying effects. In most cases the Administrator agrees to an increase in rates beyond the legal limit, but where the increase is substantial he will make an investigation. In other cases he has had to force local authorities to increase the rate in order to improve the financial position of the local authority. The efficacy of this type of control, particularly the requirement that ratepayers must consent, is open to serious doubt. Dr. Holmes considers that these limitations serve no useful purpose, but "tend to hamper the normal development of local authorities".(3) Ratepayers are usually resistant

(1) Note that Durban's proposals to introduce a form of differential rating have consistently been rejected by the Province(See"Differential Rating" by G. Haygarth (I.M.T.A. Conference Proceedings, 1964); "Report on Differential Rating" by the City Treasurer, Durban and "The Durban Rating Story" by R.P. Jordan - S.A. Treasurer - September and October, 1965.

(2) In Transvaal for instance the following Rating Commissions have investigated the rating question because of the peculiarities of mining title:-

(i) Transvaal Municipal Commission 1909 (Tucker)
(ii) Local Government Commission 1915 (H.J.Hofmeyr)
(iii) Local Government Commission 1921 (Stallard)
(iv) Lating of proclaimed land Commission 1927 (Hartog)
(v) Rating Commission 1931 (Young)
(vi) Transvaal Rating Commission 1932 (J.H.Hofmeyr).
(vii) Transvaal Rating Commission 1950 (Barry)
(viii) Local Authorities Committee (B orckenhagen) - 2nd. Interim Report Part II.

(3) Local Government Finance in South Africa. Op. Cit. Page 69.

to rate increases, and their judgment at a meeting is an unreliable method of determining the quantum of the rate necessary to meet estimated expenditure. The other check, whereby the Administrator's consent is required, causes additional delay and consent is usually given well after the financial year commences. The Administrator is also susceptible to the winds of public pressure, and a vociferous local minority group may influence a decision. The ballot box is perhaps the best deterrent for controlling wasteful expenditure and rate increases, yet, as indicated above, the danger is in the other direction. Councillors themselves are just as resistant to rate increases as the ratepayers for there are few more unpopular acts in the minds of the elector than an increase in taxation. The permanent officials advocating rate increases have their proposals carefully scrutinised by the Council and the Council is more likely to err in the other direction and refuse to apply to the Administrator for a rate increase, even where the requirements of prudent finance demand this course. Therefore, if a proposed rate increase beyond the legal limit comes before the Administrator, he can do little but approve it, for to do otherwise would expose him to a charge of failing to assist local authorities in placing their finances on a sound footing. Therefore, financial control by rate limitation serves little purpose, as the Administrators have enough power to intervene in financial matters. (See below).

There is also what J.P.R. Maud calls the "curious contradiction" and "astonishing conjunction" that rates are limited in Transvaal, but not trading profits. This is yet another example of the extent to which legislative financial control becomes outmoded for at the beginning of the century rates and rate limitations were common and were taken over from the South African Republic, but there was little municipal trading.

7. Exemptions from rating.

As in the case of taxation at national level, several categories of exemption are listed in all the provincial ordinances. It is not necessary to indicate separately the provisions in each province, for they are broadly similar - the main differences are in the phraseology of the four ordinances. In only a few instances are exemptions granted in certain Provinces and not in others.

The exemptions are granted positively by all four Provinces and local authorities have no discretion in granting exemptions. The broad categories exempted from rating are the State (including the Provinces and the Railways), religious institutions, educational institutions, charitable organisations and sporting bodies. Partial exemption is granted to agriculture. It is of interest to note that no partial exemption (or de-rating) is granted to industry, which was the practice in Britain over a long period.

The control here evident is in the form of a directive by the Provinces to local authorities to exempt certain categories of institutions from local taxation. A considerable amount of case-law has been built up around these sections of the ordinances, because the question whether a particular body is liable for or exempt from rating is of direct financial consequence both to the individual and to the local authority.

Clearly it would be undesirable for exemptions to be granted locally, at the option of local councils. Pressure groups are inherent in democracy, particularly local democracy, and it is preferable that the institutions to be exempted should be determined at least at provincial level. A study of Annexure B will also emphasise that a strong case could also be made out for uniformity at national level. It would be manifestly advantageous for a court decision in one province to be universally applicable, a matter which cannot be envisaged with four provincial ordinances.

Ever since the Government placed the Derating Act on the statute book, local government has protested and called for its repeal.(1) Strong representations were made to the Borckenhagen Committee by the United Municipal Executive, in both verbal and written evidence, urging the payment of local rates by the State.(2) Much has been written on this subject, but as control is the desideratum here, only one thing need be said - that the senior legislative bodies, the Central Government and the Provinces are likely to retain the exemption of the State (including Provincial) property from rating.

This is a very important form of direct financial control for it is conceivable that the Provinces could exempt a far wider range of institutions from rating, thus reducing directly the tax base of local authorities. Not only in

(1) State Property (Immunity from Rating) Act 1931.
(2) See memoranda on "Derating" (1959) "Exemptions from Rating" (1957) prepared by the Institute of Municipal Treasurers and Accountants on behalf of the United Municipal Executive.

South Africa, but elsewhere in the world, local government has protested against the erosion of its tax base through the actions of the State in granting exemptions from local rating in the national interest (e.g. industrial derating in Britain). This subject was dealt with comprehensively by local authorities before the Borckenhagen Committee.

Financial Control by the State and the Provinces is thus direct, but once a list of exemptions is agreed upon it is proper that such control be exercised at Provincial and not local level. While recognising the historical reasons which gave rise to the establishment of four provinces in the Republic of South Africa, a study of Annexure B relating to exemptions from rating leads to the conclusion that uniformity would have decided advantages for local government.

There is one further field in which the tax base of local authorities may be eroded, and that is in the sphere of exemption from rating in new areas.

In all provinces the Administrators have wide powers to alter the boundaries of local authorities, and a natural consequence of such power is the power to determine what rates shall be levied in the areas newly incorporated. In Natal, Transvaal and the Cape Province the Administrators' powers with regard to rating are clear, but in the Orange Free State the position is not clearly stated.

This is a clear case of direct financial control inasmuch as the Administrator can redefine the boundaries of a local authority and then determine what rates shall be imposed in the new area.

