Fall 1971

Special Service Districts in a City-County Consolidation: Conflict Between Metropolitan Reform and "One Man-One Vote" in Indianapolis-Marion County

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Recommended Citation
Huston, Michael J. (1971) "Special Service Districts in a City-County Consolidation: Conflict Between Metropolitan Reform and "One Man-One Vote" in Indianapolis-Marion County," Indiana Law Journal: Vol. 47 : Iss. 1 , Article 5.
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RECENT DEVELOPMENTS
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SPECIAL SERVICE DISTRICTS IN A CITY-COUNTY
CONSOLIDATION: CONFLICT BETWEEN METROPOLITAN
REFORM AND "ONE MAN-ONE VOTE" IN INDIANAPOLIS-
MARION COUNTY

In 1969 the Indiana General Assembly enacted the Consolidated
First Class Cities and Counties Act, commonly referred to as the
UNI-GOV act. This statute provides that in any county in Indiana "in
which there is one (1) but not more than one city of the first class and no
city of the second class" a consolidated city shall be formed as a
separate municipal body corporate, merging the first class city into the
consolidated city. Since only Marion County satisfied these require-
ments, application of the UNI-GOV Act was limited to it. On January
1, 1970 Indianapolis and Marion County became one consolidated city.

CONSTITUTIONAL PROBLEMS RAISED BY "SPECIAL SERVICE DISTRICTS"
UNDER UNI-GOV

The UNI-GOV Act represents an attempt to create a political unit

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1. IND. CODE §§ 18-4-1-1 to 18-4-5-4 (1971), IND. ANN. STAT. §§ 48-9101 to
2. IND. CODE § 18-4-1-2(b) (1971), IND. ANN. STAT. § 48-9102(b) (Supp. 1970).
3. "Consolidated City" shall be a body corporate, created by this act, and
   including within its boundaries all of the territory of a first class city and
   of the county, except for the territory located in excluded cities; Provided,
   however, That certain departments and special taxing districts of the con-
   solidated city may have jurisdiction as provided in this act in territory
greater or less than such territorial boundaries. The consolidated city shall be
a city and shall be a city of the first class within the meaning of all laws of
the state.
5. In Dortch v. Lugar, —Ind.—, 266 N.E.2d 25 (1971), the Indiana Supreme Court
   held that the UNI-GOV Act did not violate the provisions of the Indiana Constitu-
tion prohibiting special laws. The court stated:
   The fact that the Act was drafted with Indianapolis and Marion County
in the minds of the legislators, a fact of which we take judicial cognizance,
does not, of itself, put it without the constitutional provisions of Art. 4,
§§ 22 and 23, there being sufficient legislative reason to distinguish on the
basis of population, and there being provision made for the application of
the Act to all counties that should so qualify.
   Id. at —, 266 N.E.2d at 32.
capable of utilizing the resources of an entire metropolitan area for common planning and solution of area-wide problems. It is only the third such attempt in this country. Unlike its predecessors, however, the UNI-GOV Act raises serious constitutional issues insofar as it fails to consolidate all of the governmental functions of the city and county. Exemplary of this failing is the Act’s exclusion from the consolidated city of “any city other than a first class city in the county and any town in the county having a population in excess of 5,000 inhabitants according to the last preceding United States decennial census,” and its failure to consolidate the existing city and county school districts, law

7. See Richardson, Decentralization of Metropolitan Government: Reform in Indianapolis, 4 J.L. Reform 311 (1970).

8. The first major city-county consolidation occurred in 1963 when the governments of Nashville and Davidson County, Tennessee were merged. Services such as health, welfare, police, assessment, hospital, parks and recreation are provided by the metropolitan government to the entire county and are supported by the taxes paid by all the residents of the county. Additional services such as street cleaning and lighting, refuse collection and fire protection are provided in the urban services district, which encompasses the area of pre-consolidation Nashville. The residents of the urban services district pay an additional tax to support the additional services they receive. In Frazer v. Carr, 210 Tenn. 565, 360 S.W.2d 449 (1962), the Tennessee Supreme Court upheld the constitutionality of the dual taxation provisions of the consolidation. See generally D. Boote, Metropolitics: The Nashville Consolidation (1963); H. Duncombe, County Government in America 195-213 (1966); B. Hawkins, Nashville Metro: The Politics of City County Consolidation (1966); R. Martin, Metropolis in Transition (1963); Lineberry, Reforming Metropolitan Governance: Requiem or Reality, 58 Geo. L.J. 675 (1970).

