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Utilization of County Boundaries in Drawing Legislative Districts

DR. ROBERT A. BARRETT *

ABSTRACT — Analysis of the traditional and contemporary arguments on county lines as a basis of drawing state legislative districts appears to indicate that in a state such as Minnesota, with a large number of counties and extreme variations between them, county boundary lines should not be accorded primary consideration in drawing legislative districts if compliance is sought with the "one-man, one-vote" constitutional principle. Minnesota government officials faced with reapportioning the state's legislative districts need to determine the role that county boundary lines should fulfill in their decision. This paper was prepared originally at the request of the Minnesota Governor's Reapportionment Commission.

A commonly-held but erroneous impression regarding Minnesota legislative districts is that district lines have always followed county boundary lines. When the 1959 Minnesota apportionment created new state senate districts, fully one-third contained only portions of counties and nearly one-half contained two or more counties. Roughly only one-sixth of the state senate districts contained exclusive one-county areas. In the lower house it is a frequent occurrence to find legislative districts occupying only portions of a county.

Another frequent misconception is that portions of one county cannot be grouped with other counties to form a legislative district. The 1959 Minnesota apportionment provided for three such instances covering the 27th, 28th, and 61st state senate districts. Previously the 1913 Minnesota apportionment also had provided for three such instances in the 45th, 46th, and 47th state senate districts.

Contrary to popular belief, no restriction exists in Minnesota law prohibiting the division of counties or the grouping of several counties or portions thereof into state legislative districts. In fact, if counties were not grouped together, it might well be argued that existing counties should be consolidated in order to comply with constitutional requirements: "With enough county consolidation, a rule of at least one member for each county might conceivably be retained." (David and Eisenberg, 1961). Only a dozen of the 50 states have more counties than the 87 in Minnesota. Such an abundance poses a redistricting dilemma in that the great population extremes make difficult the convenient groupings of counties into legislative districts which meet constitutional apportionment standards.

The Rationale for County Lines

Alfred deGrazia in his book, Representative Democracy and Apportionment Theory, 1963, suggested several potential factors of representation, including terrain, governmental groupings, ethnic differences, community or neighborhood groupings, economic similarities, political-historical traditions, and others, that might be accommodated through an apportionment standard based upon territorial survey, governmental boundaries, official bodies, functional divisions of the population, or free population alignments. Of these, territorial surveys (the division of the population into contiguous districts composed of equal numbers of voters) are the "most common in modern times."

But, observed deGrazia:

Corporate or collegial bodies, such as American state legislatures, also use the criterion of governmental boundaries in apportioning seats. A favored device of early American state governments was to apportion seats solely according to the county and town boundaries in one or both houses of the state legislature. This procedure was abandoned in most state governments, on grounds that it invariably and openly worked to the disadvantage of governmental units of heavy population density.

At another point, deGrazia made a strong presentation in favor of utilizing governmental boundaries with these words:

To maximize local influences and community spirit, apportionment should be based on local units of government, as was originally the case in a number of American states and is presently the case in several. Then all the electorate of a given locale, who are possessed already of a degree of solidarity from economic, social and political causes, will project that solidarity into the . . . state legislature and reinforce it thereby. Since many "natural" units of local governments are divided or combined in the geometry of apportionment, the full impact of localism on state . . . legislatures is less than it might otherwise be. Nevertheless, territorial surveys that produce . . . a "contiguous and compact territory containing as nearly as practicable an equal number of inhabitants" will provide a considerable reflection of local interests.

In their respective essays, Baker (Reapportionment, The Minnesota Academy of Science...
1960) and David and Eisenberg argue that frontier conditions of isolation and poor communications provided a rationale for the representation of counties as units. Such representation did little violence to the equal representation principle when the distribution of a state's inhabitants was fairly uniform and counties were roughly comparable.

"With the long-term trend toward the concentration of population in urban areas, the county pattern of representation has become less appropriate, but it has been maintained or even manipulated primarily to preserve the political power of rural interests," according to David and Eisenberg.

The technological factor is frequently raised as justification for affording greater representation to non-urban areas. DeGrazia argued that the multiplicity of sources for conveying opinions and desires in densely settled areas—mass media, offices of government, offices of public utilities, and other facilities—make resort to politicians less frequent.

The court, in the case of Reynolds vs. Simms, directly rebutted this "technological" rationale with the following statement:

But neither history alone, nor economic or other sorts of group interests are permissible factors in attempting to justify disparities from population-based representation. Citizens, not history or economic interests cast votes. Considerations of area alone provide an insufficient justification for deviations from the equal-populations principle. Again, people, not land or trees or pastures, vote. Modern developments and improvements in transportation and communications make rather hollow, in the mid-1960's most claims that deviations from population-based representation can validly be based on geographical considerations. Arguments for allowing such deviations in order to insure effective representation for sparsely settled areas and to prevent legislative districts from becoming so large that the availability of access of citizens to their representatives is impaired are today, for the most part unconvincing.

However telling the court's refutation of deGrazia's thesis might be, it does not shut the door to the representation of political subdivisions as such. The court asserted in Reynolds vs. Simms that a state can "rationally consider according political subdivisions some independent representation . . . as long as the basic standard of equality of population among districts is maintained." This opinion might be interpreted to permit states to specify consideration of political subdivisions within their respective constitutions, which Minnesota's constitution specifically does not provide. To "maintain the integrity of various political subdivisions insofar as possible," in the court's words, might countenance respecting city, village, town, township, or county boundaries wherever feasible. The only permissible consideration in the Minnesota constitution alludes to "sections" that are to be so arranged in an apportionment system as to produce equal populations. "Sections" might mean units of one square mile, townships, towns, villages, wards, precincts, cities, or counties.