The control exercised by the provinces in this sphere has been the subject of much argument, involving as it does the contributions which persons who own property in peripheral areas should contribute towards the parent local authority. When the Administrator has determined that an area newly incorporated within the area of an existing local authority should be exempt from rates, the local authorities have frequently protested on the grounds that the inhabitants of the peripheral areas, while not receiving the tangible services such as water, sewerage and electricity, nevertheless enjoy the intangible services of the parent city such as parks, traffic control, health and libraries.(1) There is a natural desire on the part of the residents in outer areas to pay low rates, and yet enjoy the advantages of proximity to a closely settled community. When various areas were in-

(1) See Report No. 8 of the Social Economic Planning Council. U.G. No. 4 1945 - Pages 24 and 25.

corporated in Durban, in 1931, one witness from Sydenham stated "I have all the advantages of Durban without having to pay for them."(1)

The financial control here discussed is of great importance to local authorities, for it frequently happens that an area on the periphery of an existing local authority is poor and in need of control. The Administrator is anxious that the parent local authority take over the area, but the local authority declines if the area is to be exempt from rating. This question was investigated when the Administrator of Transvaal requested the Institute of Municipal Treasurers and Accountants to give its views on differential rating with particular reference to Meyerville. Meyerville was incorporated into the area of Standerton, but was exempted from rating. Standerton gave no services because it received no rates. This was the dilemma, and the Institute in a comprehensive memorandum concluded that complete exemption was never justifiable, but that a sliding scale of rates should be introduced over a period, and that after a certain period full rates should be levied to cover both the tangible and intangible services.(2)

The Administrator could seriously impair the state of local finances by exempting from rating these incorporated areas over long periods. In practice, however, a commission is normally appointed to investigate the desirability of rateability, the identity with the parent authority, the extent of tangible services and the potential benefit from intangible services. There is, nevertheless, considerable merit in the view that such form of control should be removed from the statute book. Once the Administrator has determined the boundaries of a local authority, all within such boundaries should contribute towards the common pool, for it is not possible to differentiate between the various areas according to benefits received. "The ordinary municipal rate is not levied according to specific benefits but according to ability to pay as evidenced by the ownership of fixed property, the justification of the tax being community of interest. It is a tax, and a tax is a common burden."(3)

(1) Report of Commission to consider and report on (1) the extension of the boundaries of the Borough of Durban or (2) the better government of the local urban areas adjacent thereto (Published under Provincial Notice No. 411 -1930.)
(2) Memorandum on "Differential Rating" by the Institute of Municipal Treasurers and Accountants S.A.(Inc.) Agust 1950.
(3) Transvaal Municipal Commission 1909 (T.G. No. 12 - 1909 Paragraph 236).

8. The Recovery of Rates.

It is very necessary that clear and concise provisions exist regarding the recovery of rates. It is the usual practice throughout the world to impose stringent conditons regarding collection of taxes from individuals. To be lax and haphazard in this regard would be inequitable towards taxpayers as a whole.

For this reason very clear provisions are laid down with regard to the notification and payment of rates, clear definitions are given regarding the persons who are liable for rates and a clear procedure is laid down for the recovery of rates if payment is not made in the first instance. Lastly, there is one important provision which is of the greatest assistance to collecting authorities, that no transfer of property may be made until the rates on such property have been paid.

It is necessary at all times to have established a clear procedure whereby local authorities are empowered to take action against owners who default in the payment of rates.

The provincial auditor will exercise his powers of surcharge in cases where a local authority has failed properly to recover arrear rates in terms of the law. The importance of this particular type of provincial control is made manifest when it is realised how important it is to collect all rates due up to the limit of the law, as a measure of justice towards the taxpayer who pays in full. Wherever taxes are levied, the assumption should be made that taxes levied should be collected in full. To assume otherwise, would be to impose an additional burden on a limited number of taxpayers. Hence, the provisions in the law regarding the collection of taxes are always severe and local authorities are given wide powers to sue in the courts, to sell properties in execution and to refuse to sign a certificate that rates have been paid when property is transferred from one person to another.

Therefore, the financial control imposed by provinces in the mechanics of rates collection is clearly in the public interest. These legal provisions enable local authorities to enforce the collection of taxes and so ensure a more equitable system of taxation as a whole.

CHAPTER 13.

CONTROL BY THE PROVINCE V : THE STATUTORY AUDIT.

Of all the controls imposed on local authorities, none is so complete and final as the statutory external audit of the accounts of local authorities. The Provincial Auditor is given wide powers with regard to the inspection of local government accounts, and his power of report and surcharge are far-reaching. These are discussed below together with other general controls over the accounts and audits of local authorities.

1. The Appointment and Remuneration of Auditors.

The legal provisions in the four ordinances relating to the appointment of auditors are broadly similar. The important fact is that the accounts of local authorities must be audited by the Provincial Auditor, or by a professional accountant. Whether the Provincial Auditor or a private accountant audits the accounts, the audit is in all provinces under the direction of the Provincial Auditor. In Natal, Transvaal and the Orange Free State this is clearly stated, and it is also stated that any outside auditor must be appointed or approved by the Administrator. In the Cape Province it is the Provincial Auditor who must appoint an outside auditor. It is not stated that such audit must be under the direction of the Provincial Auditor, but this could be implied from the appointment which would be in accordance with terms laid down by the Provincial Auditor.

None of the ordinances lay down clear qualifications or disqualifications for auditors, but in Natal, Transvaal and the Orange FreeState an outside auditor must be registered in terms of the Public Accountants and Auditors Act 1951. Although this is not laid down in the Cape Province, Bünges and van Winsen state "The fact that the Provincial Auditor designated the persons by whom audits are carried out is a safeguard against this work being entrusted to persons who are unqualified or unsuitable or who have an interest in the affairs of the municipality."(1)

The Provincial audit of local authorities' accounts is an example of direct financial control in its clearest form, and this becomes emphasised as the other sections dealing with the powers of auditors unfold. Through the statutory audit the Administrator exercises financial control; in all but the largest cities the Provincial Auditor and his staff previously conducted the audits but staff problems areforcing the Provinces

(1) Municipal Law (Second Edition) Page 141.

to hand over the function to private accountants. The Administrators would prefer all audits to be conducted by the Provincial Auditor and there is evidence that local authorities themselves prefer provincial auditors for they are well versed in the uniform application of provincial legislation and they are in a better position fearlessly to criticise than the private auditor.(1) This view has been opposed on the grounds that an objective and detached audit is preferable to a routine provincial audit.(2)

The appointment of auditors to conduct a compulsory audit is thus the first step in the line of audit control and is followed by the imposition of duties on and the granting of powers to the auditors.

In all four Provinces there is a routine provision that local authorities must pay the cost of the audit conducted by the Provincial Auditor or his nominee. There is also provision that the auditor may require further payments to be made if he has to carry out accounting work as well as auditing work.

2. The Auditor's Duties.

After having provided for the appointment of auditors, the law imposes specific duties on the auditors. The most important duty is naturally to audit and examine the accounts, and in all Provinces this obligation is clearly laid down. There are important differences in the four ordinances regarding the auditors' duties in the conduct of the audit, and in the preparation of a report on his audit.

In Natal the auditor must certify that the accounts are in order, that separate accounts of trading departments have been kept, that the accounts present a true and correct view of the financial position, that due provision has been made for the redemption of loans, that the amounts set aside for depreciation and obsolescence are adequate, that the value of assets has been fairly stated, that all items of revenue, expenditure, capital and liabilities have been brought to account and that all his requirements have been complied with. The auditor must submit a report to the Administrator and to the Council with his certificate, drawing attention to matters of importance.

(1) "The Audit of Municipal Accounts in the Cape Province" by F.E. Jenvey - S.A. Treasurer - Feb. 1947. Pages 52/53.
(2) By Prof. John Wimble, for example, see S.A. Treasurer June, 1947 - Pages 124/125.