The second important city-county consolidation was the 1967 merger of Jacksonville and Duval County, Florida. This consolidation followed the same pattern as the Nashville-Davidson County consolidation and established a general service district which encompassed the whole county as well as five separate urban service districts for the five municipalities in the county. See generally R. Martin, Consolidation: Jacksonville and Duval County (1968); Lineberry, supra.

9. IND. CODE § 18-4-1-2(d) (1971), IND. ANN. STAT. § 48-9102(d) (Supp. 1970). The cities of Beech Grove and Lawrence and the town of Speedway City are excluded from the consolidated city even though they are located entirely within Marion County. For a discussion of the voting rights of citizens of these municipalities, see text accompanying note 55 infra.

10. IND. CODE § 18-4-3-14 (1971), IND. ANN. STAT. § 48-9213 (Supp. 1970). In United States v. Board of School Comm’rs, —F. Supp.—, 26 Ind. Dec. 527 (S.D. Ind., Aug. 18, 1971), where the district court held that the Indianapolis School Board had failed to desegregate its school system effectively, the failure to consolidate the city and county school corporations came into issue. The court concluded that the effect of the failure to consolidate the school corporations into one metropolitan school corporation may have been to retard desegregation. The court ordered the plaintiff to join all the interested school corporations so that the following questions could be litigated.


2. If the answer to Question 1 is in the affirmative, did the passage of the UNI-GOV Act automatically extend the boundaries of the School City coterminous with the boundaries of the Civil City, as provided generally by Indiana law?
enforcement agencies$^{11}$ and fire departments.$^{12}$

In lieu of consolidating the police and fire departments of the city and county, the Act provides for the creation of "special service districts," initially coterminous with the limits of pre-consolidation Indianapolis.$^{13}$

3. If both of the foregoing questions are answered in the affirmative, are Lawrence, Beech Grove, and Speedway City presently under the jurisdiction of the defendant Board, or does UNI-GOV merely have the effect of annexing the eight township school corporations?

4. Regardless of the answer to the first three questions, should the General Assembly, by appropriate legislation, provide for the creation of a metropolitan school district embracing all of Marion County, together with all or some substantial part of the other counties going to comprise the Indianapolis Metropolitan Statistical Area, in order to purge the State of its role in contributing to de jure segregation in the Indianapolis School System?

5. If the answer to Question 4 is in the affirmative, and the General Assembly fails to act within a reasonable time, or in a reasonable way, does this Court have the power to create such a metropolitan school district by judicial decree?

Id. at —, 26 Ind. Dec. at 561 (footnotes omitted). The court questioned whether there may be an analogy between the court's power in desegregation and apportionment cases, since both arise under the equal protection clause. Since the court may order redistricting for apportionment, it may be that a court could do likewise to effect desegregation. If either the legislature or the court were to create a metropolitan school district, it would be consistent with the over-all consolidation purpose of the UNI-GOV Act even though it would surely meet with strong opposition from many citizens of the consolidated city.

11. The police division of the department shall be known as the Consolidated City Police Force of —. The authority and jurisdiction of such consolidated city police force shall extend throughout the territory of the police special service district, as the same may exist from time to time, and the sheriff and the sheriff's department of the county shall continue to have the same authority and jurisdiction as presently exists for the sheriff of such county until such police special service district is extended as provided in section 1208 of this article...


12. The fire division of the department shall be known as the Consolidated City Fire Force of —. The authority and jurisdiction of such consolidated city fire force shall extend throughout the territory of the fire special service district, as the same may exist from time to time, and the township trustee of townships within the consolidated city but outside the fire special service district, shall continue to have the same authority and jurisdiction relating to fire protection as presently exists for the trustee of such township.


13. "Police Special Service District" shall mean a special service district in which the consolidated city police force created under this article shall have jurisdiction. At the effective date of this act such police special service district shall be coterminous with the boundaries of the the first class city as the same existed on the day preceding the effective date of this act...

IND. CODE § 18-4-12-6(b) (1971), IND. ANN. STAT. § 48-9406(b) (Supp. 1970).

