

## NEW HAMPSHIRE MUNICIPAL ASSOCIATION (/)

# New Hampshire Town And City

## NLC REPORT: Dillon's Law versus Home Rule

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By

### **Background**

The Constitution of the United States does not mention local governments. Instead, the Tenth Amendment reserves authority-giving powers to the states. It is not surprising, then, that there is a great diversity in state-local relations between, as well as within, states. This means that to speak of local government in the United States is to speak of more than fifty different legal and political situations.

Consistent with the Northern New England tradition of strong legislative oversight of local government, New Hampshire is not known as a home rule state. All powers of local government in New Hampshire stem from the legislature, and few freedoms have been delegated to units of local government. However, the concept of home rule is philosophically supported by many New Hampshire citizens.

### **Types of Authority Given**

Political power in a state can be divided into three spheres: the local government, the state government and the functions that the two governments share. Within the local sphere, there are four categories in which the state allows discretionary authority:

**Structural** -- power to choose the form of government, charter and enact charter revisions

**Functional** -- power to exercise local self-government in a broad or limited manner

**Fiscal** -- authority to determine revenue sources, set tax rates, borrow funds and other related financial activities

**Personnel** -- authority to set employment rules, remuneration rates, employment conditions and collective bargaining

Typically, the broadest discretionary powers are applicable to local government structure, and the narrowest are given to finance. Also, local governments endowed with discretionary authority may not always exercise it; for example, the adoption or amendment of a local government's municipal charter is infrequent.

### **Narrow Government Authority: Dillon's Rule**

Dillon's Rule is derived from the two court decisions issued by Judge John F. Dillon of Iowa in 1868. It affirms the previously held, narrow interpretation of a local government's authority, in which a substate government may engage in an activity only if it is specifically sanctioned by the state government. Dillon's Rule was challenged by Judge Thomas Cooley of the Michigan Supreme Court in 1871, with the ruling that municipalities possess some inherent rights of local self-government. Cooley's Rule was followed for a short time by courts in Indiana, Iowa, Kentucky and Texas until the U.S. Supreme Court upheld Dillon's Rule in 1907 (*Hunter v. City of Pittsburgh*) and again in 1923. Since then, the following tenets have become a cornerstone of American municipal law and have been applied to municipal powers in most states:

- A municipal corporation can exercise only the powers explicitly granted to them
- Those necessarily or fairly implied in or incident to the powers expressly granted
- Those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable

State constitutions vary in the level of power they grant to local governments. However, Dillon's Rule states that if there is a reasonable doubt whether a power has been conferred to a local government, then the power has not been conferred.

### **Broad Government Authority: Home Rule**

The ability of local governments to respond effectively to local conditions in the late 1800s was severely limited by Dillon's Rule; no local action could be undertaken without permission from the state legislature, which only met for short, biennial sessions. As such, Dillon's Rule generally requires that local officials spend a considerable amount of time lobbying the state legislature to approve bills granting local authority and disapprove bills imposing restrictions on them.

The inflexibility of this system is the reason that many states began to adopt "home rule" provisions in the early 1900s that conferred greater authority to their local governments. Home rule is a delegation of power from the state to its sub-units of governments (including counties, municipalities, towns or townships or villages). That power is limited to specific fields, and subject to constant judicial interpretation, but home rule creates local autonomy and limits the degree of state interference in local affairs.

Three times in the past 40+ years, New Hampshire voters have been asked to vote on a proposed amendment to the state Constitution to grant expanded home rule authority to municipalities. The most recent proposal, in 2000, would have permitted towns and cities to exercise any power and perform any function regarding its affairs that was not prohibited by the state Constitution, state law or common law; the State would have retained its right of pre-emption over municipal powers and functions. However, this proposal failed to get the required two-thirds vote and did not pass.

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