In Transvaal the position is broadly similar to the position in Natal. There is a difference in the reporting procedure, however, for the auditor must submit a report to the Administrator with his certificate, and the Director of Local Government must thereafter send the Abstract of Accounts and a copy of the audit report to the Town Clerk of the council concerned. In the Orange Free State the position is approached from a different angle, for the auditor is directed to carry out the audit in terms of the regulations laid down by the Administrator, to examine the accounts and securities of the Council, to satisfy himself that reasonable precautions have been taken to safeguard the collection of and accounting for monies, to satisfy himself that all expenditure is brought to account, to satisfy himself that the title deeds and securities are in order and to satisfy himself that provision has been made for the redemption of loans and the depreciation of assets. Nowhere does the ordinance say that the auditor must certify these things to be in order. The auditor must transmit to the Council copies of the certified accounts and audit report. At the same time, copies must be sent to the Provincial Secretary by the auditor.

In the Cape Province there are still greater variations, for more detail is included regarding sundry extraneous items. The auditor must enquire into the accounts, books and records of persons entrusted with moneys, satisfying himself that reasonable precautions have been taken and all laws observed regarding the collection of and accounting for moneys due to and payable by the Council. He must satisfy himself that all expenditure has been brought to account. He must conduct the audit in accordance with the audit regulations and in particular he must decide whether the audit should be a continuous or post audit, he must carry out surprise examinations, when necessary, he must communicate any gross irregularity to the mayor and chairman of the finance committee, and he is given power to carry out test examinations where expedient. He must submit certified copies of his report and the accounts to the council and to the Provincial Secretary.

It is clear from the above duties imposed on the auditor that the financial control imposed by the Provinces in this sphere is direct and of the greatest importance. The power given to the auditor to report is very wide and in this way the Administrator excercises what is probably the most important form of financial control. An unfavourable financial report submitted by an auditor would bring forth some kind of action by the Administrator. The power of the auditor to report on any aspect of the finances of a local authority is a strong power. Mr. Powell Morgan, Provincial Auditor of Natal, stated in 1930 "I should like to say here that I set but little store on the power of surcharge. In fact I have recommended, but without avail, its repeal....... I have found the power of report equally if not more effective".(1)

The Natal and Transvaal ordinances give the clearest form of power to the auditor to report, and they are in line with the recognised certificate that must be furnished by a professional auditor, that the accounts present a true and correct view of the financial position of a local authority.

Not only is the auditor's report itself important but the moral effect of a post-audit by an external auditor is of importance in financial control. "The moral effect of the knowledge that accounts are subject to external and independent criticism is very great."(2)

In stressing the importance of the external audit report in the realm of financial control, its limitations should also be recognised. It is possible to have a good system of financial control within an otherwise inefficient organisation. The most extravagant waste can often take place strictly in terms of the law. Thus, the external auditor can certify that the accounts are in order, but inefficiency can still persist. Powell Morgan put this point very well as follows "No matter how efficient an auditor may be; no matter what pains he may take to ensure that all the revenue has been accounted for, that all expendiutre is lawful and that the accounts are presented in an intelligent form, he may be merely ploughing the sand, as when all these things have been ensured, and when all these things have been ensured, and a high standard has been attained, the finances of the town may be in a deplorable state."(3) Since Mr. Powell Morgan wrote these words there have been important developments in local government in the sphere of efficiency investigations. The appointment of Organisation and Methods officers and Management Consultants and extension of the scope of internal audits to embrace efficiency audits, are common practice today. However the statutory audit remains a financial audit and external

(1) Natal Municipal Audit. (I.M.T.A. Conference Proceedings 1930 - Page 129.)
(2) H.B. George, former Provincial Auditor in the Cape Province and Transvaal (I.M.T.A. Conference Proceedings 1937 - Page 189
(3) Op. Cit. Page 131.

financial control does not encompass efficiency investigations.

From the point of view of Provincial control, the external audit functions remain an outside check on local authorities and its employees and it is imposed to protect the interests of the public. "The external audit has a mandate independent of the council, for even professional auditors whose duties are agreed between the parties, are primarily concerned with the accuracy of the final accounts of the council as stewards for the ratepayers."(1)

3. The Auditor's Powers.

The most important power given to the auditor is the power to disallow expenditure and surcharge the persons responsible for any illegal expenditure. This is a necessary power given to the auditor, for it is clear that if a person makes an illegal payment from public monies, he must be held responsible therefor . The law therefore gives the auditor very definite powers to recover the amounts illegally spent. In spite of the acceptance of this principle ~~nevertheless~~ in the ordinances in all provinces, there nevertheless are important differences in the Provincial ordinances, the details of which are summarised in Annexure B.

In Natal, the auditor must disallow every payment made without legal authority and if the disallowance is not adjusted or recovered he shall charge it on the person making such payment. The ordinance then goes on to say that pecuniary responsibility shall rest with the Treasurer where clerical errors are concerned, or from double payment etc. or for payments contrary to the law except where this is done on explicit instruction from the council, after the irregularity had been pointed out to it. Councillors are responsible when payment is made upon their instructions. The persons making an illegal payment include all councillors who were present at the time the resolution authorising such payment was carried, and who did not cast their votes against such resolution.

In Transvaal the auditor must disallow every payment made without authority according to law and surcharge the person making the payment. Persons making an illegal payment shall include all councillors who were present at the meeting where such payment was authorised and did not cause

(1) Financial Administration in Local Government by Dr. A.H. Marshall. Page 149.

their votes to be recorded against it.

In the Orange Free State the auditor may surcharge persons who incur or authorise illegal payments and surcharge the person with the amount thereof. A councillor shall be deemed to have authorised a payment if he was present at a meeting at which the resolution to make payment was taken, unless it was recorded in the minutes that he voted against it.

In the Cape Province the auditor may disallow any payment improperly made or any deficiency in the collection of revenue. Every disallowance shall be recovered by the council from any councillor or employee. If the council fails to adjust any disallowance the provincial auditor may surcharge the councillor or employee concerned. In all Provinces the Administrator may remit any sum surcharged.

It was noted above that the duty of the auditor to report on the finances of a local authority is an important form of control. The power/to disallow expenditure and impose a surcharge on councillors and officials which is a further important form of control. It is also a necessary form of control where public monies are involved, for councillors and officials must be constantly on their guard to ensure that all payments made are made in accordance with the law.

It has already been indicated above that a former Provincial Auditor of Natal attached little importance to the power of surcharge because the Administrator has power to remove the surcharge when explanations are furnished by local authorities. Nevertheless, it has an important moral effect and will always be effective in dealing with serious cases.

