

Concept Paper

This paper attempts to summarize the proposal discussed on May 1 by the committee, concerning retaining the city as a corporate entity and extending its boundaries to encompass most of the county. It will also elaborate on how the proposal might work, raise one question about details, and suggest what legislation, beyond charter provisions, might be necessary to accomplish the committee's proposal.

City continuation and boundary change. The basic concept of the proposal is that the city will continue to exist as a corporate entity and that its boundaries will be expanded. Under the expansion, the city will include all portions of Durham county except (1) areas already within another city or town; (2) the Research Triangle Park, which under SL 1985, c. 435, § 2, is off-limits to any involuntary annexation; and (possibly) (3) areas assigned to some city other than Durham under a current annexation agreement with the city of Durham.

Question for the committee. The City of Durham currently is party to annexation agreements with a number of other cities and towns, including Chapel Hill and Raleigh. Under these agreements, the cities have established zones within which each participating city is the only city allowed to annex territory. I have learned from the planning department that, at the least, Raleigh has been assigned territory within Durham county that it has not yet annexed. Including such an area within the larger city of Durham might cause Raleigh (or another participating city) to object and thereby affect passage of the charter legislation within the General Assembly. How does the committee want to treat these areas?

The area and nature of the merged government. Under the committee's tentative proposal, the area of the merged government would be all of Durham county plus any parts of the city of Durham that are in other counties. The city will be able to continue to annex pursuant to state law, and as and if the city does annex additional areas in Orange or Wake (or other) counties in the future, the merged government's area would expand to include the newly-annexed areas. This would be the area from which the new governing board would be elected, and this would be the area that would carry the formal name of the merged government – i.e., the Unified [Consolidated] [Merged] [United] Government of Durham, Metropolitan Durham, Durham Metro, whatever. (It does strike me that it would be a bit inaccurate to characterize this area as a "County" inasmuch as it includes areas beyond Durham county.)

For at least two reasons, it would be helpful to characterize this larger area as a corporate entity itself. (The two reasons are that (1) it would, I think, help support the legality of the governing board arrangements and (2) it would allow the new entity to levy an entity-wide tax and to borrow money. I'll elaborate on both of these points

further on.) One ironic result of characterizing the larger area as a corporate entity is that merger would then result in one more corporate entity than exists at present rather than one less. That is, the county and city would each continue as a corporate entity and would be joined by this new corporate entity.

A single governing board and governmental organization. The charter would provide that the new, larger area of the merged government would elect a single governing board. This governing board would be the governing board for the merged government. In addition, it would be ex-officio the governing board for the county and the city. We have in North Carolina existing examples of a governing board of a county serving ex-officio as the governing board of a smaller entity within the county. The most common such arrangements involve entities known as county water and sewer districts. I don't know of any situations in which one governing board is the ex-officio governing board of two other entities, but logically there's no reason against it. I am more comfortable with the governing board being the direct governing board of some entity, as well as an ex-officio governing board, and that's one reason I think it useful to incorporate the entire area of the merged government as a new corporate entity.

The charter would also direct that the two existing governmental structures – city and county – be merged into a single administrative entity. Thus, there would be a single manager, attorney, and clerk, and single departments for finance, purchasing, personnel, and the like. The charter could also direct that all employees of the city and county become, by legislative act, employees of the merged government. This would be true even for employees in agencies that serve only the city or only the county. It strikes me that such a system is preferable to one having some persons be employees of the city, some of the county, and some of the merged government.

Thus, in Durham merger would be a unification of governing board and administrative structures. It would not be a formal unification of corporate entities.

City services and service districts. Unless the charter provides an exception, the expanded city will have all the powers of a city throughout its new jurisdiction. As a practical matter, this means that the city will be authorized to maintain streets throughout this expanded area and operate a police department. (It will have other powers, or course, but those powers are shared by counties.) Another committee is developing proposals for law enforcement, and so this paper will not address that subject.

Streets. With respect to streets, the merged government will need to meet with the state DOT and negotiate which streets will become city responsibilities and which will remain state responsibilities. Although the merged government might, in theory, refuse to take over maintenance of any streets in areas not currently within the city, this would place those secondary roads at a considerable disadvantage. DOT will maintain such roads within an incorporated municipality, but there is no state money available for paving dirt or gravel roads within a city or town. Therefore, it is likely that the merged government will assume responsibility for all secondary roads added to the city through the charter. In return for that, the merged government will receive increases in Powell Bill payments from the state, and increases in utility franchise taxes. The Powell Bill distributions are currently at the approximate rates of \$24.50 per person and \$1750 per mile of streets maintained by the city. Utility franchise taxes are levied on electric and

telephone companies, and a city receives tax proceeds in the rough amount of 3 percent of the gross receipts of the taxed utilities within the city.