"Fire Special Service District" shall mean a special service district in which the consolidated city fire force created under this article shall have jurisdiction. At the effective date of this article, such fire special service district shall be coterminous with the boundaries of the first class city as the same shall have existed on the day preceding the effective date of this
The jurisdiction of the consolidated city's police and fire departments is limited to the area of these districts. The Act further authorizes the city-county council to expand the districts to include any additional portion of the consolidated city. The city-county council has not yet acted to expand the districts.

The exclusive power to approve the special service district's budget, make appropriations and levy taxes on the property within the district is vested in a special service district council. Membership on the council is limited to those members of the city-county council representing: (1) single electoral districts, at least half of whose population resides within the special service district; or (2) the county at-large electoral district, provided sixty per cent of the population of the county resides within that special service district.

The effect of this scheme for determining membership on these governing bodies is to permit the taxation without representation of certain persons residing in special service districts, while affording representation without taxation to some non-residents of those districts. This anamoly results from the fact that a voter whose special service district contains less than half the population of his electoral district is not entitled to representation on the special service district council, the unit of government authorized to tax his property. On the other hand, a voter whose electoral district contains fifty per cent or more of the population of a special service district has representation on that district's council even if he lives outside its boundaries so that his property is not subject to taxation by that council. Furthermore, any resident of a special service district is subject to disfranchisement if the population of the electoral district in which he lives shifts so that less than half of the resultant population


14. See notes 11-12 supra.

15. IND. CODE §§ 18-4-12-8, 18-4-12-36 (1971), IND. ANN. STAT. §§ 48-9408, 48-9443 (Supp. 1970). The police and fire special service districts may be expanded to include any or all of the territory outside the present limits of the district but still within the limits of the consolidated city, provided the city-county council determines that reasonable and adequate police or fire protection can be provided in the expanded area and that the extension of the boundaries of the special service district is in the public interest of the citizens of the consolidated city. The "excluded cities and towns" (note 9 supra) may become part of the police special service district; however, there is no provision allowing the excluded cities and towns to become part of the fire special service district.


resides in the special service district. The obvious question is whether such a scheme can meet the one man-one vote standard of the equal, protection clause.

**One Man-One Vote and the Special Service District Councils**

The United States Supreme Court has unequivocally held that the one man-one vote standard is applicable to municipal elections:

> [A]s a general rule, whenever a state or local government decides to select persons by popular elections to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as practicable, that equal numbers of voters can vote for proportionally equal numbers of officials.

Thus, in order to test the constitutional validity of the UNI-GOV scheme for determining membership on special service district councils, three questions must be answered: (1) Are the members of the special service district councils selected by “popular election”? (2) Do the members of the special service district councils “perform governmental functions”?

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20. The problem of determining what constitute governmental functions for local appointment purposes plagued the Court for about three years. *Sailors v. Board of Educ.*, 387 U.S. 105 (1967), introduced the confusion by classifying the functions of a local school board as essentially administrative rather than legislative and refusing to require reapportionment. The board had the power to appoint a county school superintendent, prepare an annual budget, levy taxes, distribute delinquent taxes and transfer areas from one school district to another, in addition to its function of supervising the services of the county schools. After *Sailors* it was thought that the one man-one vote principle would only be applied where the elected body performed legislative functions.

However, in *Avery v. Midland County*, 390 U.S. 474 (1968), the first case to apply the one man-one vote principle to the election of local officials, the Court applied the principle despite an assertion that the functions of the defendant county commissioners were not sufficiently legislative. The commissioners had the power to establish a courthouse and jail, appoint numerous minor officials, fill vacancies in the county offices, let contracts in the name of the county, administer the county’s public welfare services, set the county tax rate, serve as a board of equalization for the tax assessments and build roads and bridges. As the governing body of the county, it also had authority to build and run a hospital, an airport and libraries, as well as fixing the boundaries of the school districts within the county. The Court based its decision on the fact that the officials in question had the “power to make a large number of decisions having a broad range of impacts on all of the citizens of the county.” *Id.* at 483.
(3) Are the members of the special district councils elected from districts “established on a basis that will insure, as far as practicable, that equal numbers of voters can vote for proportionally equal numbers of officials”?