Auditors themselves must be particularly careful to ensure that when surcharges are imposed, they are imposed in accordance with the law. In a particular case in the Transvaal, a Provincial Auditor disallowed expenditure on the grounds of certain accounting systems and operations, and this was held to be beyond his powers.(1)

An aspect of surcharge which is frequently raised is the extent to which a treasurer can refuse to make an illegal payment. In the past, and particularly in the United Kingdom, reliance is placed on the well known case of Attorney-General vs. De Winton 1906, discussed by Dönges and van Winsen in Municipal Law, and by Senior Counsel in Opinion to the South African Association of Municipal Employees, 6th of September

(1) See Senior Counsel's Opinion (J.B. Vieyra) Town Council of Springs, to the effect that no power exists to disallow expenditure on the grounds of methods of vouching, 1952.

1951. The Natal Ordinance comes closest to a fiduciary relationship between the treasurer and ratepayers in South Africa. It seems to be a clear approach to the problem, that the treasurer must accept responsibility for clerical errors in his department, but he should gain relief if he specifically draws the attention of a council to the illegality of expenditure. This is in line with the provision in Scotland where the Local Government Act 1947 provides that a surcharge shall not be made upon any officer by reason only of his signing a cheque, if he satisfies the Secretary of State that before signing the cheque he advised the authority in writing that in his opinion the payment is illegal.(1)

The power of surcharge granted to auditors is a very important form of financial control imposed by the Provinces over local authorities in South Africa. Although many legal arguments have arisen consequent upon the imposition of surcharges, the power is a necessary form of external financial control.

The next important power given to auditors is the power to call upon local authorities to produce all books and accounts which may be required. In all four Provinces the council (in the case of Natal, the treasurer) is obliged to lay before the auditor all books and records necessary for the audit. There is, however, a considerable difference in the wording of the ordinances and in the particular records that must be produced.

The Cape Ordinance goes much further than the other ordinances and requires the council to submit special records which have to be specially prepared, such as a half-yearly statement of ledger balances, a report on the stores stocktaking etc. Transvaal is the only province to provide that the books may not be removed from the council's offices without its express sanction.

The control imposed here is an outright provision in the law to compel local authorities to furnish the auditor with the books of account and other records. This is a logical step following the appointment of the auditor, and it is a necessary and accepted provision to ensure that the auditor is in no way fettered in the execution of his duties. However, the additional requirements in the Cape Province do give rise

(1) 'Financial Administration in Local Government' by Dr. A.H. Marshall. Page 63.

to the question whether the detailed requirements of stocktaking and ledger balancing should be incorporated in a provincial ordinance. The Cape Province has more detailed legislation than other provinces, for there is not only the Local Authorities Audit Ordinance No. 17 of 1938 which is more detailed than the laws of the other Provinces, but there are also comprehensive audit regulations which have been promulgated by the Province.(1) These regulations lay down in the smallest detail what procedures must be followed (for example, that double-sided carbon paper must be used). The difficulty with regulations of this kind is the universal applicability to all local authorities, large and small, and failure to review in the light of modern mechanical accounting developments.(2)

This is an important principle in financial control, and it comes to the fore in a great deal of provincial legislation. Much of the detailed legislation regarding audit undoubtedly arose due to the failure of local authorities to keep proper books or appoint qualified treasurers.(3) The provincial auditors in the Cape Province had also taken the further step of drawing up standard forms of accounts to ensure the proper compilation of books of account by local authorities.(4) A Provincial Auditor of Natal forcefully drew attention to the appointment of unqualified treasurers, and the "almost disastrous results of their efforts, and also the strenuous work the Government men were required to perform later, in their endeavours to improve the position."(5)

Financial control by the provinces could be considerably streamlined, and it is here that considerable advantage could be gained by laying down for all provinces a common list of books and documents that must be produced to the auditor. The final accounts of local authorities have proceeded far along the road to standardisation as a result of the report of the Institute of Municipal Treasurers and Accountants S.A. (Inc.) on standardisation,(6) and also the pro forma set of accounts prepared by the Provincial Auditor of Transvaal in 1962, and the similar et prepared for the

(1) Audit Regulations, Proclamation 29 of 1945, promulgated under Section 18 of Ordinance 17 of 1938.
(2) For a critical review see "Cape Audit Regulations" by A.S. Aldis - S.A. Treasurer, March, 1961.
(3) See "Local Government Audit in the Orange Free State" by A.D. Malan (I.M.T.A. Conference Proceedings 1936 - Page 124)
(4) See "Cape Audit Regulations" Op. Cit., and "Standardised Abstracts of Accounts of Local Authorities in S.A., including Financial and Accounting Statistics" by S.C. Gooch (I.M.T.A. Conference Proceedings 1949 - Page 73).
(5) J.F. Williams (I.M.T.A. Conference Proceedings 1939 -Page 48.
(6) Op. Cit. (Under Revenue Funds).

Cape Province in 1965 by the Western Province Students Society in collaboration with the staff of the Provincial Auditor. For this reason it is not a difficult task to standardise audit legislation and regulations. Much of the detail in the Cape Audit Ordinance and regulations is covered in other Provinces by the financial regulations of local authorities.

Another important power is that given to the Administrator to make regulations governing the accounts of local authorities, and to have conducted additional audits where necessary. The position is least clear in Natal where it is merely provided that it shall be lawful for a council to have an additional audit made of the accounts by any such person as it may think proper, but this shall not affect the other provisions of the law relating to audit.

In the three Provinces Transvaal, Orange Free State and the Cape Province the Administrator has power to make regulations with regard to accounts and audit. Included in this power is the power to prescribe the form of the audit report and the abstract of accounts. In the past the Institute of Municipal Treasurers and Accountants has drawn up standard forms with the object of advancing the standardisation of accounts by local authorities, but it would appear that the power granted by the Administrator to make regulations could override any work on standardisation voluntary undertaken by treasurers themselves. Where provincial auditors have laid down standardised forms of accounts, these are sometimes prepared more with the object of easing the tasks of the provincial auditor and his staff. This is understandable for, as indicated above, the provincial auditor's task in some of the smaller local authorities is formidable and he must often finalise the accounts [illegible] cation of a rigid set of pro forma accounts to the [illegible] Province, however, has given rise to problems, particularly where treasurers have wished to prepare a set of accounts which are designed for use by the local authority and by the treasurer in the interests of good management, and not necessarily in the interests of easy and straightforward audits.(1)

One of the serious disadvantages of promulgating regulations for the conduct of audits, is that no definite procedure is laid down for keeping these regulations up to date.

(1) For a full discussion of this subject see "Recent trends in the standardisation of accounts" (S.A. Treasurer October. 1956 by J.W. Cowden).

in the standardisation of accounts" (S.A. Treasurer October. 1956 by J.W. Cowden).

It is a simple matter to build a Maginot line of regulations which are added to year after year, in the wake of practical examples of defalcation which auditors encounter. It is necessary, however, to guard against the temptation to promulgate a mass of regulations, which are soon rendered out-of-date by modern accounting methods, particularly in the field of mechanisation and computer developments. It would seem that a continually changing and mobile system of internal audit is better. It is unsatisfactory to perpetuate outmoded systems and regulations, merely to make the task of the auditor easier.

From the point of view of Provincial control, advantage for all levels of government could be gained if professional accountants and town treasurers and provincial officials could prepare a set of regulations for application in all Provincial administrations. There is little to justify the considerable differences in the detailed regulations which exist in the four Provinces.

