



LIFT Perspective

Role of Government Series

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The Role of Government, Part I: Blurred Lines between State and Local Government

Recommendation

The roles and responsibilities of state and local government in Texas require clarification. Conservatives must acknowledge that meaningful local control is an important way to limit the power of centralized government, and that it is *not* the role of the state to protect local taxpayers from themselves by attempting to limit the ability of locally elected officials to raise revenue for local services and projects. In light of that, the Texas Legislature should initiate a long-term effort designed to:

- Better define service-delivery roles between the state and units of local government,
- Prevent duplication of services,
- Eliminate and prevent state oversight of local services,
- Eliminate unnecessary “layers” of government (and thus unnecessary spending) by exploring regional service delivery models where necessary,
- Prohibit unfunded and under-funded mandates, and ultimately
- Lower tax burdens.

Background: Blurred Lines of Government

There are many areas of public policy over which local units of government, such as counties or cities, are given authority by the state government to deliver and provide

services. Zoning, housing, permitting, police, fire control, libraries, hospitals, park and recreation efforts are just a few of the policy functions and services local governments generally provide. However, the state government retains absolute control over many of these policy areas through statutory efforts (specifically, the Local Government Code) and clearly attempts to restrict these functions. Just as importantly, the state clearly imposes a limitation on the ability of counties and cities to generate revenue to finance these functions through restrictions it has put in place over the years on local governments' ability to raise taxes. This design has fundamentally flawed the distinction between which level of government is really in charge of providing the services and has confused and frustrated the average citizen when they interface with the various levels of government.

The complexity of the problem can clearly be seen by examining the current tax system. The typical Texan is taxed by, at a minimum, the federal government, the state government, their resident county government, their resident school district, and their resident municipal government (if they live inside the corporate boundaries of a city). In addition, they might also be taxed by any number of "special districts" such as a community college district, a water district, a utility district, or a hospital district (just to name a few). Each one of these taxation units represents a new level of government (and thus some form of an elected or unelected governing body). In many cases, distinctions between the various different levels of government are vague and confusing. As a result, individual citizens suffer a variety of consequences. To illustrate this case, we highlight four different ways in which our current system is failing us.

Exhibit A: Duplication of Services

Results of the State Comptroller's Local Government Survey, published in April 2005, revealed that 34% of county government elected and appointed officials disagree with the statement that "state government works closely with my governmental unit to prevent duplication of services." An additional 31% of respondents said that they did not know the extent to which different levels of government worked together to prevent service duplication.¹ In other words, two-thirds of county officials are doubtful that there is a significant attempt to avoid duplication of services at county and state levels. Any duplication of service provision is significant because it demonstrates that each level of government is overreaching its responsibilities (and arguably spending tax dollars inefficiently). Therefore, there is clearly a case for clarification of the role and responsibilities of state and local government in Texas.

Exhibit B: Unfunded and Under-funded Mandates

By definition, a "mandate" is a blurring of the lines between different levels of government. As conservatives, we should be concerned about the federal government

¹ Results of the Comptroller's Local Government Survey, April 2005; <http://www.window.state.tx.us/lga/localgovsurvey/index.htm>

dictating policy to the state; the state dictating policy to cities and counties; etc. because we believe public policy is best formulated closest to home (i.e. – locally). As conservatives, we should be particularly concerned about “unfunded” and “under-funded” mandates because it not only violates the conservative approach to policy making (i.e. – local control), it also violates conservative spending principles in that it forces another level of government to increase spending to finance a function it had no role in designing.

The Texas Association of Counties (TAC) has been particularly vocal in recent months on the subject of unfunded and under-funded mandates handed down by the state government. TAC highlights the Fair Defense Act, enacted by the 77th Legislature, as an example of an under-funded mandate. The Act provides an entitlement to legal counsel for any indigent defendant during judicial proceedings. Since the Act became effective, TAC reports the state has issued grants to counties totaling \$29.6 million to assist with the implementation, yet Texas counties reported expenditures associated with implementation of the Act have totaled \$243.6 million² - a shortfall of \$214 million.

TAC also argues that “[l]ocal property taxpayers often do not understand the subtleties of the way our governments are organized. Hence, when their property taxes rise due to unfunded mandates, taxpayers know only to blame their local elected officials, whose hands are tied by state government.”³ Unfunded mandates, however, are only one aspect of the problem.