Ultimately, one must address the most common argument advanced in behalf of county units: their assumed role as natural and viable communities.

To a legislator, lawyer, or politician, the county appears to be of considerable import. He perceives the county as the unit for collecting vital statistics, recording property transactions, maintenance of tax rolls, issuing of legal documents, and other record-keeping and legal transactions. But his is a distorted perception not shared equally by the electorate or general populace. That his attorney travels to the county seat to complete a legal transaction is given little cognizance by the citizen. It may properly be suggested that the citizen possesses a far greater attachment to his local community be it city, village, town, township, or school district. Baker's examination of the subject concluded that "realistically, it is hard to defend the notion that county lines, for example, denote real communities."

Implicit in the argument of representing counties as natural communities is an assertion that they enjoy a position comparable to the states in the federal system. The "federal analogy" fails, however, because the states existed as sovereign units prior to the union. They authorized establishment of the union and state sovereignty enabled them to demand geographical representation in the U.S. Senate as a constitutional compromise. Counties enjoy no such relationship in theory, law, or common sense. States are unitary and not federal in composition; and counties are mechanical (administrative) rather than sovereign subdivisions. Counties are created as agents of the state and can be altered or abolished, unlike federal units. Few counties have historic identities; they merely represent administrative devices for performing certain state functions at the local level (highways, law enforcement, record keeping, welfare, etc.) The county is legally classified as a municipal quasi-corporation lacking even the self-governing authority of the village or city and in no manner paralleling the legally sovereign position of states in the federal organization.

Confronting the rationale of the federal analogy in apportioning districts on a county basis, the United States Supreme Court stated in Reynolds vs. Simms:

We find the federal analogy inapposite and irrelevant to state apportionment arrangements . . . The system of representation in the two houses of the Federal Congress . . . is based on the consideration that in establishing our type of federalism a group of formerly independent states bound themselves together under one national government . . . Political subdivisions of states counties, cities or whatever never were and never have been considered as sovereign entities. . . .

Nor does Minnesota's state constitution make any provision for a federal analogy.

The Division of Counties

If Minnesota state legislative districts are to be drawn in compliance with the "one-man, one-vote" standards
required by both the state and federal constitutions, county boundary lines will of necessity have to be accorded only momentary consideration. The informed consensus of reapportionment observers supports this conclusion, as indeed did one of the state legislators in oral testimony before the Governor's Reapportionment Commission on October 1, 1964. That legislator remarked that it is a necessity to divide counties and group counties if any attempt is to be made at improvement. Belle Zeller, in her recognized classic which culminated a four-year study by the American Political Science Association, (American State Legislatures, 1954) noted the following:

Political units (counties) . . . pose puzzling and difficult problems that render inadvisable their use as representative areas. The unitary character of the American state governments would seem to render unnecessary the representation of units of local government as such. Moreover, counties and towns as units of local government have largely lost the significance they once had and are no longer vital rural communities with independent and distinctive interests of their own. Of much greater importance are the larger areas or sections of our states.

It should immediately be recognized that counties are constantly divided for a variety of purposes such as the Minnesota legislative districts. Under these conditions, county election officials sometimes must prepare different ballots and conduct separate ballot counts for parts of counties in different legislative districts. Candidates for office campaign in, and state legislators represent different portions of the same county.

Moreover, cities, which are infinitely more viable units of self-government than counties, are commonly divided and/or combined with other municipalities or counties for the purposes of state legislative districts. Such is the case in several communities of Hennepin, St. Louis, and Ramsey counties. For county commission districts, also, individual Hennepin County municipalities have been purposely divided and grouped with adjacent municipalities as provided for by the county commission and sanctioned by the state legislature in 1963.

The argument of indivisibility also proves critically deficient when applied to the cities of St. Cloud and Mankato. No county could profess to be a more "natural community" than either of those municipalities. Yet, by virtue of following county lines, the legislature in the 1913 and again in the 1959 apportionment laws split the natural community of St. Cloud into two artificial communities that presupposed a stronger affinity between portions of St. Cloud and the respective counties than for the city at large. Correspondingly, the 1913 apportionment law divided the city of Mankato and paired each section with adjacent portions of different counties in an "artificial community" rather than as a more natural city community.

However, "inapposite and irrelevant" counties might be to the equal representation of citizens in the state legislature, it would be folly to dismiss lightly consideration of them entirely. For if compelling circumstances do not dictate otherwise, "legislators are overwhelmingly persuaded that district lines should have some relation to other existing communities and jurisdictions." (Gordon E. Baker, Rural versus Urban Political Power, 1955)

And, as Baker later observed:

While county government as an administrative unit may often seem weak, the county ruling clique as a political force is unusually strong. Its lines of responsibility and accountability to the public are correspondingly weak . . . The close political ties between the county officers and legislative candidates often result in a 'sacred cow' position for the county.

A Reapportionment Caveat

A persuasive argument might be made that legislative district draftsmen have traditionally started from the wrong set of assumptions. Normally, they have designated an ideal district size (50,953 population in the Minnesota Senate and 25,288 in the Minnesota House) and then grouped counties and subdivisions into districts approaching the ideal.

In this connection it can be suggested that the drafters should delineate an ideal size below which no district could be established. The drafting problem would then shift from the present one of grouping together a sufficient number of counties to approach a maximum ideal size to a new problem of paring down various groupings to reach a minimum ideal size. The practical result of such a transformation would be to place the common barriers to "equal population" apportionment in a disadvantageous category. For example, if a given group of counties were reluctant to permit their boundaries to be violated in creating legislative districts, holding their boundaries inviolate as "natural communities," their reluctance would result in less representation per capita for those counties. They would, in effect, be expressing a preference for the inviolate character of their "natural communities" to the principal of "equal-population" representation.

References

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The Minnesota Academy of Science