Service districts. It is the committee's intention that the merged government establish a service district with the same initial area as the area of the city before merger. (I think it would be somewhat confusing in the statutes to call this an "urban service district." We might call it a "city service district" or a "central service district" or something else.) In this district, the merged government will provide a number of services not provided throughout the expanded city. I would guess that these services would include garbage collection, professional fire protection, perhaps street lighting, perhaps police services, depending on the charter commission's decisions on law enforcement, and perhaps others. (Based on my comments on streets, I would expect that street construction and maintenance would be a citywide activity.) These services would be supported by a tax levied only on service district property.

In addition to this initial service district, the committee intends that the government be authorized to establish other service districts for provision of one or more services to other areas within the merged government. The current authority of a county to establish fire districts would apply to the merged government within Durham county, so that the current system of fire districts could continue. The same would be true of the county's authority to establish a research and production service district (RTP); that is, the existing district could continue unchanged. For other services – such as garbage collection or street lighting – new legislation would be necessary.

This entire service district system (except for the fire districts and the RTP district) will need to be authorized by general legislation. I understand the committee wishes that these districts be established under procedures comparable to those required for urban service districts under the Consolidated City-County Act. This legislation will be companion legislation to the charter itself.

Debt. Because both the county and the city continue in existence, both units would remain responsible for their own debt. In the absence of any charter provision, property within the expanded city would be liable for taxes to retire the city's debt. It would, however, probably be possible to require in the charter that existing city debt (including installment financing debt, that is, certificates of participation) be paid off only from taxes levied on property within the central services district.

In addition, both the county and the city will be able, in the future, to borrow money as a separate entity and will have reason to do so. If money is needed for street construction or repairs, for example, only the city could borrow it, because only the city could spend the money. Similarly, if money is needed for construction of new school or court facilities, only the county could borrow it, because only the county could spend the money. If a bond referendum was necessary, only voters residing in the city or county, as appropriate, could vote in the referendum.

If the merged government itself is also a corporate entity, as suggested above, it too could borrow money. This would probably be a useful power, because there are likely to be services provided throughout the entire government or facilities that benefit the entire government. For example, the merged government might be the appropriate entity to borrow money for new parkland, or for an office building for the merged

government. The merged government might also ultimately be the most appropriate entity for borrowing money for the water and sewer systems.

Budgeting and taxation. Although there will be three units, the charter should direct the merged government to adopt a single budget ordinance and keep a single set of books. The operations limited to the city and to the county could be accounted for in separate funds of the merged government. The committee intends that the merged government governing board will levy a number of different property taxes, reflecting the different areas within which services are provided.

Durham county. There would be a tax levied throughout Durham county to finance services provided countywide (but not to those portions of the merged government outside the county). These services would include the public schools, the community college, the sheriff's office, the register of deeds, the board of elections, the public health department, the social services department, the mental health authority, and perhaps others.

Durham city. There would be a tax levied throughout the city of Durham to finance services provided citywide (but not to those portions of the merged government not in the city). These services would include street construction and maintenance and perhaps other services.

Fire districts. There would be separate taxes in each of the fire districts.

Central service district. There would be a tax levied in the central service district to finance the city services provided only in that district.

RTP district. The Research Triangle Park is a county research and production service district, and the governing board would levy a tax in that district for its package of services.

Other service districts. If the merged government established other limited service districts, there would be tax levies for each of those districts.

Merged government as a whole. There will be a number of services, especially administrative activities, that are provided uniformly throughout the merged government, for which the government might wish to levy a single tax throughout its jurisdiction. Such a tax might support the manager's, attorney's, and clerk's offices, as well as such staff departments as finance, purchasing, MIS, personnel, and the like. (Alternatively, the merged government might finance these sorts of services through indirect cost charges to the other funds, so that no entity-wide tax was necessary.)

If the merged government is to have the power to levy property taxes for the entire government, as suggested in the preceding paragraph, that will also require general law authorization, again as a companion to the charter.

Other taxes and revenues. Cities have authority to levy two taxes not available to counties: motor vehicle privilege taxes, in the amount of \$5 per vehicle; and business privilege license taxes, which Durham levies on a gross receipts basis. It would be possible to limit the merged government's authority to levy these taxes to areas within the central service district; doing so will require inclusion of appropriate language in the Consolidated City-County Act. If no such provision is made, the uniformity clause of the state constitution will require that these taxes be levied throughout the area of the city.

