

## *The Pennsylvania County Commission System, 1712 to 1740*

MOST studies which have traced the growth of democratic institutions in colonial America have focused upon legislatures rather than the local level where the demand for political control should have had its greatest impact. Such a case can be found in Pennsylvania, where the development and operation of the commission form of county government from 1712 to 1740 is an excellent illustration of democratic spirit in operation in local government.

The commission form of county government was an indigenous political institution which grew out of a demand by Pennsylvanians for greater control over the raising and disbursement of taxes. Once established, the county commissioners continued to expand their power at the expense of those county officials who had obtained office by appointment. The transfer of political power from appointed to elected officials at the county level paralleled the rise of the Pennsylvania Assembly as an autonomous legislative body at the provincial level and reflected the political struggles between the Crown and Parliament which had taken place in England during the seventeenth century.

Until 1711, county government had been dominated by justices of the peace who were appointed by the governor. Before the arrival of William Penn in 1682, local affairs in Pennsylvania had been controlled by the towns as established under the Duke of York's laws.<sup>1</sup> Penn chose to establish the county rather than to continue the town as the dominant form of local government. This change insured him, or his deputy, a large degree of control over local government because the justices of the peace, whom the governor commissioned,

<sup>1</sup> Staughton George, Benjamin M. Nead, and Thomas McCamant, eds., *Charter to William Penn and the Laws of the Province of Pennsylvania, Passed between the Years 1682 and 1700, preceded by the Duke of York's Laws in Force from the Year 1676 to the Year 1682, with an Appendix containing Laws Relating to the Organization of the Provincial Courts and Historical Matter* (Harrisburg, 1879), 44, 50-51, 69.

governed the county, and, in so doing, were following the general pattern of local government consistent with English practice.<sup>2</sup> The Charter of Privileges, granted by Penn in 1701, was almost mute on county government, providing only for the manner by which the justices, sheriff, and coroner obtained office. The absence of any other details in the Charter on county government thus enabled the Assembly to establish its own method of managing local affairs.

The commission form of county government developed in several stages from 1711 to 1725. At first, commissioners were not really county officials at all, but provincial tax collectors appointed by the Assembly. They levied and collected provincial taxes at the county level, replacing in this function the courts of quarter sessions which had, along with assistance from elected county assessors, previously levied these taxes.<sup>3</sup> This new method of raising provincial taxes was initiated because a large part of the taxes had not been collected. When the bill first came to the floor of the Assembly, it empowered the Governor and Provincial Council to "hasten and compel the collection of" back taxes. But this bill was amended on the second reading to empower certain "commissioners in the respective counties in Lieu of the Governor and Council" to collect back taxes. The commissioners were appointed in the act by name; there were four for the county of Philadelphia, and three for those of Bucks and Chester. A bill to raise a new tax was also passed and it named four additional commissioners for each county to levy the new tax in association with the elected assessors.<sup>4</sup> From 1712 to 1722 commissioners were appointed by the Assembly for the purpose of raising taxes. Until 1718 they were merely tax collectors for the Assembly who, along with the assessors, determined assessments and raised a tax which had already been established by the Assembly.

In 1718 the Assembly moved closer to providing permanent county commissioners by making two significant changes. First, commissioners were given the power to determine how much tax should be levied; second, they were given the power to order payments from

<sup>2</sup> Sidney and Beatrice Webb, *English Local Government From the Revolution to the Municipal Corporations Act: The County and Parish* (London, 1924), III, 233-250.

<sup>3</sup> J. T. Mitchell, *Statutes at Large of Pennsylvania from 1682-1801* (Harrisburg, 1896-1908), III, 188, hereinafter *Statutes at Large*.

<sup>4</sup> *Ibid.*, II, 3, 369-374; III, 3, 83, 128, 175.

the county treasurer. Instead of acting merely as a collection agency for the provincial treasury, the commissioners were now charged with the task of establishing the size of the tax to be levied and also with paying the salaries of assemblymen, defraying the cost of building and repairing courthouses and other county buildings, destroying wolves and foxes, and for such uses as might benefit the county.<sup>5</sup> Property taxes were no longer used for provincial purposes, other than paying salaries of assemblymen, thus shifting the provincial tax base from real estate to import duties, a move undoubtedly supported by domestic producers. The commissioners had thus obtained a certain degree of autonomy within a framework established by the Assembly, and were no longer merely administrative agents. The minutes of the county commissioners for Philadelphia County began with this act of 1718.<sup>6</sup>

