

CHAPTER I

THE HISTORICAL AND CONSTITUTIONAL DEVELOPMENT OF THE COUNTY

Michael T. Allen & Joseph N. Fratesi

Historically, county governments have made up the largest territorial units of local government in the United States.¹ Today, there are 3,066 counties governing 98 percent of the nation's population. Forty-eight of the fifty states have some form of county government. Even the two states without functioning county governments – Rhode Island and Connecticut – are nevertheless divided into geographical regions called counties. All states with county governments refer to these local governmental units as *counties* except Alaska and Louisiana which call them *boroughs* and *parishes*, respectively.²

Across the nation, counties vary greatly in both size and population. The smallest is Arlington County, Virginia at 25.9 square miles while the largest is North Slope Borough, Alaska at 87,861 square miles. The least populous county is Loving County, Texas with 140 residents and the most populous is Los Angeles County, California with 9.2 million.³

In many rural areas of the nation, counties have historically been the primary and sometimes the only unit of local government.⁴ This scenario remains true for many Americans today. Counties with populations of less than 50,000 are considered rural and make up almost 74 percent of all counties. However, these rural counties contain only about 16 percent of the nation's population.⁵

According to the 2000 U.S. Census, Mississippi contains a greater percentage of rural counties than does the nation as a whole. Of the state's 82 counties, 70 counties or 85 percent are classified as rural since they have populations of less than 50,000. Only 12 counties are

¹Vincent L. Marando and Robert D. Thomas. *The Forgotten Governments: County Commissioners as Policy Makers* (Gainesville, FL: University Presses, 1977), p. 1.

²National Association of Counties, "Fact Sheet: County Government," Washington, D.C., 1994; NACO: About Counties. "About Counties." [Online October 31, 2003] Available http://www.naco.org/Content/NavigationMenu/About_Counties/About_Counties_Overview.htm, n.d.

³NACO: About Counties. "About Counties."

⁴Gordon K. Bryan, "County Government and Administration in Mississippi" (Ph.D. dissertation, University of California, Los Angeles, 1949), p. 1.

⁵National Association of Counties, "Fact Sheet: County Government."

classified as urban with populations greater than 50,000. Of these 12 counties, only five exceed 100,000 residents (DeSoto, Harrison, Hinds, Jackson, and Rankin). By population, Hinds is the largest county with 250,800 inhabitants and Issaquena the smallest with 2,274. Mississippi's 2000 population was 2,844,658.⁶

Mississippi has a total area of 48,430 square miles.⁷ Like their populations, the sizes of the 82 counties vary considerably – the smallest in land area is Alcorn with 400 square miles and the largest⁸ is Yazoo with 919 square miles.⁹ Seventy-two counties have a single county seat where the county government is headquartered. The remaining ten have two county seats since the division of court districts splits them and both county sections have their own courthouse.¹⁰

In Mississippi, as in other states, county power descends from the state constitution and state law. Counties are creations of the state and are charged primarily with the purpose of providing state services.¹¹ The role of the county as an arm of the state and operating solely under state authority is often referred to as *Dillon's Rule*. This term was coined in the late 1800s as presiding Iowa State Supreme Court Judge John F. Dillon and the Court upheld the principle of state supremacy over counties.¹² However, even though Mississippi tends to operate under "Dillon's Rule," through the home rule provision adopted by the Legislature in 1989 counties are granted greater authority to act in most areas not expressly forbidden by state law. Some notable exceptions to this provision are as follows: no county can appoint constitutional officers, impose new taxes, or give county funds to private organizations.¹³

While county development in Mississippi goes back two hundred years, the development of the

⁶U.S. Census Data Set: Census 2000 Summary File 1 (SF 1) 100-Percent Data. Tables: GCT-PH1. Population, Housing Units, Area, and Density: 2000.

⁷Composed of a total land area of 46,907 square miles and a total water area of 1,523 square miles.

⁸In terms of total area, Jackson County is the largest with 1,043 square miles, 316 of which are water.

⁹U.S. Census Data Set.

¹⁰Mississippi, Secretary of State, *Mississippi: Official and Statistical Register 1992-1996*, by Dick Molpus, (1993), p. 19, 142.

