

**Special Legislation for New York Cities, 1914-1921.** The New York constitution of 1894 has a peculiar provision on the subject of special legislation for cities. The provision is as follows:<sup>1</sup>

"All cities are classified according to the latest state enumeration, as from time to time made, as follows: the first class includes all cities having a population of one hundred and seventy-five thousand or more; the second class, all cities having a population of fifty thousand and less than one hundred and seventy-five thousand; the third class, all other cities. Laws relating to the property, affairs of government of cities and several departments thereof, are divided into general and special laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed except in conformity with the provisions of this section. After any bill for a special city law, relating to a city, has been passed by both branches of the legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of each city, and within fifteen days thereafter the mayor shall return such bill to the house from which it was sent, or if the session of the legislature at which such bill was passed has terminated, to the governor, with the mayor's certificate thereon, stating whether the city has or has not accepted the same. In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof concurrently, shall act for such city as to such bill; but the legislature may provide for the concurrence of the legislative body in cities of the first class. The legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided, by every such city. Whenever any such bill is accepted as herein provided, it shall be subject as are other bills, to the action of the governor. Whenever, during the session at which it was passed, any such bill is returned without the acceptance of the city or cities to which it relates, or within fifteen days is not returned, it may nevertheless again be passed by both branches of the legislature, and it shall then be subject as are other bills to the action of the governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words 'accepted by the city', or 'cities' as the case may be; in every such law which is passed without

<sup>1</sup> Art. XII, sec. 2, pp. 201-3 of clerk's manual.

acceptance, by the words 'passed without the acceptance of the city' or 'cities', as the case may be."<sup>2</sup>

In order to discover what the effect of this suspensory veto power of the cities actually is, the following analysis has been made as to the fate of the special city bills, introduced in the state legislature from 1914 to 1921 inclusive:

	1914	1915	1916	1917	1918	1919	1920	1921	TOTAL
Bills passed both houses....	181	188	206	220	192	175	237	240	1639
Bills recalled from mayor (dead).....	—	3	—	1	—	—	—	—	4
Bills accepted by the city....	147	152	164	185	146	132	193	177	1296
Bills not accepted by the city	34	33	42	34	46	43	44	63	339
Bills passed by legislature over city's disapproval....	1	3	1	2	1	2	2	5	17
Bills passed by governor af- ter city's disapproval; held not a city bill.....	—	—	1	2	3	—	—	1	7
Bills lost—"pocket vetoed" by city.....	33	26	38	25	38	36	42	54	292
Bills lost—"tabled" by leg- islature after disapproval of city.....	—	4	2	5	4	5	—	3	23
Governor's veto after pro- test of city and repassing by legislature (city bills)..	—	1	—	—	—	—	2	—	3
Bills enacted into law.....	133	144	163	172	135	119	187	161	1214
Governor's approval after protest of city (city bills)	1	2	1	2	1	2	—	5	14
Governor's veto after appro- val of city (city bills).....	15	10	3	17	14	15	6	22	102
Recalled from governor after acceptance by city (dead).	—	—	—	—	1	—	—	—	1

During the eight year period, 24 bills, or an average of 3 bills per session, were passed by the legislature over the city's protest. Of these, 21 bills, or an average of  $2\frac{5}{8}$  bills per session, were enacted into law. Deducting the 7 so-called noncity bills, 14, or an average of  $1\frac{3}{4}$  bills per session, were enacted into law.

During the same period, 318 bills, or an average of  $39\frac{3}{4}$  bills per session, were not enacted into law, after the city's protest. Thus  $22\frac{2}{7}$  times as many bills were not enacted into law after the protest of the city as were enacted.

<sup>2</sup> Amended by vote of people, Nov. 5, 1907.

Of a total of 339 bills not accepted by the city, 24 bills, or 7.08 per cent, were passed by the legislature over the city's protest. Of a total of 339 bills not accepted by the city, 21, or 6.2 per cent, were enacted into law. Deducting the 7 so-called noncity bills, 14 bills of a total of 332 city bills not accepted by the city, or 4.2 per cent, were enacted into law.

Therefore, the constitutional provision was from 92.92 per cent to 95.8 per cent effective in preventing hostile special legislation.

Of a total of 339 bills not accepted by the city, 7, or 2.07 per cent, were approved by the governor, after he had held that the bill was not a city bill. Of a total of 339 bills not accepted by the city, 17, or 5.01 per cent, were repassed by the legislature. Of a total of 339 bills not accepted by the city, 23, or 6.78 per cent, were tabled, an average of  $2\frac{7}{8}$  bills per session. Of a total of 339 bills not accepted by the city, 292, or 86.13 per cent, were pocket vetoed by the city; an average of  $36\frac{1}{2}$  bills per session.