As to the first question, the one man-one vote principle has been applied exclusively to the election, rather than the appointment, of public officials. This fact was demonstrated in *Sailors v. Board of Education*,21 where the Supreme Court held that the one man-one vote doctrine was not applicable when the method of selection was basically appointive. The Court said:

[T]he choice of members of the county school board did not involve an election and since none was required for these non-legislative offices, the principle of “one man, one vote” has no relevancy.22

In *Sailors*, members of local school district boards were elected by popular vote of the citizens of the respective districts. Thereafter, each local board sent one delegate to a meeting at which the five members of the county board of education were selected. Since each of the local school boards had equal unit representation despite the widely varying populations of their representative districts, the plaintiff contended that the system of choosing the members of the county board violated the principle of one man-one vote. In a footnote, the Court found that this procedure did not constitute a popular election:

It is evident, therefore, that the membership of the county

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22. Id. at 111.
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board is not determined, directly or indirectly, through an election in which the citizens of the county participate. The "electorate" under the Michigan system is composed not of the people of the county, but the delegates from the local school boards.\textsuperscript{23}

In \textit{Hadley v. Junior College District},\textsuperscript{24} the Supreme Court was confronted with a statutory apportionment formula for the popular election of junior college trustees. In explaining its application of the one man-one vote principle, the Court emphasized the presence of a popular election:

\begin{quote}
[A] constant factor is the decision of the government to have citizens participate individually by ballot in the selection of certain people who carry out governmental functions. Thus in the case now before us, while the office of junior college trustee differs in certain respects from those offices considered in prior cases, it is exactly the same in one crucial factor—these officials are elected by popular vote.\textsuperscript{25}
\end{quote}

In \textit{Sailors} the one man-one vote principle was irrelevant because membership on the county board was not determined by an election in which the citizens of the county participated. In \textit{Hadley}, where the officials were chosen through popular election, the Supreme Court applied the one man-one vote principle and invalidated the apportionment formula. From these two rulings it follows that whenever officials are determined, either directly or indirectly, through an election in which all of the citizens of the governed area have a right to participate, there is a popular election, and the one man-one vote principle applies. Any statutory provision, therefore, which obstructs the one man-one vote principle should be invalidated as violative of equal protection.

Under the UNI-GOV Act, determination of membership on special service district councils is basically elective rather than appointive in nature. The Act specifically directs that certain members of the popularly elected city-county council shall also be members of the various special service district councils.\textsuperscript{26} The city-county council, therefore, has no independent authority to appoint members to these various councils. Under the criteria set forth in both \textit{Sailors} and \textit{Hadley}, membership on

\begin{itemize}
\item \textsuperscript{23} \textit{Id.} at 109-10 n. 6.
\item \textsuperscript{24} \textit{397 U.S. 50} (1970).
\item \textsuperscript{25} \textit{Id.} at 54.
\end{itemize}
the special service district councils is determined by popular election.

The requirement that popularly elected officials perform "governmental functions" before one man-one vote applies has posed a continuing problem for the Supreme Court. In light of the cases, however, the test for determining whether the elected body performs governmental functions appears to be: Do the decisions of the elected body have sufficient impact on all the citizens throughout the district governed by that body? Under the amended UNI-GOV Act, the special service district council has exclusive power to adopt the budget, levy taxes and make appropriations. The powers of the special service district council are not as broad as either those of the county commissioners in Avery v. Midland County or of the junior college trustees in Hadley. However, the council's powers are general and have substantial impact throughout the special service district. In Hadley, the Court stated: 

"Education has traditionally been a vital governmental function and these trustees, whose election the State has opened to all qualified voters, are governmental officials in every relevant sense of that term."

Taxation is clearly as traditional a vital governmental function as education. Therefore, since the special service district councilmen have the power of taxation, they must also be considered governmental officials. The decisions made by the special service district council concerning budget and appropriations also have a great impact, since these decisions determine the priority and quality of services performed for the benefit of the district's residents.

