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Goodbye, Town Hall?

The General Assembly has approved changes to Act 47, the statute written to help municipalities that become fiscally distressed. Part of the overhaul is language allowing distressed municipalities that have fallen beyond rock bottom to pursue an avenue of dis-incorporation.

That's a pretty radical idea in Pennsylvania. We have known for some time that every square inch of the state is incorporated and governed by a municipality at the local level (city, borough, township, etc.), thanks to a combination of charters and petitions of residents to various judicial offices pursuant to state law. Interestingly, the fact of all land being in incorporated areas appears to be a historical artifact rather than being an explicit constitutional or statutory requirement.

A 2012 study in the *Yale Law Journal* shows just a few more states (NJ, HI, VT, CT, MA, and RI) have no unincorporated territory within its borders. Pennsylvania and those states, along with Delaware and North Carolina, also have no language on the books that allow for local citizens to initiate dis-incorporation of the municipality in which they reside.

So should we expect the recently passed Act 47 amendment to prompt a reduction in the count of more than 2,500 municipalities currently incorporated in the Commonwealth as some look to dissolve their city or town as a result of the new provisions?

Probably not. For starters, the changes prohibit cities of the first class from pursuing the option, so that eliminates Philadelphia. Second, to be considered for dis-incorporation the municipality must be in Act 47 status. Right now, there are twenty municipalities in Act 47 (less than 1 percent of the total number of municipalities). Lastly, if the municipality provides its own police or fire protection with its own employees it cannot pursue dis-incorporation. That would disqualify the five Allegheny County municipalities in Act 47 currently (Pittsburgh, Braddock, Rankin, Clairton, Duquesne) and basically leaves communities that rely on the state or a neighboring community for police protection and has a wholly volunteer fire department that also happen to be in Act 47 distress, certainly a small fraction of the current twenty in distressed status.

But the possibility for some to dis-incorporate now exists, and for them the process is spelled out in the amended law. So how will a municipality move from carrying out public business to becoming an "unincorporated service district"?

The process will involve the Secretary of the Department of Community and Economic Development (DCED), the municipal government, the courts, the Act 47 coordinator, and the residents of the municipality. There has to be significant consensus that the municipality is in

dire straits—that it cannot provide services, cannot function as a municipality, the tax base has collapsed, there is no real solution to turn things around, and no other municipality would take the opportunity to work toward a merger or consolidation with the failing municipality. When the DCED Secretary determines that the municipality is not viable based on the recommendation of the Act 47 recovery coordinator, the decision to move to dis-incorporation then goes to the municipality.

At that point, either an ordinance passed by the municipal government or a petition signed by 51 percent of the electors who voted in the most recent gubernatorial election moves the process forward, which then involves a hearing conducted by the court of common pleas. The court has the power to overrule the ordinance or the petition if there is evidence that the municipality is indeed viable and the situation is not as bad as presented. If the court rules against the local decision to dis-incorporate, the DCED secretary can then look at the situation in the municipality and recommend a host of actions (continue under Act 47 status, terminate Act 47 status, receivership, or a Chapter 9 bankruptcy filing).

If the court upholds the local decision to dis-incorporate, then the municipality slowly dissolves into a status of an "unincorporated service district" with an appointed administrator. The district becomes an entity of the Commonwealth with the purpose of making sure that essential services are provided. The property and debt of the former municipality are held in trust by the state, but the state as a whole assumes no responsibility for either. Here we note that absent bankruptcy, the debt and other obligations of the municipality such as pension funding would still have to be met somehow.

How would taxes be handled? It is safe to assume that a property owner or a resident in an "unincorporated service district" would be liable for school district and county property and non-property taxes as they were prior to the dis-incorporation of the municipality. As described by a fiscal note on the legislation, for purposes of funding the essential services, debt, and upkeep of the former municipality, an annual assessment "calculated on a front-foot or benefit conferred basis" will be completed. Publicly owned property would be subject to an assessment that would cover the costs of services consumed by that property. If the former municipality has any pension obligations they too presumably would be handled by the administrator.

This district is intended to be a temporary condition until the municipality can re-incorporate or join with another existing municipality. So it is not expected that Pennsylvania will have large swaths of unincorporated areas as is the case in other states.

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