The final step in the establishment of a permanent elective office of county commissioners occurred in 1722. The Assembly had received several petitions requesting a change in the method of raising county levies. One petition requested that the "Commissioners for raising County Levies be made elective Yearly." After consideration of this petition, the Assembly resolved that "the office of county commissioner be made elective yearly," that there be three commissioners in each county, and that the present commissioners be continued in office until the first of October.<sup>7</sup> Another act, passed in 1725, clarified the procedure for electing the commissioners and prohibited any one of them from being re-elected for a second term within three years.<sup>8</sup>

By 1725 the structure of county government had been established and its transition from a government of appointive officials to a government of elected officials completed. But the laws were vague; no clear distinction between the court of quarter sessions, which still administered some parts of county government, and the newly

<sup>5</sup> *Ibid.*, III, 176.

<sup>6</sup> *Statutes at Large*, III, 174-191. A microfilmed copy of the minutes of the Journal of Philadelphia County Commissioners is at the Historical Society of Pennsylvania; it is not known where the original minutes are kept.

<sup>7</sup> *Pennsylvania Archives, Eighth Series, Votes and Proceedings of the House of Representatives of the Province of Pennsylvania* (Philadelphia, 1931), II, 1319. The number of commissioners was also reduced to three.

<sup>8</sup> *Statutes at Large*, IV, 11.

created county commissioners was made. This vagueness caused conflict, and more statutes were eventually enacted to clarify jurisdiction. But the trend toward greater popular control of county government was irreversible, so that in 1740 county commissioners had achieved the dominant position in county government.

Some functions of county government, such as the laying out of roads and the paying of bounties continued to be administered exclusively by the court of quarter sessions. The levying and collecting of taxes were reserved to the commissioners. But disputes arose over those functions such as the building of bridges, the maintaining of the poor, and the paying for "sundry services" which were administered, or thought to be administered, jointly. While further legislation did clarify some issues, in most instances the commissioners' control of county finances enabled their will to prevail, even when legislation existed to the contrary.

The procedure for levying and collecting taxes shows a large amount of involvement by the inhabitants in influencing policy at the local level. The right to be taxed by elected representatives was not raised only after 1763, but had been practiced by Pennsylvanians within two decades after their arrival in the colony.<sup>9</sup>

The commissioners and assessors met some time after their election, either in November or early December, to calculate the needs of the county for the following year. The maximum tax which could be levied was three pence per pound on estates and nine shillings per head, excepting the property and estates of the Governor and the Proprietor.<sup>10</sup> Once the tax had been levied it was then necessary for the constables to bring in a list of the names of the inhabitants

. . . together with an account of what tracts and parcels of land and tenements they respectively hold in such township; and how many and what part of those tracts are settled, improved or cultivated, and how much of the same land is sowed with corn; and how many bound servants and negroes, with their ages, and what stock of cattle, horses, mares and sheep they possess.<sup>11</sup>

<sup>9</sup> There is a reference to assessors being appointed in 1696; in 1700 the Assembly passed an act which called for the election of six assessors. *Statutes at Large*, II, 35.

<sup>10</sup> *Ibid.*, IV, 14.

<sup>11</sup> *Ibid.*

The assessors then made the assessment, and a day for appeal was set. Appeals were held before both the commissioners and assessors, although the law stated that the aggrieved might appeal to the commissioners of their county.<sup>12</sup> The tax assessments were then given to the collectors who proceeded to collect the amounts due to the county.<sup>13</sup>

The process of levying the tax and hearing the appeals was completed in the spring; tax collections began in the summer. Collecting taxes was painstaking and tedious with the county commissioners devoting a great deal of time to this task. Although the law stated that "collectors shall once in six weeks, at least, render a just and true account of and bring in and pay" all such sums of money and receipts for wheat which they have received to the county treasurer, tax collectors were frequently delinquent in paying their taxes.<sup>14</sup> In 1722, for example, delinquent tax collectors owed Philadelphia County more than £360, almost one year's taxes. Notices to delinquent collectors with threats of legal action were frequent. Sometimes the commissioners delivered warrants to the sheriff who then took the necessary steps to bring in the taxes. But legal action against collectors was rare. On one occasion the commissioners were told that the "Surcumstances of one of the Delinquent Collectors (who is at this time in arrear the whole tax on the township wherein he resides) and much embarrassed and the Publicks Money in his hands in danger of being aplyed to his own private use." The delinquent collector, who happened to be in town, was brought before the commissioners and made to promise to pay before he left town.<sup>15</sup> It was common practice to reduce or forgive taxes. Collectors appealed to the commissioners to have their accounts reduced because individuals had moved from their district, or asked to have taxes reduced on persons because they were aged, under age, poor, or had been married and were no longer

<sup>12</sup> *Ibid.*, IV, 17.