Exhibit C: Excessive State Involvement in Otherwise Local Operations

Another major example of the state’s role and the role of local government becoming blurred is illustrated when the state exercises jurisdiction and oversight in policy functions cities and counties ought to be able to control and deliver without state interference. The creation of hospital districts, for example, is provided for by the Texas Health and Safety Code⁴, and is therefore controlled by the State Legislature. It is unclear, however, why the state should control the ability of a county to create a hospital district or deliver those services. County commissioners are elected by the residents of a county, so it is not the state’s role to protect county residents from the actions of their elected county officials. Issues pertaining to hospital districts, school districts, and zoning, as well as the provision of services such as refuse collection and sanitation are clearly *local* issues, and, as such, should be controlled exclusively at the local level. If elected county and city-level officials cannot exercise complete authority over these areas of policy, then the purpose of these local officials becomes unclear. If their role is to simply implement state level policy in local jurisdictions, local government officials become little more than glorified administrators, and it is hard to justify why their

² *State Mandates: Unfunded and Under-Funded*, Texas Association of Counties; <http://www.county.org/resources/assets/UFM.doc>

³ *Unfunded Mandates: General Talking Points*, Texas Association of Counties; http://www.county.org/resources/legis/documents/Talking_points.rtf

⁴ *Texas Statutes: Health and Safety Code*; <http://www.capitol.state.tx.us/statutes/hs.toc.htm>

positions need to be elected. However, because local officials *are* elected, they must be able to direct local-level policy and maintain accountability to their electorate. State leaders might argue that the state needs to set guidelines for local officials to follow with regard to certain areas of policy. However, that practice is dangerous at best. When do helpful guidelines cross the line and become state oversight into local matters? If locally elected officials cannot effectively zone and manage local property, for example, or effectively operate a local hospital, then it should be up to the local residents to express their displeasure and convey the changes they believe need to occur – either that, or vote the local officials out of office. Regardless, the process should not encourage a dialogue for change to occur in Austin at the State Capitol.

Exhibit D: Regional Governments versus Councils of Government (COGs)

Regional councils of governments (COGs) are voluntary associations of local governments. These associations are primarily designed to deal with local planning needs that cross the boundaries of individual local governments (such as water supply and quality, air quality, transportation, emergency preparedness, and the coordinated delivery of various social services). COGs also establish region-wide geographical information systems (GIS) and databases on regional population, economic, and land-use patterns.

COGs are formally authorized and created under Texas state law and, due to their very statutory existence, lawmakers sometimes feels the need to dictate policy to COGs just as they do to counties and cities. This too is problematic. Equally as troubling is the fact that COGs receive state funding. In reality, COGs are an extra layer of government that is almost never necessary, and certainly should not be funded with state dollars. If local government entities wish to participate in such regional schemes, the participation should be at the expense of the local taxpayer, rather than the entire state. Moreover, the state should never include COGs in the design of state law or policy or authorize them to play a formalized role in policy implementation.

On the other hand, the need for regional delivery of services is very real and sometimes desirable. Why, for example, should county governments exist in otherwise urban areas of the state when municipalities already provide the same service? Conversely, why would each municipality provide a service the county can otherwise perform? For example, virtually 95% of the land in Dallas County is within the existing boundaries of a municipality (and approximately 99% of the population is within a city). Why, then, should the county provide so many services and raise so much revenue when the individual cities could provide these services (or already are providing the services)?

Similarly, why does Dallas County need a transportation department complete with road crews and expensive construction equipment if the individual cities in the same geography already carry out the vast amount of that responsibility? Is urban-area Texas really best served by paying for county constable officers *and* municipal police officers (in addition to Texas State Troopers) when one police force could provide both

functions? Why do we need a multi-million dollar municipal jail facility in Arlington and an additional multi-million dollar county jail facility only fifteen miles away? Why could the County not house all the prisoners and allow Mansfield, Arlington and other Tarrant County cities to discontinue operating a duplicative and costly service?

The Solution: More Local Control

Conservatives should favor a diffusion of government power. A powerful centralized government carries with it the risk of burdensome and oppressive taxation, whereas decentralized power creates increased local control. This is not to say that the propensity of local government to tax oppressively is significantly lower than that of state government (if anything, local government is likely to be more responsive to special interests) but is simply to acknowledge that if a county does tax oppressively, it affects fewer people than would oppressive taxation at the state level, and county voters are still clearly able to hold their elected officials and commissioners accountable at the ballot box.