Having established that the members of the special service district councils are selected, in the words of Hadley, "by popular elections to perform governmental functions," it now becomes necessary to examine the districts themselves in order to determine whether the districts are "established on a basis that will insure, as far as practicable, that equal numbers of voters can vote for proportionally equal numbers of officials." In other words, does one special service district resident's

27. See note 20 supra.
28. Id.
29. See note 47 infra & text accompanying.
32. See note 20 supra.
33. 397 U.S. at 56.
34. Id.
35. Id.
vote carry as much weight as that of any other?
In *Avery*, the Supreme Court held:

> [T]he Constitution permits no substantial variation from equal population in drawing districts for units of local government having general governmental powers over the entire geographic area served by the body.\textsuperscript{36}

In *Hadley*, the Court again applied the one man-one vote principle to a unit of local government and required substantial equality of population within districts. However, in *Abate v. Mundt*,\textsuperscript{37} the most recent apportionment case involving local government, the Court appeared to relax the population equality standard and approved an apportionment plan which produced a total deviation from population equality of 11.9 per cent.\textsuperscript{38} While finding that the plan contained no indigenous bias tending to favor particular geographic areas or political interests, the *Abate* Court emphasized that its decision was also "based on the long tradition of overlapping function and dual personnel in Rockland County government."\textsuperscript{39} The Court warned, however, that "nothing we say today should be taken to imply that even these factors would justify substantially greater deviations from population equality."\textsuperscript{40}

The UNI-GOV Act requires that single electoral districts be compact in configuration and as equal as practicable in population.\textsuperscript{41} However,

\textsuperscript{36} 390 U.S. at 484-85.
\textsuperscript{37} 403 U.S. 182 (1971).
\textsuperscript{38} The apportionment plan provided for a county legislature composed of 18 members elected from five legislative districts which corresponded exactly to the county’s five constituent towns. Each district was assigned its legislators according to its population in relation to the smallest town or district. The smallest district was assigned one legislator, and the number of legislators assigned to the others was determined by dividing the population of each of the larger districts by the population of the smallest. The fractional results were rounded to the nearest whole number. The plan resulted in one district being over-represented by 4.8 per cent and another under-represented by 7.1 per cent. Therefore, there was a total deviation from population equality of 11.9 per cent.
\textsuperscript{39} 403 U.S. at 187. For more than 100 years the county had been governed by a board of supervisors made up of the supervisors of the five constituent towns in the county. The county board of supervisors had never been separately elected, but rather its members held their offices solely by virtue of their election as town supervisors.
\textsuperscript{40} Id.
\textsuperscript{41} The twenty-five (25) single member council electoral districts provided in section 306 shall have the following characteristics:

1. Be as equal as practicable in population.
2. Be compact in configuration, subject only to natural boundary lines, such as railroads, interstate highways, other major highways, rivers, creeks, parks and major industrial complexes and to the requirement, where practicable, of being located entirely outside or entirely inside a special service district.

under the provisions of the amended UNI-Gov Act, it is possible to have districts which vary 100 per cent from population equality. In order to illustrate this point, assume that each of the single electoral districts has a population of 100,000. For the election of members to the city-county council, these districts meet the population equality standard of *Avery*. However, it is doubtful that they meet the constitutional mandate of *Avery*, as modified by *Abate*, for the election of special service district councilmen. Membership on the special service district council is made up of those members of the city-county council who represent electoral districts in which half or more of the population also resides in the special service district. Each such electoral district is entitled to one representative on the special service district council. Therefore, any single member of the special service district council could represent as few as 50,000 or as many as 100,000 residents of the district. Although *Abate* relaxed the population equality standard applicable in local apportionment cases, it is doubtful whether a potential 100 per cent deviation from population equality could be supported.

The UNI-GOV scheme also seems to violate the spirit and policy of the apportionment decisions of the Supreme Court. In speaking of the apportionment cases, the *Hadley* Court said:

The consistent theme of those decisions is that the right to vote in an election is protected by the United States Constitution against dilution or debasement.

The Court’s decisions reflect the general policy that each individual should be given equal representation on the elected bodies of government which allocate benefits and burdens among the citizenry. When the votes of both residents and non-residents of special service districts carry equal weight in electing the governing bodies of those districts, the resident’s votes are diluted. Non-residents of special service districts, being unaffected by the benefits and burdens allocated by the elected officials, have no right to special service district representation.

**Decisions under the Original Provisions of the UNI-GOV Act**

The constitutionality of certain provisions of the UNI-GOV Act

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42. All of the same issues discussed in the context of the single electoral districts exist with respect to the at-large districts. However, since the single member districts allow fifty per cent of the voters voting for a special service district councilman to live outside the special service district, while only 40% of an at-large councilman’s constituents may live outside the special service district, the single member district poses the more serious problem. *See* text accompanying note 17 *supra*.

