

# **The County Incorporation Act and the Establishment of Municipal Government in Nova Scotia**

The County Incorporation Act (1) of 1879, forerunner of the present Municipal Act (2) and the first general act authorizing elected municipal governments in Nova Scotia, reveals in the many significant amendments passed in its early years the difficulties of establishing a new form of government. Before the County Incorporation Act the local government of the province was in the hands of appointed justices with the assistance and advice of grand juries composed of substantial proprietors chosen by lot. The fight for elected local governments had long since been lost, first because of opposition from Halifax and the Colonial office, later because of strenuous opposition in the more rural areas (3).

When elected municipal governments were introduced, they had to be thrust upon the province. The district of Yarmouth was the first to ask for dissolution, perhaps relying on its earlier experience when it was the only county to incorporate under the optional legislation of 1855, but it quickly reverted to its former status in 1858. Possibly the reason for the creation of elected local governments was the main reason for opposition to them. Faced by serious financial difficulties, the newly-elected Conservative government under Simon Holmes saw municipal government as a means of relieving some of the pressure. The sponsor of the bill, Attorney-General John S.D. Thompson, told the Assembly that its main object was to "compel the Counties to tax themselves directly to keep up their roads and bridges." (4) It raised taxation and, naturally enough, was one of the reasons for the Conservative defeat in 1882.

The Act, more properly named municipal incorporation rather than county incorporation after the New Brunswick model, established twenty-four rural municipalities: "The Inhabitants of every County and Sessional District in this Province . . . shall be a body corporate under the name of the Municipality of the respective county or district, as the case may be, . . ." (5) The boundaries followed the boundaries of twelve counties and the twelve sessional districts in six divided counties. None of these boundaries had changed markedly after 1863 and most had been finalized many years earlier. None have been changed to any important extent since.

The first Act provided for some of the important features of the present government of rural municipalities: separation of towns and cities from the rural municipality; councillors elected from districts and who elect the head of the council, the warden, from among their own number; the power to tax property; approval of by-laws by the province; and provincial approval of borrowing. Generally the rural municipalities assumed all of the local government powers of the grand jury and sessions, and the powers of the town meetings held to provide for the support of the poor. The importance of the concept of municipal responsibility for roads and bridges is highlighted by the fact that of thirteen specifically enumerated powers, four dealt with roads. (6) The others dealt with poor

houses; licences for intoxicating liquor; ferries, wharves, and markets; paying for the administration of justice; tax collection; contracts; salaries; presiding officers; and general supervision. In addition they assumed powers under 43 existing statutes.

An interesting facet of the roads question was the proviso that the county could spend the provincial grant and their own funds freely, but could not raise more than \$1,000 for roads without the approval of the Governor in Council.

The power to pass by-laws was restricted to 39 distinct objects, most of which, for example "For providing means to pay the expenses of the administration of justice chargeable on municipal funds, and for the preventing and extinguishing of fires," (7) embraced a fairly wide scope. Broad authority over "the good rule and government of the municipality, and for the regulation and management of the local, municipal, fiscal, prudential, and sanitary affairs thereof" (8) was also conferred. Most of these powers, in the same order if one takes into account some explication and division, appear in the present statute.

Briefly, then, the County Incorporation Act introduced elected local governments for the whole of the province outside the City of Halifax and five incorporated towns. The powers of the rural municipalities embraced those of the sessions and the grand jury and of the town meetings, and extended further primarily to roads, streets and bridges. The structure of the council was little different from the present.

Experience with the Act, composed of one hundred sections and two schedules, led to the revelation of previously concealed problems. In 1880, forty-eight revising and clarifying sections were passed (9). For the most part the changes were of minor importance. For example, councils were permitted to pay their auditors, and to receive gifts. The term of office was extended from one to two years, and a number of revisions to the provisions respecting elections were made, no doubt on the basis of experience. In general, the Act of 1880 was a housekeeping measure to clear up some of the difficulties shown to exist in the original Act.