¹¹Tanis J. Salant, "County Governments: An Overview," *Intergovernmental Perspective* (Winter 1991): 6.

¹²Blake R. Jeffery, Tanis J. Salant, and Alan L. Boroshok, *County Government Structure: A State by State Report* (Washington, D.C.: National Association of Counties, 1989), p. 2.

¹³*Ibid.*, p. 66.

county form of government in the United States goes back centuries further to Medieval times and an area that was to become the nation of England.

THE DEVELOPMENT OF COUNTY GOVERNMENT IN THE UNITED STATES

Similar to the present arrangement, the American county of the past served as a very important unit of local government positioned between town or municipal governments and the state government. Its historical roots extend deeply into the Colonial Era where most of its uniquely American features originated.

The American form of county government was adapted from the older British model in which the county served both as a local government and an administrative division for the national government.¹⁴ The British model dates back to AD 603 when the territory that is now England was divided into cities and counties called *boroughs* and *shires*, respectively. Because the king or queen appointed the government officials in a shire, these local governments became important tools of the national government.¹⁵ Some unique features and offices (such as the grand jury and the offices of sheriff, coroner, and justice of the peace) of the British model dating back to these Anglo-Saxon times are still found in many American counties.¹⁶

The Colonial Era brought about four major systems or styles of rural local government to the developing United States: the New England town, the commissioner system, the town-supervisor, and the southern county. All originating in England, these four systems were modified to meet the unique needs, rugged environment, and rapidly-growing settlements of the Colonies. The southern county system, adopted primarily in the South where it was generally called the “Virginia Plan,” proved to be the one patterned most like the traditional English system.¹⁷

The Virginia Plan or a similar arrangement was adopted throughout most of the Southern states. Under this system and in rural areas the county became the basic unit of local government and functioned as an arm of the state.¹⁸ Governmental functions were under the control of the county court composed of justices of the peace. Besides its regular judicial duties, the responsibility of

¹⁴Victor S. DeSantis, *The Municipal Year Book 1989* (Washington, D.C.: International City Management Association, 1989), p. 55; Salant, “County Governments: An Overview,” p. 5.

¹⁵Jeffery, Salant, and Boroshok, *County Government Structure: A State by State Report*, p. 1.

¹⁶Paul W. Wager, ed., *County Government Across the Nation* (Chapel Hill: University of North Carolina Press, 1950), p. 5.

¹⁷*Ibid.*, p. 5-6.

¹⁸Salant, “County Governments: An Overview,” p. 5.

this court included levying taxes, appropriating money, and overseeing county affairs. In many of these early counties, officers were appointed by the governor or another state official. Over the years and following the example of Arkansas' 1836 state constitution, most of these offices became elective rather than appointive.¹⁹

In the United States, all functioning county governments are administered by a locally-elected executive body. Most of these executive bodies contain three to five members; however, the number varies across and sometimes within the states. Although the titles of these executive bodies vary, "board of commissioners" and "board of supervisors" are the most common designations.²⁰ In Mississippi by constitutional prescription, the county's executive body is known as the board of supervisors and contains five locally elected members:

Each county shall be divided into five districts, a resident freeholder of each district shall be selected, in the manner prescribed by law, and the five so chosen shall constitute the board of supervisors of the county, a majority of whom may transact business.²¹

A BRIEF MISSISSIPPI HISTORY

Long before a single county government existed in the land of the Anglo-Saxons, people were living in Mississippi who would influence the region for thousands of years to come. These people, called Indians by the European explorers, enriched Mississippi's history and supplied many of the names that were given to counties, cities, and rivers within the State. Even the name *Mississippi* came from the local Indians who called the land *Misi sipi* meaning "Father of Waters."

When European explorers first arrived in the region of *Misi sipi*, the people living there were of three major tribes and several smaller bands. The major tribes were the Natchez, the Choctaw, and the Chickasaw. It has been estimated that in the year 1700 these three tribes and the smaller bands had a total population of around 30,000. The Choctaws were the largest tribe with a population of somewhere between 5,000 and 10,000 at this time. The Alabamas, a smaller band living in what is now north-central Mississippi about the time the first European explorers arrived, later migrated eastward and settled in the present state of Alabama.²²

The first known European explorers to enter Mississippi were Spanish. Hernando DeSoto, the

¹⁹Wager, *County Government Across the Nation*, p. 344-45.