Arguments in favor of local control are not new. The Anti-Federalist Papers, published in the late 18th century contain frequent references to the undesirability of a heavily centralized system of government. A speech delivered by George Mason in 1788, and published as Anti-Federalist Paper Number 35, lays out the case for local control:

“[T]he states can raise the taxes with more ease, and lay them on the inhabitants with more propriety, than it is possible for the general government to do. If Congress hath this power without control, the taxes will be laid by those who have no fellow-feeling or acquaintance with the people.”⁵

In this case, the states are clearly the local unit of control, while “general government” refers to the centralized unit of government, the United States Congress. The arguments remain the same, however, when the city or county is the local unit and state government is the centralized unit.

According to the 2002 Census, Texas has 1,196 cities, 254 counties, 1,089 school districts and 2,245 special districts. With only four of these counties and only three cities having a population higher than a million people, local governments in Texas provide an opportunity for effective local control to be exercised. In fact, many cities and counties are home to fewer than 5,000 people⁶. Thus, local control is an attainable goal in Texas.

What Will More Local Control Accomplish?

⁵ *Federal Taxing Powers Must Be Restrained*, Anti-Federalist Paper No. 35, George Mason, June 4, 1788; <http://www.thisnation.com/library/antifederalist/35.html>

⁶ *2003 Total Population Estimates for Texas Counties*, Texas State Data Center and Office of the State Demographer, October 2004; http://txsdc.utsa.edu/tpepp/2003_txpopest_county.php

Several reports by the Texas Comptroller have identified areas in which local delivery of services could improve on the statewide provision of services by agencies such as the Health and Human Services Commission (HHSC) and the Texas Education Agency (TEA). A Texas Performance Review, published by the Comptroller in 2003, found that:

“[A] combination of tight government budgets, and the growing demand in services for families and children has forced policy-makers to search for better delivery systems. At the same time, many states have discovered that shifting decision-making closer to the point of service delivery fosters innovation and creativity, and increases program capacity and flexibility.”⁷

An earlier Texas Performance Review, focused on public education, argued that “cynicism about government’s ability to perform even its most basic duties has fueled a movement towards more local control of public education.”⁸

A focus on more local control will bring decision-making closer to home, eliminate unnecessary effort at the state level (and thus reduce state spending) on functions best provided by local governments, and reduce the tendency of the state to mandate functions which increase costs.

What is Standing in the Way of Creating More Local Control?

For local control to be effective there must be a clear dividing line between what should be controlled by the state government, and what should be controlled locally. Each level of government should restrict itself to overseeing the areas of policy for which it has responsibility. This is made clear by Alexander Hamilton in Federalist Paper Number 31, in which he argues that:

“A government ought to contain itself in every power requisite to the full accomplishment of the objects committed to its care, and to the complete execution of the trusts for which it is responsible, free from every other control but a regard to the public good and to the sense of the people.”⁹

The problem is that the dividing line between the role of state and local government is often blurred and uncertain. This uncertainty begins with the Texas Constitution and continues throughout the statutory approach to local services found, primarily, throughout the Local Government Code. Both legal documents give the state government an often imperious control over the freedom of counties and cities and unnecessarily place the state in a position of “oversight”. An analysis of how the Texas Constitution deals with

⁷ *Increasing Local Control of Health and Human Services Spending*, Texas Performance Review, January 2003; <http://www.window.state.tx.us/tpr/tpr4/c2.hhs/c231.html>

⁸ *Gaining Ground: Public Education*, Texas Performance Review, 1994; <http://www.window.state.tx.us/tpr/tprgg/ggedpub.html>

⁹ *The Same Subject Continued: Concerning the General Power of Taxation*, Federalist Paper No. 31, Alexander Hamilton, January 1, 1788; <http://www.thisnation.com/library/books/federalist/31.html>

counties, published by the University of Texas at Austin, finds that the Constitution has a “seemingly slapdash treatment of local government”, and that:

“The overall treatment of county and municipal government in the Constitution is quite uneven. Specifications for the organization of local government, including for county and local judges, tax assessor, tax collector, treasurer, and surveyor, are scattered throughout the various articles. The two articles primarily dedicated to counties and municipalities are focused on the geographic size and shape of counties and on issues of taxation and spending.”¹⁰

The Local Government Code, enacted and amended by the legislature, directs the manner by which county and city governments must be organized, and is similarly slapdash in its apportionment of responsibilities between cities and counties. What is lacking in both the Constitution and the Local Government Code is a clear designation of the areas of policy over which the state has control, and the areas of policy that should be determined at the local level.