43. *See* text accompanying note 17 *supra*.

44. 397 U.S. at 54.
has been litigated in both state and federal courts. In *Dortch v. Lugar*, the Indiana Supreme Court rejected all constitutional challenges to the UNI-GOV Act. However, in *Bryant v. Whitcomb* the District Court for the Southern District of Indiana found that the UNI-GOV Act did contain unconstitutional provisions relating to the composition and limited authority of the special service district councils. In 1971 the General Assembly amended the UNI-GOV Act in an effort to cure the constitutional defects noted in *Bryant*. It is doubtful whether the amended provisions effectively cure the defects noted in *Bryant*.

In *Bryant*, the court construed the original UNI-GOV Act so as to exclude the four at-large city-county councilmen from membership on special service district councils. The court found that while the statute appeared to allow the four at-large councilmen to be members of the special service district councils, such a construction “would raise serious constitutional issues since approximately forty per cent of the voters for such councilmen would reside outside the special service districts.” Therefore, construing the statute to exclude the four at-large city-county councilmen was necessary to avoid placing “a construction on a statute that would impute to a legislative body an intent to enact legislation contravening constitutional principles.” The court also warned that provision would have to be made to limit the eligibility of members of the city-county council elected from single electoral districts, since “even a small enlargement of a special service district might have the effect of placing the entire city-county council on the special service district council.” The court’s recommendation for such a provision was also

45. —Ind., 266 N.E.2d 25 (1971).
48. A “special service district council” shall be comprised of the members of the city-county council elected from all those districts which encompass any part of a special service district.
49. The electoral district from which the at-large councilmen are elected encompasses the entire special service district. The statute only required that the electoral district contain a part of the special service district in order for a city-county councilman to qualify as a special service district councilman.
50. Slipsheet at 10.
51. Id.
52. Id. at 11. The special service district theoretically could have been expanded so that each of the twenty-five single electoral districts would encompass at least a part of the special service district. In that situation, all the members of the city-county council would have become members of the special service district council, since the
prompted by the fact that non-residents of the special service district were able to vote for members of the district council. Noting that all the constitutional defects could be cured by proper implementation of the existing statutes or by other means, the court did not enter a final judgment but retained jurisdiction of the case until the defects noted were resolved.

It is difficult to understand how the amended provision of the UNI-GOV Act concerning the composition of the special service district councils cures the defect noted in *Bryant*. The district court was concerned with the constitutionality of a scheme whereby approximately forty per cent of the voters for a special service district councilman might live outside the district. Nevertheless, the amended provision specifically authorizes membership on special service district councils by representatives of an at-large district in which forty per cent of the voters reside outside the special service district. Furthermore, membership is also authorized for representatives of single electoral districts in which at least fifty percent of the population resides outside the special service district.

The only plausible explanation for such apparent disregard of the districts from which they were elected would encompass "any part" of the special service district.

53. The court also held that the statutory limitation on the authority of the special service district council was unconstitutional as a substantial dilution of the voting rights of those citizens who resided in the special service district. The original Act provided that the sole function of the special service district council was "to approve its budget and make [specified] appropriations and tax levies". The court reasoned that a combination of the city-county council consisting of the nine or ten members elected from the districts outside the special service district, the four at-large members and only one or two of the members elected from districts entirely within the special service district could overrule the vote of the city-county councilmen actually representing the citizens of the special service district on such vital functions as police, fire, redevelopment and housing, for these were functions left to the city-county council.

The amended statute would appear to cure this defect. It gives the special service district council power to reject any ordinance adopted by the city-county council which relates solely or exclusively to the special service district, if the Constitution of the United States or of the State of Indiana so requires. However, implementation of the amended provision raises such questions as: (1) Who determines when the United States Constitution or the Indiana Constitution requires the approval of the ordinance before it can become effective? (2) When is the determination to be made? Unlike the provision concerning the composition of the special service district council, which can be attacked on its face, the provision concerning the authority of the council will require implementation before any constitutional issues can be raised.

54. After a careful analysis of the Act and the federal constitutional questions presented, the Court finds that the Act does contain unconstitutional provisions. However, each of the defects noted can be cured by implementation or other means as pointed out later in this opinion.