²⁰Salant, "County Governments: An Overview," p. 6.

²¹Mississippi, *Constitution*, art. 6, sec. 170. (Hereinafter cited as *Const.*, §)

²²John K. Betterworth, *Mississippi Yesterday and Today*, (Austin, TX: Steck-Vaughn Company, 1964), p. 2, 21.

first Spanish *conquistador* to set foot in Mississippi, came in 1540 and became the first recorded European to see the Mississippi River. However, it was the French who, over 200 years after Columbus “discovered” the New World, established the earliest colonial settlements in the region.²³

The first French explorers were led by Robert Cavelier de La Salle and arrived in Mississippi around 1682. La Salle claimed the entire Mississippi Valley for the King of France in March of that year. Seventeen years later in 1699, Frenchman Pierre le Moyne d’Iberville established the first European colony in Mississippi and built *Fort Maurepas* near the site of present-day Ocean Springs in Jackson County. The settlement was called Biloxi after the friendly Biloxi Indians of the area.²⁴

Other settlements began to spring up as more explorers arrived. In 1716, d’Iberville’s brother, Jean Baptiste le Moyne de Bienville, who had participated in the 1699 expedition that established the Biloxi colony, traveled up the Mississippi River to the present site of Natchez in Adams County. There he set up an important outpost named *Fort Rosalie*, and was later commissioned Governor of French Louisiana. Part of this territory was later to become the Mississippi Territory.²⁵

After the French and Indian War (1755-1763), French Louisiana was divided between Spain and England. England received the land east of the Mississippi River, including much of the territory that was to become the State of Mississippi. The English called this region British West Florida. Spain gained New Orleans and all French territory west of the Mississippi River. In 1779, during the American War for Independence, Spain seized control of British West Florida. About fifteen years later, under the Treaty of San Lorenzo in 1795, Spain gave up its land north of the 31st parallel to the new United States government. In 1798, the Spanish left Natchez, and Natchez became the capital of the newly formed Mississippi Territory.²⁶

The U.S. Congress officially designated the region as the Mississippi Territory on April 7, 1798. Congress enlarged the Territory in 1804 and again in 1812 to encompass the land areas of the present States of Mississippi and Alabama. At this time, the greatest population concentration was in the western portion (Adams County area) of the Territory. It was in this area that the first Mississippi counties of Adams and Pickering were established in 1799. These two counties had essentially identical forms of government, court systems, and political offices. The following

²³Ibid., p. 37-46.

²⁴Ibid., p. 37-46; Mississippi, Secretary of State, *Mississippi Official and Statistical Register 1988-1992*, by Dick Molpus, (1989), p. 19.

²⁵Mississippi, Secretary of State, *Mississippi Official and Statistical Register 1988-1992*, p. 19.

²⁶Ibid., p. 19-20.

year, on June 4, 1800, the third county, Washington County, was established.²⁷

Several weeks before the creation of Washington County, on May 10, 1800, the U.S. Congress authorized the Mississippi Territory to elect a general assembly. The resulting Territorial Legislature first convened on September 22, 1800. During their second session, the Legislature altered the three existing counties' boundaries, changed the name of Pickering County to Jefferson County, and created two more counties. Over the next decade, other counties were added as the Territory's non-Indian population increased to 40,000 by 1810. In creating a new county, either a large county was divided to form two smaller counties or a recently-populated area was incorporated into a new county. By 1816, the southwestern portion of the Mississippi Territory contained fourteen counties. By this time, many of these county residents were eager for the Territory to be admitted to the Union as the State of Mississippi.²⁸

The first stage in the quest for statehood began on December 27, 1814 when the Territorial Legislature approved a petition to the U.S. Congress for permission to hold a constitutional convention. This request was submitted to Congress on January 21, 1815 and sought approval to hold a constitutional convention and to draft a constitution suitable for admission of a new state into the Union. On March 1, 1817, after Congress passed and President James Monroe signed an enabling act, the Mississippi Territory was authorized to hold a constitutional convention, to adopt a constitution, and to set the boundaries for the proposed State of Mississippi. The enabling act also reorganized the eastern portion of the Territory as the Alabama Territory.²⁹