<sup>13</sup> Collectors and constables were appointed yearly by the county court of quarter sessions.

<sup>14</sup> *Statutes at Large*, IV, 18.

<sup>15</sup> Philadelphia County, Journal of the Proceedings of the County Commissioners, 1718-1780, Aug. 28, 1722, hereinafter cited as JPCC. All references are made by dates since the pages are not numbered.

liable for the head tax. The tax abatement was almost automatic, the commissioners rarely refusing to grant the collectors' requests.<sup>16</sup>

While the procedure for levying and collecting taxes was specifically laid out by legislation, other aspects of county government were administered by the commissioners by virtue of their control over disbursements from the county treasury. One such function which produced considerable conflict between the justices and commissioners was that of erecting bridges. Roads were laid out by justices at the court of quarter sessions upon petition by a number of inhabitants; they were constructed by the inhabitants in each township under direction of the supervisor of the highway, an appointee of the county court of quarter sessions. Bridges had been erected in much the same manner until it became necessary for county commissioners to approve the necessary funds for materials and labor. Within a few years the commissioners had so completely dominated this function, that the justices were moved to appeal to the Assembly that the commissioners had "claimed a power of directing the building of bridges and of agreeing with workmen for the doing of the same without the concurrence of any court or grand jury."<sup>17</sup> The Assembly then declared "that the grand juries, commissioners and assessors, with the concurrence of the justices of the general quarter sessions of the peace, shall be the sole judges of the place where any bridge shall be built and maintained over any creek or rivulet within the respective counties to which they belong." It also directed that the commissioners and assessors, with the concurrence of the justices at their quarter sessions of peace, should agree with workmen for the building, repairing, and maintaining any bridge or bridges within their respective counties. The commissioners were directed to pay for such work out of the county treasury.<sup>18</sup> Although this law limited the authority of the commissioners in theory, in practice it did not seem to hamper unilateral action by the Philadelphia County commissioners. From 1732 to 1740, they met with the justices on only two occasions for selecting

<sup>16</sup> Lancaster County Commissioners' Minutes, 29, 41, Lancaster County Courthouse; Chester County, Minutes, Oct. 25, 1740, Chester County Historical Society; JPCC, *passim*.

<sup>17</sup> *Statutes at Large*, IV, 236.

<sup>18</sup> *Ibid.*, IV, 235.

the site of a bridge, and did not meet with them at all for repairing or building bridges.<sup>19</sup>

Another area of conflict between elected and appointed officials occurred over the care for the poor by the workhouse corporation. The workhouse corporation, a self-perpetuating body, was composed of a president, a treasurer, and assistants chosen from among the inhabitants of the county. It could recommend rates and levies to the justices in quarter sessions who could in turn levy a rate on the county.<sup>20</sup> The law provided a taxing power to the justices, which had been assumed by the commissioners when they were established. It was this apparent overlapping of taxing jurisdiction that produced the conflict between the commissioners and the justices. It was finally resolved by the Assembly. The dispute continued for several years, and was centered around the question of whether or not the justices could order the commissioners to provide money from the county treasury for support of the workhouse.

The dispute began when the representatives of the workhouse presented an account to the commissioners to pay for damages done to the workhouse and to provide an annual salary for the master of the workhouse, Joseph Scull. The commissioners refused payment, believing that the matter did not properly lie with them.<sup>21</sup> At this point the president and assistants of the workhouse threatened to raise a separate tax, and the commissioners, rather than have the corporation impose a special levy on the inhabitants, thus challenging what they considered to be an exclusive prerogative, granted him a salary of £20 a year.<sup>22</sup> Having been successful in one venture, the corporation, with the concurrence of the justices, proposed that the commissioners provide them with £150 to be used for materials needed for manufacturing by the workhouse. They also proposed that the master of the workhouse be paid from the profits gained by the sale of goods produced by the workhouse.<sup>23</sup> When the commissioners refused the request, the corporation

<sup>19</sup> JPCC, *passim*.