Finally, in all four Provinces the auditor is given power to summon any person before him in order to obtain information necessary for the audit. Anybody who fails to appear or to perform the other requirements (such as producing books etc.) is guilty of an offence, and penalties are laid down in each Province.

4. Publication of the Accounts and Auditor's Report.

Because the external auditor is looked upon as a guardian of the ratepayers interests, all the Provinces indicate what steps a council must take on receipt of the auditor's report. It may not merely be filed away. It must receive the fullest possible publicity.

In Natal the accounts and auditor's report must be exhibited on the public notice board for 30 days and a notice must be published in the newspaper stating that the documents are so exhibited, and that copies will be furnished if requested and paid for.

In Transvaal, as soon as the Town Clerk receives the accounts and audit report from the Director of Local Government, he must submit the report to the Mayor and to the Chairman of the Management Committee, or to both, and he must then lay it before the Management Committee at its next meeting by means of the agenda. Within three months after this meeting, the Town Clerk shall include in the council agenda the report and accounts, and within 14 days of the council meeting, the Town Clerk must furnish copies of the agenda to the press.

In the Orange Free State the law is not so strict. The audit report and account must be laid before the council within three months of receipt, and thereafter verified by the Chairman. As soon as possible thereafter the report and accounts must lie open for inspection by the public for three months, and notification to this effect must be placed in the press.

In the Cape Province, the procedure is similarly not as strict as it is in Transvaal. The report and accounts must be laid before the first ordinary meeting of the council after receipt of the documents and the Chairman must verify the documents. A copy of the statements must be exhibited on the notice board, or a notice to the effect that they are available for inspection.

The control so imposed by the Provinces is to ensure that ratepayers will know if the finances of the town are deteriorating. While it is true that the ordinary ratepayer is unlikely to follow the abstract of accounts, he would certainly understand the warnings in an audit report. Rumours and confidential information spread by councillors are often the cause of investigations. The objective report on the town's finances and particularly those sections dealing with serious losses and defalcations, provide a good starting point. It is for this reason that the law stipulates that publicity must be given to audit reports, and it is an important form of external financial control.

CHAPTER 14.

CONTROL BY THE PROVINCES VI : MISCELLANEOUS FINANCIAL CONTROLS.

In addition to the main spheres of control discussed in the previous four chapters i.e. accounting and budgeting, capital finance, local taxation and audit, there are several miscellaneous forms of control which are dealt with below.

1. Contracts.

All the ordinances lay down a strict procedure which must be followed when local authorities enter into contracts for the supply of goods and the execution of work. Legislation in the four Provinces is broadly similar, and provides briefly that before a council may enter into a contract in excess of a stipulated amount, public tenders must be invited and a certain period must be laid down for the submission of tenders. After that, the council may accept the tender which in all the circumstances is the most advantageous.

There are several important variations in the Provincial ordinances. In all provinces the necessity for calling for tenders may be dispensed with under special circumstances; when this is done in Natal, Transvaal and the Orange Free State, full reasons for doing so must be furnished to the council, but no special steps need be taken in the Cape Province. In Natal, full reasons must also be given where a tender other than the lowest is recommended, but councils in other provinces are not restricted in this way.

There are outright exemptions from tender requirements in all provinces in the case of goods purchased at a public auction. In Natal and Orange Free State where goods are purchased from other public bodies; and in Natal and Cape Province where it is necessary to place orders outside the Republic.

In comparing the tenders submitted, local authorities in Transvaal and Cape Province are compelled to award a preference to goods manufactured in the Republic. In the case of Transvaal, the preference is on a sliding scale (see Annexure B) and after the prices have been reduced to a comparative basis, the Council must accept the lowest tender, unless the Administrator otherwise determines. In the Cape Province, local authorities must allow the same preferences as the Provincial Administrations. In Natal, the awarding of a preference is merely permissive and a preference may also be accorded to goods manufactured in Great Britain and in British Dominions. There are no provisions relating to preference in the Orange Free State.

Financial control is thus direct, for not only are local authorities bound to invite public tenders under specific conditions, but they are also required to subsidise local manufacturers in the national interest. In addition to the provisions of the ordinances, certain local financial regulations lay down strict procedures for inviting, receiving and opening tenders.

In few spheres of local government has corruption been so prevalent as in the sphere of awarding public contracts.(1) It is mainly for this reason that the law has been made as strict as it is. Serious injustice can arise if contractors

(1) For a recent example of this, see commentary on the Collins Pipe Line Contract (Durban). James Commission Op. Cit. 1966.

are allowed to alter their prices, or if the lowest tender is not accepted for inadequate reasons. In seeking the reason why public bodies must follow a strict procedure for entering into contracts, the commentary of Mr. Justice Hathorn is significant:

"I consider that it has two principal objects. The first is to provide that the ratepayers money, of which municipal councils are mere trustees or managers is properly spent in a competitive market, which would normally result in the council paying a fair price for goods or receiving proper value in works or undertakings. Its second principal object no less important than the first, is that the spending of the ratepayers' money shall take place in broad light of day with a view to discouraging any preference for particular contractors or any indirect or improper dealing of any sort whatever."(1)

2. Appointment of Finance Committees and Management Committees.

In all the Provinces except the Cape Province the appointment of a Finance Committee or Managment Committee is obligatory. In the Transvaal and Orange Free State the Management Committee has been substituted for the Finance Committee under the new system of local government. In the City of Capetown an Executive Committee must be appointed.(2)

There are important differences in the nature of the ordinances, and in the extent to which such committees are charged with the duty of controlling financial matters.

The powers of Finance Committees has been the subject of argument in all Provinces. Although it seems clear from the wording of the ordinances that the council has the ultimate power to decide on all matters, including the financial matters, and that Finance Committees are appointed to advise the Council on financial matters, it has sometimes been held that Finance Committees have a right to veto proposals with financial implications.(3)

The fact that in three of the provinces the law originally made it obligatory on a council to appoint a Finance Committee is an indication that the provinces sought to ensure that Town Councils would devote adequate attention to the problems of

(1) Durban Corporation vs. Kemp and Pettersen 1940. N.P.D.Page467.
(2) For summaries of the legislation, see Annexure B.
(3) See 'Uniformity in Provincial Legislation' Op. Cit. Page 259 also "Local Government Finance in South Africa" Op.Cit.Page 202.

finance. Even in the Cape Province, where the power to appoint occasional and standing committees is permissive and not obligatory, the practice has been followed of appointing Finance Committees, which report to the Council on all financial matters.