Therefore, 12.7 times as many bills were pocket vetoed as were tabled.

Of a total of 1635 bills which the city considered, 339, or 20.73 per cent were not accepted by the city.

In discussing the effect of the suspensive veto of the city in the nineteen years following the adoption of the New York constitution of 1894, Professor Howard L. McBain finds that only 147 special acts relating to cities were passed over the heads of the cities affected.<sup>3</sup> According to the above investigation, there were 17 bills passed by the legislature over the disapproval of the city. However, 3 of these bills were vetoed by the governor, leaving 14 enacted into law. There were also 7 bills disapproved by the city, which the governor held were not city bills, and subsequently approved, causing them to become laws. This makes a total of 21 bills enacted into law, during the eight year period, without the consent of the city. Thus, since the adoption of this constitutional provision of 1894, there have been 171 bills—including the 7 so-called noncity bills, and the 3 bills subsequently vetoed by the governor, passed over the heads of the cities affected, or an average of  $6\frac{3}{8}$  bills per session. This compares with the average of  $7\frac{1}{2}$  bills per session for the first nineteen years.<sup>4</sup> The decreased average per session is quite pronounced in the last eight years, only 3 bills per session having been passed over the city's protest. Deducting the 3 bills vetoed by the governor, after having been repassed by the legisla-

<sup>3</sup> McBain, *The Law and the Practice of Municipal Home Rule*, p. 103.

<sup>4</sup> *Ibid.*

ture over the city's disapproval, the average shrinks to  $2\frac{5}{8}$  bills per session. Deducting the 7 so-called noncity bills, the average dwindles to  $1\frac{3}{4}$  bills per session. This would seem to bear out Professor McBain's observation that there has been a noticeable diminution in the number of bills thus enacted.<sup>5</sup>

Comparing the number of city bills enacted into law despite the city's protest, 14 (that is, deducting the 3 bills vetoed from the 17 passed by the legislature over the city's protest), with the number lost after the disapproval of the city, 318 (that is, adding the 292 bills pocket vetoed, the 23 bills tabled, and the 3 bills vetoed by the governor),  $22\frac{5}{7}$  times as many bills were not enacted into law after the protest of the city as were.

Comparing the total number of bills passed over the city's protest, 24, with the total number of bills not accepted by the city, 339, gives a percentage of only 7.08. Deducting the 3 bills vetoed by the governor, the percentage decreases to 6.2. Then eliminating the 7 so-called noncity bills, the percentage decreases to 4.2. Thus the suspensory veto power has been from 92.92 per cent to 95.8 per cent effective in preventing the evils of special legislation. It is evident, then, that the power is almost absolute.

It is significant, however, to note the fact that of the 318 bills not accepted by the city and subsequently lost, 3 were vetoed by the governor, 23 suffered the fate of being tabled, while 292 were pocket vetoed. In the case of the bills pocket vetoed, the legislature sent the bills to the city less than 15 days before the end of the session. As the city has 15 days for a public hearing upon the bill, its disapproval at the end of the 15 day limit could not be overruled by the legislature, since the legislature was then out of session. The 23 bills tabled were those which were returned disapproved by the city before the close of the session, and upon which the legislature either took no further action or which they definitely tabled. In other words, adding the 17 bills disapproved by the city which were subsequently repassed by the legislature and the 23 bills tabled, there were only 40 bills of the 339 disapproved by the city which the legislature had an opportunity to repass. The margin between 23 and 17, or between those which the legislature allowed to die and those it repassed, is certainly not a large one. Expressing the problem in percentages, we find that 5.01 per cent of the bills not accepted by the city were repassed by the legislature, while 6.78 per cent were tabled—a difference of only 1.77 per cent. On the other hand, 86.13 per cent of the bills not accepted by the city were

<sup>5</sup> H. L. McBain, *The Law and the Practice of Municipal Home Rule*, p. 103.

pocket vetoed—or a difference of 79.35 per cent between those pocket vetoed and those tabled. In other words, 12.7 times as many bills were pocket vetoed as were tabled.

The tendency in the legislative branches of our governments, in other states as well as in New York, to delay, for various reasons, the passage of many measures until near the close of the session, is notorious.<sup>6</sup> Also, the relatively longer procedure necessary in passing special city legislation after passage by both houses, transmission to the mayor, with a fifteen day period after his receipt of the bill, for a public hearing, and then the return to the legislature in case of disapproval, intensifies this difficulty of passing special city bills. The real effectiveness of the suspensory veto, therefore, has been due not so much to the hesitancy of the legislature to override the will of the city as it has been to conditions within the legislature, apart from its attitude towards city affairs.