<sup>20</sup> *Statutes at Large*, IV, 274-275.

<sup>21</sup> JPCC, Mar. 1, 1732.

<sup>22</sup> *Ibid.*, Mar. 18, 1732.

<sup>23</sup> *Ibid.*, Dec. 31, 1734.

petitioned the Assembly, complaining that the commissioners and assessors of Philadelphia County had

under different Pretences, but sometime alledging that they did not conceive themselves obliged to raise any money by Virtue of the Order of the Justice, or of the Act of Assembly aforesaid, have altogether refused to yield any obedience to the same, to the great disappointment of the President, Treasurer, and Assistants aforesaid; and therefor praying the House would grant such relief as to their Wisdom shall deem good.<sup>24</sup>

The Assembly ordered the justices and the commissioners to appear before the House. They then resolved that

the said corporation are charged with government and management of the said Act and that the Commissioners and Assessors ought to raise and pay all such Sums of Money as shall be directed to be raised by the said Magistrates (justices), pursuant to the Tenor of the said Act.<sup>25</sup>

The commissioners complied with this request, but when the treasurer of the workhouse corporation later requested to be paid for service done for the corporation, the commissioners refused.<sup>26</sup> It was evident from their actions that the commissioners were reluctant to support the workhouse out of the county treasury on an order from the justices.

On another occasion, in 1731, the resentment of the justices toward the increasing power of the commissioners and assessors resulted in another action by the Assembly which limited the power of the commissioners and assessors to some degree. The justices of Philadelphia County complained to the Assembly that the commissioners had the power to raise and dispose of money without rendering any "account for what they do," which was a "very high Privilege, that nearly concerns the Right of every British Subject within this Province." They asked that the House pass an act which would leave no doubt about the right understanding of a "Point of so much importance; and that it may be regulated in such Manner as may suit as near as may be with an English Con-

<sup>24</sup> *Votes and Proceedings*, III, 2246.

<sup>25</sup> *Ibid.*, III, 2249-2250.

<sup>26</sup> JPCC, Sept. 2, 1738.



stitution, and be consistent with English Liberty.”<sup>27</sup> After considering the petition, the Assembly resolved that the “commissioners and assessors should have their accounts audited by the justices of the peace and grand juries.”<sup>28</sup> In the next session a motion was debated

That the County Levy Act is in several parts too loose and ill-guarded, and in this particularly, that Powers too unlimited are thereby given the Commissioners and Assessors, which in their natural Tendency and Consequence, may prove highly prejudicial to the Interest and Property of the Inhabitants of this Province.<sup>29</sup>

This resulted in legislation which directed the commissioners and assessors to submit their accounts yearly to the justices and grand jury for audit.<sup>30</sup> Although the commissioners complied with the law, they bristled at the implication “that the proceedings of the Commissioners have been carried on in an arbitrary manner & that the Countys money has been disposed of by them unwarrantably.”<sup>31</sup>

Many of the services provided for the inhabitants of the province were paid from the county treasury. Most of these requests were authorized by the county commissioners and it was this power which enabled them to scrutinize the activities of other officials, not only those employed by the county, but provincial officials as well.

When the office of county commissioners was established, the members of the Assembly must have had their own salaries uppermost in their minds, because much of the early business of the commissioners involved paying salaries of assemblymen, some of whom displayed vouchers for services rendered as early as 1700, and even included requests from widows and executors of extates.<sup>32</sup> But the Assembly had second thoughts about their dependence upon the county levies for their salaries when the commissioners of Lancaster County refused to honor all the requests from assemblymen and questioned the validity of some of the expense vouchers. From that time on, the assemblymen’s salaries were paid upon the signature of the Speaker of the House from interest accrued in the

<sup>27</sup> *Votes and Proceedings*, III, 2060.

<sup>28</sup> *Ibid.*, III, 2070.

<sup>29</sup> *Ibid.*, III, 2137.

<sup>30</sup> *Statutes at Large*, IV, 234-236.

<sup>31</sup> JPCC, Aug. 18, 1733.

<sup>32</sup> *Ibid.*, Jan. 6, 7, 19, 1719, Mar. 28, 1724.