The existence of a separate committee to deal with financial matters has worked well in practice, and whenever the power of finance committees has been challenged, it has usually been on matters which are relatively insignificant and not over any major issue of finance. For instance in 1936 Benoni Town Council obtained senior counsel's opinion on the powers of the Finance Committee, because its Finance Committee deleted an amount from the draft estimates for roads which had previously been approved by the Council-in-committee; Pretoria obtained senior counsel's opinion because the Finance Committee vetoed costs of a popular vote Mayoral election; Springs obtained a senior counsel opinion because the Finance Committee turned down the expense of sending the Deputy Town Clerk to a conference in Brazil. The Benoni opinion held that a Finance Committee had the unfettered right of veto; the other two opinions were to the effect that the veto only applies in the case of expenditure not provided in the estimates. Where the finance committee has exercised its power wisely, little difficulty has arisen. Often Finance Committees abuse their powers by using financial reasons for recommending against items which are in fact policy matters. These matters should be resolved by the whole council, and it should never arise that a Financial Committee has the power to fetter the council on policy decisions.

The two principles enunciated by Sir James Lythgoe, formerly City Treasurer of Manchester, are very much in point, namely, that policy and finance must be considered together and that the aim of finance should be positive and not negative.(1) Dr.A.H. Marshall considers that "the Finance Committee........ must carry the Council with it on all but exceptional matters. Otherwise, not only will the Council loose the advantages of having a mechanism for sifting the financial aspect of its business, but in addition the members of the Committee will not feel a proper sense of responsibility. They will tend to shirk decisions on contraversial questions, knowing that the Council will not adopt their recommendations."(2)

(1) The Place of Finance in Public Administration (Published by I.M.T.A.-U.K. (1954) Page 104.
(2) "Financial Administration in Local Government" Op. Cit. Page 44.

The requirement that a finance committee be appointed is a remote form of Provincial control which requires that local authorities give special attention to finance. The obligation to appoint a Finance Committee in itself does not ensure that financial problems will be given the attention which they deserve. It is a guiding principle of finance in local government that the council should not embark on any proposal without counting the cost. One of the main functions of a Finance Committee is to advise the council, with the assistance of the Chief Financial Officer, on the full financial implications of any project in clear and unmistakable terms. Once a Finance Committee has done that, it has performed its duty. If the majority decision of the Council goes against a recommendation of the Finance Committee, the decision of the council is paramount and a Finance Committee cannot veto a council's decision.

Under the new system of local government in Transvaal, the Management Committee, which is a small executive committee, deals with both finance and policy matters when it submits its report to the council. The ordinance sets out clearly what the functions of the Management Committee are, and one of these functions is the preparation of the annual estimates for submission to the Council. Management Committees have thus taken over the duties formerly performed by Finance Committees. Policy and finance are considered together, but there is always the danger that a strong Management Committee, assured of a clear political majority in the council, may play down financial implications to gain popularity.

The indirect financial control imposed in this instance by the Provinces is usually supplemented by financial regulations and the standing orders of the council, which deal further with committees. A study of the proposed new financial regulations in the Transvaal, for instance, will indicate the very firm procedure which must now be followed in advising the council on financial matters. Both the Town Treasurer and the Management Committee are given specific duties which must be carried out in advising the Council on revenue and capital expenditure.(1)

(1) Promulgated in Provincial Gase6te - 1st November, 1967.

3. The Appointment of Treasurers.

In all the Provinces except Transvaal, it is obligatory to appoint Town Treasurers. The Office of Town Clerk and Town Treasurer may be held by the same person. There is the further provision that a Town Treasurer may not be dismissed or suffer a reduction in emoluments without the approval of the Administrator. It is no doubt an omission in Transvaal legislation that there is no provision for the appointment of Treasurers, especially in view of the formidable duties imposed on them (for instance in the ordinances and the new standard financial regulations.)(1)

The statutory appointment of a treasurer is a common form of external financial control and was taken over from English legislation; the Cape Municipal Ordinance 1836 also contained a provision making it obligatory to appoint a treasurer.(2)

It is curious that although legislation lays down that treasurers must be appointed, nowhere are any duties imposed on them, nor are qualifications laid down for the post.

4. Control over property.

Provincial legislation provides for control over local authorities regarding the acquisition and disposal of assets. For the purpose of convenience, the subject will be dealt with under three main headings. Acquisition of assets, disposal of assets and insurance of assets.

(a) The acquisition of assets:

There are no specific restrictions on local authorities regarding the acquisition of movable assets. They may acquire such assets without any legal formalities subject only to the expenditure being legal and within the powers to incur expenditure.

With regard to the acquisition of movable property, however, the legislation in all Provinces introduces a form of external control, in which the Administrator's authority is required before property may be purchased.

In Transvaal, Natal and the Cape Province the Administrator must give his approval to all purchases of immovable property by a local authority, but in Transvaal this consent is not necessary where only a nominal consideration passes or where

(1) Ibid.
(2) History of Local Government in South Africa. L.P. Green Page 20.

acquisition is by voluntary purchase at a sale in execution. In Natal, the Administrator's consent is not necessary where acquisition is from the Government or another local authority, or where the purchase price does not exceed R500 for small local authorities and R1500 for larger local authorities.

In the Orange Free State the Administrator's consent is necessary and he may refer a proposal back to a local authority and require that it be submitted to a meeting of owners of rateable property; however, the Administrator's consent is not necessary if no consideration passes or if the purchase price does not exceed the value recorded in the valuation roll.

In all Provinces local authorities are given specific powers to expropriate property for municipal purposes, and the formalities to be observed are lengthy.

External financial control is naturally direct, for the price which a local authority wishes to pay must be approved by the Administrator. The Administrator will seek to ensure that the purchase price is reasonable by testing it against municipal valuation, sworn appraisement, etc. In some cases local authorities have sought to acquire at high prices large areas of land and there have been convictions for corruption. In certain instances the Administrator will withhold his consent and advise local authorities to use their powers of expropriation. Certain formulae are laid down in the Housing Act 1966 and the Slums Act 1934, which are invoked as a guide to price. In the case of the acquisition of large areas, the Administrator may appoint a Commissioner to investigate the matter.

Effective external control is essential in a sphere such as this, and the tests applied by the Administrators of the four Provinces are satisfactory. It is doubtful whether the additional step in the Orange Free State, to refer the matter to a meeting of registered owners, is a satisfactory form of control. The ability of public meetings to pass wise judgment on matters requiring investigation has already been discussed above.(1)

(b) Disposal of assets:

With regard to the disposal of movable assets, the Natal provisions are more elaborate than the provisions in the ordinances in the other Provinces; disposal must be by means of public auction or public tender. There are also specific requirements to be followed regarding such matters as the trade-in of goods, and the conditions under which sales by

(1) See pages 110 and 111.

private treaty will bepermitted. There is exemption from these provisions when sales take place to other public bodies. In Transvaal, Cape Province and the Orange Free State there is little control by the Provincial administrations over the sale of movable assets; in Transvaal an outright authority to dispose of assets is given without any conditions being laid down, in the Orange Free State the only stipulation is that the proceeds from the sale of movable property must be credited to the fund from which the property was originally purchased, and in the Cape Province the matter is dealt with only under the heading of contracts, and provides that tenders need not be invited in the case of goods sold by public competition where the sale has been duly advertised.