Although Professor McBain points out that judicial controversy as to whether a bill is a city bill has been averted by the liberal practice of the legislature in submitting doubtful bills to the city or cities concerned, yet the governor may approve the bill, after holding that it is not a city bill. This power of the governor to override on his own accord the disapproval of the city is of course necessarily limited to those doubtful cases which, unfortunately, the constitution allows to arise by its vague definition of city laws as "laws relating to the property, affairs, or to the government of cities."<sup>7</sup> That this is not important relatively is shown by the small number of bills which have met this fate, only 7 out of a possible 339, or 2.07 per cent.

While it is obvious that the various cities have had a decided negative influence over their affairs, yet it is apparent that the suspensory veto is not the ideal solution for the difficult problem of the relationship of the state to the city. The division of the responsibility between the state and the city is especially noticeable in "claim bills," which in many cases would probably not be passed if either the state legislature or the mayor had to accept full responsibility.

There is also a possibility that the officials of the city are not truly representative on all bills involved. This is especially possible in the mayor-council plan, since in this plan the mayor's responsibility to the city is interrupted and discontinuous. This possibility, Professor McBain illustrates through the experience of the city of Buffalo in its

<sup>6</sup> Holcombe, *State Government in the United States*. New York City, 1916.

<sup>7</sup> Art. XII, sec. 2.

attempt to establish the commission form of government, despite the opposition of the mayor.<sup>8</sup>

Again, the evils of hostile special legislation have not been automatically removed. A considerable number of bills were passed by the legislature which the cities concerned considered as inimical to their interests. Out of a total of 1635 bills sent to the cities for their consideration (deducting the 4 bills recalled from the mayor from the 1639 bills passed by both houses) 339 were not accepted. In other words, 20.73 per cent, or over one-fifth of all bills which the cities considered, they deemed to be against their interests.

Summing up the results of the investigation: first, the suspensory veto power of the cities of New York has been almost completely effective in preventing hostile special legislation; second, the effectiveness of the suspensory veto power has been due, not to the hesitancy of the legislature to override the will of the city, but to conditions within the legislature, apart from its attitude on city affairs; and third, the suspensory veto power, although effective in a negative way, is not the ideal solution of the problem of the relationship of the state to the city, as there is the possibility of division of responsibility between state and city, as well as the possibility that the officials of the city are not representative of the city on a particular measure; while the fact that one-fifth of all the bills sent to the cities were not accepted by them indicates that the cities are compelled to be constantly on their guard against hostile special legislation.

It is important to note the remarkable consistency of the items year after year. It is evident from a study of the table that these conclusions are based not on a chance or erroneous combination or averaging of figures, but on actual conditions which seem to have acquired a relatively permanent character. They are as true for any year of the investigation as for an average or total of the eight.

GUSTAV L. SCHRAMM.

*University of Pittsburgh.*

<sup>8</sup> McBain, *The Law and the Practice of Municipal Home Rule*, pp. 104-5, n. 1. Also S15 of 1914—Not accepted by the city, repassed by the legislature and approved by the governor. Here the obvious public opinion in Buffalo had a large part in crystallizing legislative sentiment so as to cause the legislature to override the mayor's veto.

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

EDITED BY FREDERIC A. OGG

*University of Wisconsin*

Professor W. W. Willoughby, of the Johns Hopkins University, has been on leave of absence, assisting the Chinese government in the preparation of its case before the Washington Conference on Far Eastern affairs.

Professor Clyde L. King, of the University of Pennsylvania, was engaged during the summer of 1921 as research expert for the joint congressional commission of agricultural inquiry. The report of the commission deals chiefly with the causes of agricultural depression.

The University of Michigan and the University of the Philippines have completed arrangements for an exchange of professors of political science. Maximo M. Kalaw, head of the department of political science in the latter institution, will give courses at Michigan during the academic year 1922-23, while Professor Ralston Hayden will do similar work at the University of the Philippines. Professor Hayden will leave for Manila in May, 1922. He will be away about fifteen months and expects to make a first-hand study of colonial government, not only in the Philippines, but also in the Japanese, French, Dutch, and British possessions. Professor Hayden will shortly publish a collection of the new European constitutions.

Professor H. E. Bolton, of the University of California, will take charge of Professor W. R. Shepherd's courses in Columbia University during the second semester. Professor Shepherd is on leave during the present year.

Professor Howard L. McBain, of Columbia University, has been appointed by Governor Miller a member of the commission for the revision of the New York City charter.