The rationale behind splitting the Territory into two states was an attempt by Southern congressmen to strengthen the region's position in the U.S. Senate.³⁰ Thus Congress divided the Territory into two pieces in 1817 and authorized the western section to seek statehood first.³¹

Accordingly, in July 1817, the forty-eight elected delegates met in a Methodist church for Mississippi's first constitutional convention. The convention, held in the town of Washington in Adams County, lasted for six weeks and produced an eighteen-page constitution that was adopted on August 15, 1817. Congress approved the constitution and on December 10, 1817

²⁷Bryan, "County Government and Administration in Mississippi," p. 6-7, 10, 13.

²⁸Ibid., p. 15; Robert B. Highsaw and Charles N. Fortenberry, *The Government and Administration of Mississippi* (New York: Thomas Y. Crowell Company, 1954), p. 1.

²⁹Bryan, "County Government and Administration in Mississippi," p. 16-18; Tip H. Allen, Jr., "The Enduring Traditions of the State Constitutions," in *Mississippi Government and Politics: Modernizers Versus Traditionalists*, Politics and Governments of the American States, Dale Krane and Stephen D Shaffer (Lincoln: University of Nebraska Press, 1992), p. 44.

³⁰Allen, "The Enduring Traditions of the State Constitutions," p. 43-44.

³¹Highsaw and Fortenberry, *The Government and Administration of Mississippi*, p. 1.

formally admitted the State of Mississippi as the twentieth state of the Union. (Mississippi escaped being named Washington by a mere six votes in the 1817 constitutional convention.)³² Two years after Mississippi's statehood, on December 14, 1819, Congress admitted the eastern portion of the Territory to the Union as the twenty-second state, the State of Alabama.

Natchez, capital of the Mississippi Territory, became a temporary capital under statehood. In 1822, the Mississippi Legislature designated the city of Jackson as the state's new capital. The capital city, named in honor of General Andrew Jackson, overlooks the Pearl River on a site once known as LeFleur's Bluff.³³

After statehood was achieved, Mississippi experienced rapid population growth and economic development. With the introduction of a superior Mexican variety, cotton soon became the state's primary crop. High cotton prices coupled with inexpensive land and good harvests caused enormous economic expansion in Mississippi.³⁴ This change brought calls to overhaul or replace the 1817 state constitution to make it more suitable for business. In December of 1830, the Legislature submitted to the voters the question of whether to call a state constitutional convention. The vote occurred in August 1831 and authorized a second constitutional convention to be convened. The convention began in September 1832 and by the middle of the next month (October 16, 1832) had completed its work. The electorate ratified the new constitution that year.³⁵

The 1850s have been called the "Golden Age of the Cotton Kingdom" and were made possible largely by the agricultural development of the Mississippi Delta. During this time, Mississippi was known as one of the wealthiest states in the nation; however, this period was short-lived as "North and South" tensions strained to the breaking point. On January 9, 1861, Mississippi became the second state to secede from the Union.³⁶

Mississippi was a totally independent state for nearly three months before joining the Confederate States of America on March 29, 1861. Jefferson Davis, a Mississippian, was elected President of the Confederacy. Mississippi became heavily involved in the ensuing War Between the States. Of the 78,000 Mississippi soldiers who fought for the Confederacy, over

³²Bryan, "County Government and Administration in Mississippi," p. 16-18; Allen, "The Enduring Traditions of the State Constitutions," p. 44.

³³Mississippi, Secretary of State, *Mississippi Official and Statistical Register 1988-1992*, p. 20.

³⁴*Ibid.*, p. 20.

³⁵Bryan, "County Government and Administration in Mississippi," p. 22.

³⁶Mississippi, Secretary of State, *Mississippi Official and Statistical Register 1988-1992*, p. 20.