Loan Office.<sup>33</sup> This incident is an illustration of the power which was possible for commissioners to wield through their authorization of expenditures from the county treasury. The Assembly was aware of it in this case.

While the Assembly was able to provide for another means of payment of their salaries, other officials were not so fortunate. Some salaries, such as those of the county treasurer and county clerk were either stipulated by law or agreed upon at the time of their appointment, but the sheriff, the coroner, and the prison keeper were paid by fees, and, when these were unobtainable from individuals or estates, they applied to the commissioners for relief. Such payment did not seem to come easily and such requests were usually cut substantially or refused altogether.<sup>34</sup> The same was true for provincial officials such as the clerk of the supreme court, attorney general, and others who applied to the county for payment. In some cases it took an order from the Assembly to convince the commissioners that the charges "in the said account might be paid out of the county treasury."<sup>35</sup>

A study of the functions of the county commissioners from 1711 to 1740 reveal a growing dominance over local government. Within a few years they had changed from appointed tax collectors to elected dispensers of county services. This transition took place at the expense of the appointed justices of the peace, thus placing the administration of local affairs in the hands of the people's representatives rather than officials appointed by the governor. It was inevitable that this movement toward more popular control would meet with resistance from those officials who stood to lose the most power, as seen by the justices' attack upon the commissioners for Philadelphia County.

Part of the conflict which existed between justices and county commissioners can be construed as political. In general, justices, who were appointed by the governor, were partial to the proprietary party which the governor, with the exception of Governor Keith, led. All other appointed officers tended to favor the proprietary

<sup>33</sup> *Votes and Proceedings*, III, 2140, 2363, 2390, 2491, 2509; *Statutes at Large*, IV, 234. Although this law was authorized for only three years, the practice continued.

<sup>34</sup> JPCC, Jan. 22, 1733, Aug. 23, 24, 1737, Nov. 9, 1737, Mar. 27, 1738, Aug. 31, 1739.

<sup>35</sup> *Ibid.*, Mar. 18, 1731, Feb. 23, 1732, Jan. 26, 1733, June 7, 1735, Aug. 29, 1735, Dec. 30, 1735, Feb. 21, 1737, May 29, 1737, Sept. 2, 1738.

party as well. When the proprietary faction dominated the Assembly, for instance, many more justices could be found in that body, the opposite being true when the Assembly was controlled by the popular faction.<sup>36</sup> Few county commissioners became justices, while there was a general movement from the office of assessor to county commissioner and then to assemblyman.<sup>37</sup>

County government in Pennsylvania was unique in colonial America. It had no parallel in either British or colonial local government. In New England county government had little significance and developed little beyond the sphere of judicial administration, and the power was administered by the town. In southern counties the government was administered by appointed officials like the justices and sheriffs. No elected officials exercised power. While New York counties were governed by a board of supervisors consisting of one or more supervisors from each township, no county officials were elected at large. In addition, the township in New York had certain independent functions which were exercised independently of the county, while the township in Pennsylvania was only an administrative unit whose officials were appointed by the court of quarter sessions.<sup>38</sup> Only Pennsylvania had a county government which was governed, for the most part, by a board of commissioners elected at large.

County government developed in two directions: first, toward the increasing power of commissioners; second, toward a more thoroughly colonial institution and away from English practice and tradition. Its development was the forerunner of county government in the nineteenth and twentieth centuries.<sup>39</sup>

### *Interlake High School*

CLAIR W. KELLER

<sup>36</sup> When the popular faction dominated the Assembly in 1710 there were only two justices elected to the Assembly. In contrast, there were twelve justices and six members of the Provincial Council, when the proprietary faction gained control of the Assembly the next year. The same general pattern can be seen in other years, such as 1721 and 1722, when party affiliation was also clear. See Clair W. Keller, "Pennsylvania Government 1701-1740: A Study of the Operation of Colonial Government" (unpublished doctoral dissertation, University of Washington, 1967), 352-391.

<sup>37</sup> All but two of the men who served as Philadelphia county commissioners from 1725, the first year that commissioners were elected, to 1740, served as assessors or assemblymen, none were justices. In those counties dominated by the proprietary party, such as Bucks, the pattern was not as precise. *Ibid.*, 459.

<sup>38</sup> *Ibid.*, 204-209. One township official, the poundkeeper, was elected.

<sup>39</sup> Arthur Brommage, *American County Government* (New York, 1933), 25.