Cities and counties both receive a number of other state-shared taxes and revenues. Expansion of the city would affect some of these but not others, as follows:

Natural gas therms tax. This tax is based on the usage of natural gas within the city; expanding the city will increase the amount of the tax coming to the city (at the expense of the State).

Beer and wine tax. This tax is based on population. Expanding the city will increase the amount coming to the city, but will effect an equal decrease in the amount coming to the county, because the latter is only credited with its unincorporated population (which might be zero if only RTP remains outside any city or town). (The charter could authorize the governing board to allocate these revenues as it sees fit rather than pursuant to the general law.)

Sales tax. The amount allocated to Durham county will not change, but the allocation between the county government and the city government will change, because of the increase in the city's area. (The charter could authorize the governing board to allocate these revenues as it sees fit rather than pursuant to the general law.)

Reimbursements. The amount allocated to Durham county will not change, but the allocation between the county government and the city government will change, because of the increase in the city's area. (The charter could authorize the governing board to allocate these revenues as it sees fit rather than pursuant to the general law.)

Water and sewer systems. The city currently operates a water system and a sewer system, while the county operates a sewer system (in the southern part of the county). The city charges higher rates to customers outside the city. The committee's tentative proposal would have these consequences and possible consequences for the utility systems.

1. Under the general law applicable to cities, a city may not charge differentiated utility rates to customers located within the city. Therefore, those customers added to the city by this proposal would become entitled to pay in-city utility rates. Areas still outside the city (i.e., RTP and areas outside the merged government altogether) would continue to be liable for higher rates.

2. After merger, it strikes me that it would be sensible for the county's sewer system to be transferred to the city and operated as part of the city's system. If that were to occur, then the county's customers – both inside and outside the city – would pay for service under the city's rate structure. The charter could be silent about such a transfer of the system, could mandate it (or actually make the transfer), or could forbid it.

3. It would also be possible for the city to transfer the system to the merged government. The major effect of such a transfer would be to eliminate the authority to charge higher rates to customers outside the boundaries of the city but inside the boundaries of the merged government (i.e., RTP). Any utility customers outside the boundaries of the merged government could still be charged higher rates. The charter could be silent about such a transfer of the system, could mandate it (or actually make the transfer), or could forbid it.

City and county assets. As with the city's and county's debt, their assets need not be affected by merger under the committee's tentative proposal. That is, each unit could remain the owner of its current property. Alternatively, the charter could transfer

their assets to the merged government, so that all assets are held by the merged government. (There would have to be some exceptions to such a transfer. If the county or city has pledged an asset as security for a borrowing – as is true of the jail and the Hillandale road water treatment plant, for example – that asset should probably remain with the county or city until the debt is paid off.) If the assets are not transferred, it would be open to the merged government to work a transfer at some time in the future, under existing general laws.

Agreements between the three units. There may be times when the city and county, or one or both of them and the merged government, will wish to enter into contracts with each other. It is a bit artificial to follow normal contracting procedures and forms when there is but one governing board and one staff, so I would suggest that the charter allow such agreements to be evidenced by a single resolution adopted by the governing board.

Ordinances. The standard transition provision states that existing ordinances stay in effect, within their pre-merger territorial areas, until modified by the new governing board. If the city and county continue as separate corporate entities, such a provision makes even more sense.

In the future, the merged government will have the choice of adopting ordinances that apply only in the city, only in the county, or only in some special area. It might wish to also adopt an ordinance that is effective throughout the merged government, but that might be difficult. Some examples of ordinances with limited geographical scope: Only cities have authority to regulate speed limits, and so any ordinance doing so would apply only within the city. It would not apply in the RTP or in those parts of Durham county in some other city. Board of health rules would apply countywide but only within the county; the Durham county board of health has no jurisdiction outside the county. The various land-development ordinances would probably apply only within the city and those parts of the county not within some other city. Chapel Hill and Raleigh would adopt zoning and other planning ordinances for areas within those cities.

An attempt by the merged government governing board to adopt an ordinance that applies throughout the entire merged government might run into difficulties in the Chapel Hill or Raleigh parts of the county. Both of those cities have extensive ordinance codes, and a comprehensive merged government ordinance might be in conflict with provisions in those codes. Counties generally may adopt ordinances to apply within a city only with the permission of the city, and perhaps that rule ought to be applied to merged government ordinances as well.