Slipsheet at 2.
district court's warning may lie in possible reliance by the General Assembly on the Indiana Supreme Court's decision in Dortch. The Dortch decision held that the statutory provisions whereby the mayor and at-large city councilmen are elected by all the voters of the county, including those living in the "excluded cities,"86 did not cause a substantial dilution of the vote of the citizens of the consolidated city. Relying upon the Avery rationale, the court found that the citizens of the "excluded cities" were entitled to vote for the officers of the consolidated city because a substantial number of the decisions and actions of those officials affected them, though perhaps to a lesser extent than they affected actual residents of the consolidated city.86 The court also based its decision upon the fact that residents of the "excluded cities" presently were or could be brought within the jurisdiction of the consolidated city for certain matters. Since Dortch was decided nearly a year after Bryant and immediately before the adoption of the 1971 amendments,87 it is possible that the legislators believed that the Dortch rationale overcame the warnings of Bryant.

However, there are several reasons why the rationale of Dortch should not be applied to the special service districts. While some of the decisions and actions of the consolidated city's officials may affect residents of the "excluded cities," the decisions and actions of a special service district council can only affect residents of that district. This point may be illustrated by focusing on the police special service district, although the same arguments could be made concerning the other districts. Persons living outside the police special service district are not within the jurisdiction of that district for any matter. The statute specifically limits the jurisdiction of the consolidated city police force to the territory of the

56. The court analyzed the provisions of the UNI-GOV Act relating to the creation, organization and powers of the Department of Public Works in determining that the citizens of the "excluded cities" are constituents of the consolidated city insofar as they are affected by the decisions and actions of the officials of the consolidated city. The court found that several of the boards and departments within the Department of Public Works had jurisdiction over the entire county. The County Drainage Board, the Department of Flood Control and the Board of Flood Control Commissioners were determined to have county-wide jurisdiction. Also, the Board of Public Works has county-wide jurisdiction over air pollution matters. However, many of the provisions of the UNI-GOV Act concerning the Department of Public Works, such as the functions of the Board of Public Works of the First Class City and the Board of Safety (with respect to the City Market) have no significance outside the limits of the consolidated city.
57. Bryant was decided Feb. 3, 1970. Dortch was decided Jan. 26, 1971, and the amendments were approved Apr. 16, 1971. The amendments became effective May 1, 1971.
district and vests sole authority for that portion of the county outside the
district for that portion of the county outside the
police special service district in the sheriff's department.\(^8\) Therefore,
county residents living outside the police special service district receive
none of the benefits of the consolidated city police force. Furthermore,
persons living outside the police special service district bear none of the
burden of supporting police activities within the police special service dis-

\(\text{\textsuperscript{8}}\) Thus, the reliance in \textit{Dortch} upon the fact that residents of “excluded cities” are
affected by decisions and actions of the officials of the consolidated city is
not applicable to non-residents of special service districts.

Reliance upon possible future expansion of the police special service
district is similarly unwarranted. The fact that a citizen may at a later
date become subject to the jurisdiction of a special service district should
not entitle that individual to vote for officials who are presently making
decisions which affect only persons now residing within the district. In
the meantime, he is represented on the city-county council, the unit with
authority to extend the special service district boundaries so as to bring
him within its jurisdiction.

\section*{Conclusion}

Within the terms of \textit{Sailors} and \textit{Hadley}, the special service district
council members are officials selected by popular election to perform
governmental functions. The districts from which they are elected must,
therefore, be drawn so that one special service district resident's vote is
given as much weight as that of any other. However, under the amended
 provision of the UNI-GOV Act it is possible that the electoral districts
from which the special service district councilmen are chosen may vary
100 per cent from effective population equality. The United States
Supreme Court has never approved an apportionment plan allowing for
such a great population variance between equally represented districts.
Not only does the amended provision appear to violate the Supreme
Court's ruling concerning local governmental apportionment schemes,
but it also violates the warnings issued by the district court in \textit{Bryant}
by specifically authorizing an apportionment scheme that can only serve
to “impute to a legislative body an intent to enact legislation contravening
constitutional principles.”\(^6\)