The disposal of immovable property is quite another matter, and external control by the Provinces is very strong. In all the Provinces very clear restrictions are imposed. In particular, the proceeds from the sale of land must be dealt with in a special way, and this was covered in the section above, dealing with Land Trust Funds.(1)

In all the provinces immovable property may not be disposed of without the Administrator's consent, and before the Administrator gives his consent he must be satisfied that a certain procedure has been followed as laid down in the ordinance, such as calling for objections, advertising, etc. There are considerable variations in the four Provincial ordinances regarding the procedure to be followed and these can be compared by referring to Annexure B. There is little need to refer to the detail here, as the control in all cases centres round the Administrator's consent to each separate transaction.

One important aspect of financial control has already been dealt with under Land Trust Funds; very clear financial control is imposed on local authorities regarding the destiny of moneys received from the sale of land.

No less important is the direct procedural control over the sale of land and other immovable property. The obligation to credit all proceeds to a special account is one form of direct control and is designed to preserve the 'corpus' of the town and prevent the squandering of fixed assets to serve current needs. The obligation to obtain the Administrator's consent in every case where the disposal of immovable property is concerned is to ensure the ultimate wisdom of disposal and

(1) See Page 99.

whether the rights of the body of ratepayers are affected. The formal procedure laid down often causes much delay.[1] Nevertheless, the disposal of a town's immovable property must be regarded in a serious light, and while administrative inefficiency in dealing with proposals should be eliminated, a thorough scrutiny by the Administrator affords an additional protection to ratepayers.

There is one other aspect of control by the Administrator and that is to ensure that local authorities obtain the highest possible price when land is sold, in the general interest of ratepayers.[2] It seems that, on the whole, local authorities themselves do take adequate steps to see that maximum prices are obtained.[3] In addition to the provision in the ordinances, the provinces have also given specific directives to local authorities. For instance, the Administrator of Transvaal has laid down that the selling price may not be less than the municipal valuation, the sworn appraisal or the pro rata cost of the land plus development costs, whichever of the three is greatest.[4]

Control over the sale of immovable property is desirable, and as far as financial control is concerned, the control is exercised with a view to ensuring that a local authority receives the largest possible income. There is evidence that such type of provincial control is necessary, and one Provincial official has given a good account of the necessity for controlling local authorities in this regard.[5]

(c) <u>The Insurance of Assets</u>:

Only in Natal is there any clear provision for the insurance of assets, but the power given is permissive and not obligatory. A council may take out insurance policies, or set up its own insurance fund.

In the other Provinces no specific power is given to take out insurance-cover for major hazards such as fire or accident. Only one insurance requirement is mentioned in these three Provinces, and that is that employees who handle money or stores must furnish a fidelity policy and the council may pay the whole or part of the cost (See details in Annexure B).

(1) See comments on Provincial delays by C.M. Payne (I.M.T.A. Proceedings 1951 - Page 95)
(2) "Alienation of land by Local Authorities" by D.G. Tees (I.M.T.A. Conference Proceedings 1950 - Page 154)
(3) "Sale of Land by Local Authorities in the Union" (I.M.T.A. Memorandum 1949 - Appendix B).
(4) Circular letter No. 16 of 1948 TALC 2/11867 - 29th December, 1948.
(5) "A Provincial Official looks at Local Government" by E.A. Bomchier (I.M.T.A. Conference Proceedings 1951, Pages 86 - 88).

It is strange that the provinces have not sought to impose direct financial control in a sphere such as this and compel local authorities to take out insurance cover against the loss of assets through fire or accident. Only in Natal is specific power given to pay premiums, but in the other provinces it can be assumed that such payments are made under implied powers. No auditor is likely to disallow expenditure on insurance premiums on the grounds that no positive legal power exists. He is more likely to comment on the absence of cover if a Town Hall happens to be destroyed by fire. It should be noted, however, that in financial regulations specific duties are frequently imposed on the Town Treasurer regarding the insurance of assets.(1)

The increasing complexity of urban living brings ever-increasing hazards by reason of the ownership of fixed property and there is the additional fact that awards made by the courts against local authorities sometimes reach formidable amounts. Even if there is no clear statutory sanction for insurance, it must be assumed that general statutory powers exist. Not to take out insurance would amount to negligence on the part of a local authority, ~~and~~ no responsible treasurer would fail to take out cover in the absence of legal compulsion. There is the added problem which arises from the failure of the provincial auditor in the Transvaal to sanction the setting aside of insurance reserves and the lack of clear authority to set up self insurance schemes, in spite of the advantages thereof.(2)

This commentary on the insurance of assets brings to light one of the vagaries of Provincial Control; control is evident in many small matters yet absent or incoherent in important matters, a subject which will be discussed in general chapters which follow.

5. Payments to elected representatives.

In all of the Provinces local authorities are authorised to remunerate the Mayor and Councillors. Reference should be made to Annexure B for details.

The payment of allowances to elected representatives, except the Mayor, is a comparatively recent development, and over a long period local authorities themselves opposed the principle.(3) When first introduced allowances were intended to be

(1) See, for example, Standard Financial By-Laws of the Transvaal (Provincial Gazette - 1st November 1967).
(2) See "Municipal Self Insurance" by H.G. Cumming (S.A. Treasurer November, 1965)
(3) For representative views pro and con, see the views of Cl. A. Schauder (Municipal Affairs February, 1964 - Page 25) and Administrator of Natal Mr. T.G.A. Gerdener (S.A. Treasurer - November, 1964 - Page 15)

mainly re-imbursive, but with the introduction of the Management Committee system the allowances are much greater in amount and involve payment for service rendered.

In addition to this all the ordinances authorise local authorities to pay travelling and subsistence allowances to Councillors when on the business of the Council.

These forms of control have come to be accepted in local government for it is clear that to leave a matter such as this in the hands of elected representatives could give rise to abuse and inter-municipal anomolies.

6. The Appointment of Commissions of Enquiry.

In all the Provinces the Administrator may appoint a commission to investigate the financial position of local authorities. In Natal the commission is not restricted to financial matters and the Administrator may take any action he deems fit on the commission's report. In Transvaal, the Administrator may instruct a local authority to put its financial affairs in order, failing which he may remove councillors from office and order a fresh election to be held and appoint persons to manage the local authority's affairs. In the Orange Free State the Administrator may, if a local authority cannot pay its debts, appoint a person to investigate the financial position and control its revenue and expenditure. In the Cape Province the Administrator may appoint one or more persons as investigators to obtain information regarding the administration of the ordinance.

This represents an extreme form of control which the Administrators may impose where a local authority fails to keep its finances on a sound footing. It is a power not often used, for there are other steps an Administrator may take before appointing a commission or an investigator. He may order the levying of a special rate in those circumstances where he is empowered to do so. He may refuse to grant further borrowing powers if the finances are bad, on the grounds that the local authority would not be able to afford the debt servicing costs.

The type of extreme financial control here described is common in the laws of South Africa. It has already been recorded above insofar as the powers of the Government are concerned.

This type of control is justified by the Central Government and by the Provincial Administrations on the grounds that it is necessary in the public interest to have powers to deal with any incompetent lower tiers of government. It is held that the powers are there only to be used in extreme cases, a justification frequently given by Cabinet Ministers to the United Municipal Executive when the far-reaching powers conferred in the various Acts have been questioned.