The result, as was highlighted above, is a situation in which the state often enacts legislation which local governments cannot afford to implement, while the counties themselves are unable to take decisions on legitimate local issues without deferring to the state legislature. Examples of the latter include provisions governing the creation of library districts, sports and community venues, and even parks boards, in the Local Government Code.¹¹ The creation of a library district or a sports venue is clearly a local issue, as is the way in which local parks are run. As long as counties or other units of local government act within existing state laws governing, for example, property rights, they should be able to build hospitals, libraries, sports facilities, or parks as they wish. They remain accountable to local voters and taxpayers, and the state need not provide an unnecessary additional level of government by seeking to govern both local and state issues.

Equally, many of the Interim Study Charges of the 79th Legislature highlight a blurring of the lines between state and local government. The House Committee on Urban Affairs, for example, is charged with examining “municipal regulation of mobile food vending vehicles”, while the House Committee on Local Government Ways and Means is charged with evaluating “how counties and school districts impose property taxes, including a study and evaluation of the effective rate, the rollback rate, and rollback elections.”¹² Both of these are examples of how the state legislature grants powers to local government, but then seeks to regulate these powers at the expense of taxpayers statewide.

¹⁰ *County and Municipal Government*, Texas Politics, Liberal Arts Instruction Technology Services, University of Texas at Austin; <http://texaspolitics.laits.utexas.edu/html/cons/0502.html>

¹¹ Texas Local Government Code, Chapters 326, 334, and 320, respectively.

¹² *Interim Study Charges*, Texas House of Representatives, October 19, 2005; <http://www.house.state.tx.us/committees/charges/79interim/79thinterimcharges.pdf>

If jurisdiction over a certain area of policy is devolved to local government, whether it is regulation of mobile food vending vehicles, or the levying of property taxes, the state government should not spend taxpayers' money ensuring that local governments perform these duties effectively. That is the role of the local citizen – not the Legislature.

Recommendations

In the light of these concerns, a long-term study should be initiated to clarify the roles of the state and units of local government. The result of the study should outline the initial stages of what will certainly be a massive re-write and re-organization of the Texas Constitution and Texas Local Government Code. The study should also focus on unfunded and under-funded mandates and Regional Councils of Government. The Legislature should specifically determine the fiscal impact of previous mandates and how to best prohibit future unfunded mandates from being passed down by future legislators. The study should examine the necessity of COGs, the necessity for state monies to finance such an operation, and what limited role COGs should play in policy making, if any. Lastly, the study should identify duplicative local services in the urban areas of the state and establish whether or not a more regional service deliver model would save taxpayers money.

TCCRI firmly believes state government must certainly retain responsibility for policies that affect the whole state, and particularly for constitutional issues, such as protecting property rights. However, cities and counties should not have to come to Austin to request authority for local policies or initiatives or for the permission to raise money to finance these locally approved services. Instead, local governments should be given broad authority to create and fund projects that will affect only the county in question. The responsibilities that local governments take on must be locally funded, just as the state government must fund its own areas of responsibility.

[Note: the broader issue of controlling local revenue collection and spending via property tax restrictions will be addressed in a forthcoming paper. Specific issues such as revenue caps and property appraisal caps, and the methods by which local government entities can raise revenue will be discussed in detail in an upcoming TCCRI report.]

Conclusion

The blurring of the lines between local and state government in Texas has created a situation in which all levels of government are doing too much and oftentimes doing it inefficiently. The cost of the resultant duplication of services is met by taxpayers. This situation can be remedied with a clarification of what each level of government is responsible for, so that the role of each tier of government is clearly defined and service delivery (and the financing of that service) is limited to one level of government. Areas of policy which are the responsibility of the state should be funded by state taxes, while

local government entities should fund their own responsibilities through local taxes. Most importantly, the state should stop the practice of “overseeing” local operations and efforts as if cities and counties were state agencies under sunset performance review. Special interest groups should take policy questions to local governments for debate instead of the current practice of convincing state legislators that one-size fits all across the state with regards to issues like zoning, building permit processes, trash collection and library and park operations. After careful study, the state should find the best way to constitutionally prohibit unfunded mandates and should also closely examine the need for regional governments. These recommendations will require serious legislative effort and study, comprehensive re-writes of statutory law, putting constitutional amendments to the voters for approval, and a general change in the way the state approaches local issues and local governments.