There are several possible solutions to the problem raised by the

\(\text{\textsuperscript{58}}\) \textbf{IND. CODE} \S 18-4-12-7 (1971), \textbf{IND. ANN. STAT.} \S 48-9407 (Supp. 1970).
\(\text{\textsuperscript{59}}\) \textit{See} text accompanying note 16 \textit{supra}.
\(\text{\textsuperscript{60}}\) \textit{Slipsheet} at 10.
statutory scheme for membership on the special service district councils. Probably the simplest solution would be for the city-county council to extend the boundaries of the special service districts to make them coterminous with the boundaries of the consolidated city. The electoral districts, which are currently satisfactory for the election of city-county council members, would then be equally satisfactory for the election of special service district council members. The actual effect of such a procedure would be to abolish the special service district council, since the statutes provide that the "service district may be abolished by the director and such district shall become a department of the consolidated city" when the boundaries of the special service district become coterminous with those of the consolidated city. Since the special service district would be abolished, there would be no need for a council. This solution would seem to be the most consistent with the overall purpose of the UNI-GOV Act—the consolidation of city and county governmental functions.

The statutory provision requiring that single electoral districts be as equal in population and as compact in configuration as possible affords another possible solution, since it provides that such districts should be "subject . . . to the requirement, where practicable, of being located entirely outside or entirely inside a special service district." If all the single electoral districts were so drawn, there would be no variation from effective population equality among the districts. The amended provision of the UNI-GOV Act would then have on practical effect and could be treated as surplusage as far as the single electoral districts were concerned. However, this solution would not solve the problem of the members elected from at-large districts. That portion of the statute would still be open to attack for permitting forty per cent of the voters for at-large councilmen to reside outside the special service district.

Other solutions would require extensive amending of the UNI-GOV Act. For example, special elections could be held for members of the special service district councils with voter eligibility based upon districts drawn entirely within the special service districts. This would prevent any overlap between the election of city-county council members and special service district council members. The disadvantage of this solution is that it requires two separate elections with different candidates. The purpose of the consolidation was to eliminate as many of the individual units of government as possible and to consolidate the functions.

of those former units. Therefore, such a separate election would be a step backward from metropolitan reform. However, in light of the original decision not to include the police and fire departments of the city and county in the metropolitan scheme, to require implementation of the logical result of that decision would not seem to be overly burdensome.

Membership on the special service district council could be determined by an appointive method. For example, the mayor could be given the power to appoint the members. If desired, such appointment could be restricted to city-county councilmen elected from districts in which a certain percentage of the population resides in the special service district. This method would achieve the same result as the present statute, but might possibly avoid the application of the one man one-vote principle since the members of the special service district council would not be determined through a popular election. However, a court might look to the substance of the scheme rather than to its form and find membership on the special service district council to be indirectly determined by a popular election.

Another possible solution would be the abolition of the special service district councils, placing their former jurisdiction under the city-county council. Under such an approach, the Indianapolis-Marion County consolidation would more closely correspond to the previous consolidations in Nashville-Davidson County and Jacksonville-Duval County. The city-county council would then determine both the services to be performed throughout the county and the additional services to be performed only in the special service districts. The rationale of this system is that the new city-county council would be simply a substitute for the formerly separate city council and county council. Since each of these former councils had the authority to determine the services to be performed in its respective area, the city-county council should also have the authority to determine what special services are needed only in the urban area as opposed to those services needed in the entire county. Although this system may raise some questions about the effective representation of "inner-city" residents, it has been tested in the Tennessee Supreme Court and found to be constitutional.

63. Frazer v. Carr, 210 Tenn. 565, 360 S.W.2d 449 (1962). One major distinction which may be made between the Nashville-Davidson County consolidation and the Indianapolis-Marion County consolidation is that in Nashville the proposed consolidation was approved by a referendum of all the citizens concerned. The Indianapolis-Marion County consolidation is unique in that it was imposed by the state legislature without a referendum. On this point, the Indiana Supreme Court, in Dortch, held that the Indiana Constitution does not require that proposed legislative changes in the form of local government be submitted to the citizens for a referendum vote. The court stated:
It is very doubtful that the provision of the amended UNI-GOV Act concerning the composition of the special service district councils can withstand a constitutional challenge. The provision appears to violate both the Supreme Court's rulings in local governmental apportionment cases and the warnings given by the district court in *Bryant*.

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A requirement that any such proposed legislative change must be submitted to the people for referendum has neither been recognized nor can it be implied from the language of Art. 1, § 1. — Ind. at —, 266 N.E.2d at 44-45. However, it seems likely that the absence of a referendum may present a problem if the special service district councils are abolished in the manner proposed.