59,000 were killed or wounded. Many battles were fought in the state and when the War finally ended, Mississippi was deeply impoverished and the economy was in shambles.³⁷

After the War and during the later Reconstruction Era (1870-1876) there was much upheaval as Mississippians tried to return to their normal lives. Readmitted February 23, 1870, Mississippi became the first Confederate state to return to the Union.³⁸ Taxes were high and moods were low for many during this time. However, able leaders, some of whom were recently-freed black Mississippians, made the transition period more bearable. For example, in 1870, Mississippi sent Hiram Rhodes Revels to the U.S. Senate as the first black Senator in the nation. In 1875, another black Senator, Blanche K. Bruce, was elected. In the Mississippi Legislature, a former slave, John R. Lynch became Speaker of the House before he was later elected to two terms in the U.S. House of Representatives.³⁹

CONSTITUTIONAL DEVELOPMENT OF THE MISSISSIPPI COUNTY

After the War Between the States (1861-1865), Mississippi called two more constitutional conventions: one in 1869 and one in 1890. The *Constitution* that was adopted in 1890, although substantially amended, is still in effect today.

In Mississippi, the county governing body, or board of supervisors as it is called today, is officially part of the judicial branch of government. Historically, such a structure has always existed in the state. The first *Constitution* (1817) established this model and it was continued in all three later *Constitutions* (1832, 1869, and 1890). The judicial branch was seen as an appropriate home for this county governing body since its predecessor was the probate court that was sanctioned by the *1817 Constitution* and empowered with police and certain administrative powers. The *1832 Constitution* established a five-member board of police elected for two year terms to serve as the county governing body. This board's jurisdiction, in addition to police powers, was later expanded to include managing highways, roads, ferries, and bridges, and ordering elections to fill vacancies in county offices.⁴⁰

The *Mississippi Constitution of 1869* was the state's first to mandate a five-member board of supervisors elected by district for two year terms. This board, replacing the previous board of

³⁷Ibid., p. 20.

³⁸John W. Winkle III, *The Mississippi State Constitution: A Reference Guide*. Reference Guides to the State Constitutions of the United States, no. 12 (Westport, CT: Greenwood Press, 1993), p. 8.

³⁹Ibid., p. 21.

⁴⁰Dana B. Brammer, *A Manual for Mississippi County Supervisors*, 2nd ed. County Government Series, no. 10 (University, MS: Bureau of Governmental Research, University of Mississippi, 1973), p. 8.

police, was similarly authorized to manage roads, bridges, and ferries, as well as order elections to fill county office vacancies. Additionally, the board of supervisors was mandated to perform other duties as defined by the state Legislature.⁴¹

In Article 6, Section 120, the *1890 Constitution* continued this prescription for a five-member board of supervisors elected by district. As in the preceding *Constitutions*, the *1890 Constitution* also placed this provision under the article dealing with the state's judicial functions. However, according to the Mississippi Supreme Court, the county board of supervisors is not limited to simply performing judicial functions. The board is recognized as possessing mixed duties containing functions that are partly executive, legislative, and judicial in nature.⁴² These mixed duties are discussed in Chapter III which covers the powers and duties of a supervisor.

The *1890 Constitution* also addressed the issue of county creation. As of 1890, there were 75 counties in existence. After the adoption of this *Constitution*, only seven more counties were created. Humphreys County, created in 1918, was the last of these seven bringing the statewide total to its current 82.⁴³

To create a new county, Article 14, Section 260 of the *Constitution* requires an election in which a majority of the qualified electors from the affected area approve of the county's creation. Such an election cannot be held in that area more often than once every four years. Additionally, any new county must be at least 400 square miles in size and no existing county can be reduced below that size.

Even though no new counties have been created in Mississippi for over 80 years now, the historical and constitutional development of the county in Mississippi continues. Each session of the Legislature adds something new to the legal framework in which county governments operate. Each county election brings new faces and change to the boards of supervisors and county offices throughout the state. However, in spite of frequent change, county government leaders can be confident in the strength and durability of the county form of government as it has been developed over many centuries. Armed with this confidence, they can then build on this sound legal and constitutional foundation and make their county government excel.

⁴¹Ibid., p. 9; Mississippi, *Constitution* (1869), art. 6, sec. 20-21.

⁴²*Ex parte Fritz*, 86 Miss. 210, (1905); Brammer, *A Manual for Mississippi County Supervisors*, p. 9.

⁴³Higsaw and Fortenberry, *The Government and Administration of Mississippi*, p. 345-46.