The next year, 1881, the amending Act consisted of seventy sections and a schedule (10). This time some important questions of principle were involved. Already the distribution of road moneys was creating problems. The first six sections of the Act dealt with clarifying and limiting the municipal powers to spend the provincial road and bridge moneys. No expenditure might be made under commission or by commissions, but only after an appropriation by the council and under the inspection of supervisors of highways. No councillor could be a supervisor of highways. All expenditures had to be made by tender or public auction, with a contract. The road moneys could be drawn from the province only if a duly attested and certified return showing the expenditure of the money was made.

The amending Act went on to provide an extensive procedure for use in the case of controverted elections and for the prevention of corrupt practices. Many of these provisions, especially those concerning the prevention of corrupt practices, are still

enshrined in the Municipal and Towns Controverted Elections Act (11), which governs all municipal elections in Nova Scotia. As was undoubtedly the case in 1881, and is today, many of these provisions are consistently flouted with impunity, so much so that forbidden activities are generally accepted political campaign practices.

The session of 1882 proved to be the last chance the Conservatives would have to amend the Act for over forty years. They seemed to tire of the Act; the amendments were only twenty sections, of which fourteen again dealt with the road moneys.<sup>(12)</sup> There were a few further restrictions on the manner in which the councils could spend the money and fairly stringent regulations regarding the payment of the provincial grant. For example, the municipality had to post a bond for the total amount of the road and bridge grant before any part of it would be paid.

As could be expected, the Liberal administration under Charles Church lost no time in amending an Act they had initially opposed. Twenty-nine of thirty-six sections dealt, again, with the road and bridge moneys (13). Expenditures by duly appointed commissioners were now to be permitted, provided the Provincial Secretary was informed, as well as expenditures under the inspection of road supervisors. Quite stringent financial accounting was required, and provision was made for the inspection of work performed. Where the investigating committee of the council determined that the work was not faithfully performed, council might decree that only part payment, or no payment would be made. There were certain other provisions for regulating the work on roads, for example, no supervisor or commissioner should employ more than forty labourers in a day. The requirement for the municipal bond was reduced to half the road and bridge grant. All of the previous provisions relating to roads were repealed.

There were three other amendments to the Act before the consolidation in 1884 (14), but none was of any importance.

#### FOOTNOTES

1 Stats. N.S. 1879, c.1

2 R.S.N.S. 1967, c.192.

3 As Beck puts it, "Originally those who desired local self-rule could not wrest it from the central government at Halifax; later their descendants would not accept the responsibilities which the central government and Legislature were anxious to confer upon them." In Murray Beck, "The Government of Nova Scotia" (Toronto: University of Toronto Press, 1957), p.134. Cf. Beck, "The Evolution of Municipal Government in Nova Scotia", a study prepared for the Royal Commission on Education, Public Services and Provincial-Municipal Services. (Halifax: Queen's Printer, 1973), and D.C. Harvey, "The Struggle for the New England Form of Township Government in Nova Scotia", Report of the Canadian Historical Association, 1933, pp. 15-22. 4 Acadian Recorder, April 7, 1879. See Beck, The Evolution of Municipal Government, pp. 25-28.

5 County Incorporation Act, s.1.

6 Ibid., s.69

7 Ibid., s.84, 2nd.

8 Ibid., s.84, 6th.

9 An Act to Amend the County Incorporation Act, 1879, Stats. N.S. 1880, c.1.

10 An Act further to amend the County Incorporation Act of 1879, Stats. N.S. 1881, c.1.

11 R.S.N.s. 1967, c.

12 An Act further to amend the County Incorporation Act of 1879, Stats. N.S. 1882, c.1.

13 An Act to further amend the County Incorporation Act of 1879, Stats. N.S. 1883. c.1.

14 Stats. N.S. 1883, c.2; Stats. N.S. 1884, c.13; and Stats. N.S. 1884, c.14.

Prepared by Policy Development and Research Division, Department of Municipal Affairs, April, 1985. e: Prepared by staff in early 1970's