7. General.

There are several forms of financial control in evidence in general laws, but these are only incidental to the main purpose of the laws. Examples are the town planning, licensing, roads and traffic ordinances. Reference to the financial provisions in these laws is omitted because of space/and because it is unnecessary for the discussion on financial control which follows in subsequent chapters.

CHAPTER 15.

THE GENERAL NATURE OF CENTRAL CONTROL IN SOUTH AFRICA.

The description of various forms of financial control given in previous chapters shows the diverse nature of control. It is therefore appropriate to collate and study these under the distinctive headings of legislative, administrative and judicial control.(1)

1. Legislative Control:

Direct legislative control is imposed on local government both by the Central Government and by the four Provincial Administrations. Thus, the Central Government has imposed on local authorities direct financial control by Act of Parliament by legislating that local authorities must keep a separate Bantu Revenue Account. Similarly, the Provincial Administrations which have original powers to legislate for local government, have imposed direct financial control by passing ordinances compelling local authorities to appoint auditors, to invest their funds only in certain institutions or to prepare estimates of income and expenditure.

In addition to direct controls in original legislation, there is a great deal of indirect control arising from the exercise of permissive powers. Such powers are conferred on local authorities, but it is left to their discretion whether they will exercise them or not. For example, the Central

(1) This division is the one most commonly used - See "Essentials of Government" by Schultz - Page 483 and Hart's Introduction to the Law of Local Government and Administration, Part II.

Government has conferred on local authorities the permissive power to borrow money and lend money for housing purposes. Once this permissive power has been exercised, however, the powers imposed by the State regarding repayment are stringent and obligatory. In the Provincial sphere, a good example of permissive legislation is the power given to incur expenditure on a variety of matters such as grants to various institutions, for public entertainment etc. In the sphere of permissive legislation there are also cases where local authorities are compelled to exercise such powers. In Natal, Transvaal and Orange Free State, for example, the levying of a rate on fixed property is permissive, but in the Cape Province it is obligatory; but because no other major sources of taxation" are available to local authorities, the permissive legislation becomes virtually and de facto obligatory.

Legislative control is an original form of control written directly into Acts and Ordinances. The powers given either <u>must</u> be exercised or they <u>may</u> be exercised without any reference to other agencies such as Ministers of State, the Administrator, Boards or Commissions. Control is usually manifested in such phrases as "every local authority shall" and "a local authority may"

2. <u>Administrative Control</u>:

Administrative control over local government has come to be far more important to local government than direct legislative control. Although Parliament is the supreme law-making body in South Africa, and although the four Provincial Councils have original powers to make laws in respect of local Government, much power has to be delegated to administrative officials. Not to do so, would impose an impossible burden on Parliament and Provincial Administrations. In South Africa, administrative control takes the form of the delegation of powers. In the case of the Central Government, delegation is usually to Cabinet Ministers in charge of State Departments, Commissions, Boards and special tribunals; in the case of Provincial Administrations delegation is usually to the Administrator in each province, but sometimes to tribunals.

This delegation forms a major part of what has come to be known as administrative law. In recent times extensive powers are conferred on Ministers and Administrators to enable them to carry out the objects of various Acts of Parliament and Provincial Ordinances. Matters of considerable importance are left to their discretion, and provided they act within the limits laid down in original legislation and provided they act in good faith, their powers cannot be questioned. Thus, the Central Government has (a) given to the Community Development Board and the National Housing Commission extensive powers over local authorities (b) given to the Minister of Bantu Administration and Development and to the Minister of Health extensive powers of control over local authorities. Similarly, Provincial Councils in the ordinances they have passed, have conferred very wide powers on the four Administrators to control the activities of local authorities. For example, powers have been conferred on Administrators to conduct enquiries into the financial affairs of local authorities, to approve the sale of land by local authorities and to grant powers to local authorities to raise loans.

Special mention must be made under this section of the common practice today of giving extensive powers to Ministers and Administrators to make regulations, which elaborate the general aims of legislation in considerable detail. Acts of Parliament and Provincial Ordinances are often but a tithe of the detailed and voluminous requirements which must be observed in order to comply with the law.

In the past few decades concern has frequently been expressed regarding the increasing inroads which administrative law has made into the rights of the individual. Lord Hewart in his work "The New Despotism" stated in clear language the dangers inherent in the delegation of too much power to administrative officials. The powers exercised by administrative tribunals was the subject of an enquiry in Britain in 1960, and the Franks Committee concluded that the individual should be free to enjoy his property without interference unless the interference can be justified in the public interest.[1] The powers given to tribunals in South Africa will be referred to in a later chapter.

Similarly, concern has frequently been expressed by local authorities regarding the growing list of powers given to Ministers and Administrators over local government. In South Africa, the United Kingdom and the U.S.A. strong local government representations have been made against the far-reaching powers assumed by the senior levels of government over local authorities.

Many writers in the sphere of political economy and political science have stressed the need for a strong system of local

(1) Report of the Committee on Administrative Tribunals and Enquiries (Cmnd. 218 August 1957).

government in democratic states.(1) Local autonomy is affected when far-reaching powers over local authorities are granted by the State to Ministers. The proceedings of the United Municipal Executive of South Africa abound with protests to the Government, not only with regard to the drastic powers taken by the Government, but the extensive powers given in legislation to other agencies such as Commissions, Boards and Ministers of the State. In several cases the Government has been prepared to modify legislation to provide that a particular power will not be exercised except after consultation with the local authority concerned. In most cases, however, the Government has not been prepared to modify the powers granted to the Ministers on the grounds that local authorities must comply with State policy, and if they do not, the State must have the necessary powers of compulsion. Recent examples are the Housing Act 1966 and the Community Development Act 1966. The President of the United Municipal Executive stated recently that the executive powers given by the State to Boards and Commissions to override local by-laws could nullify the planning schemes of local authorities.(2) In the Provincial sphere, frequent representations are made by the Provincial Municipal Associations against the powers taken by Administrators with regard to purely local affairs. A recent example which has caused considerable concern to local government was the power given by the Transvaal Provincial Council to the Administrator to determine the salaries of town clerks.(3)

There has also been an increasing tendency to delegate powers to local authorities with inadequate reference to how the increased expenditure will be financed.(4)

3. **Judicial Control**:

In addition to the control imposed directly by legislation and by the process of administrative law, there are controls which arise as a consequence of decided cases. There is naturally a limit to this form of control because the courts cannot go beyond the law which they interpret. They cannot make new laws, nor can they question why the laws are made.

(1) See for instance "Grammar of Politics" by H.J. Laski (4th Edition - Page 411)
(2) Presidential Address to the United Municipal Executive by Senator B.S. de Kok (21st February, 1966).)
(3) Section 4 of Ordinance No. 24 of 1965.
(4) Examples are (a) delegation of powers under the Community Development Act and (b) the bringing of services up to certain standards under the Emergency Planning Act.