# What is Home Rule?

Home Rule is sometimes thought of as a relatively recent concept and unique to Massachusetts, but its roots actually date back to the 1700s and its relevancy extends throughout the nation. Missouri was the first state to adopt a Home Rule provision in 1875, followed by California, Washington and Wisconsin between 1879 and 1898. In Massachusetts, Home Rule authority was granted to cities and towns in 1966. Today, almost all states have adopted Home Rule provisions which, to varying degrees, are intended to enhance self-governance for cities, towns and counties.

The American Revolution confirmed the rights of the people to govern themselves. However, as the mid-1800s approached, corporations were drawn into the debate, and distinctions were made between the rights of municipal corporations (i.e., cities and towns) and private corporations. In many higher court decisions, the right to self-rule came under attack as railroad companies, whose lawyers were well entrenched at the state level, faced resistance as they pushed to extend rail lines across town boundaries. Then, with emergence of the so-called Dillon Rule, the struggle ensued, in earnest, between advocates of local autonomy and standard bearers for state supremacy. In 1868, an Iowa Supreme Court Justice, John F. Dillon, put forward rules for interpreting the relationship between state law and local law when they came into conflict (Clinton v. Cedar Rapids and Missouri River R.R. - 24 Iowa 455, 1868). The intent and effect was to narrow the scope of municipal authority.

The Dillon Rule states that: "A municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words (from the state); second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable; and fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation."

The United States Supreme Court adopted the Dillon Rule in 1907 (Hunter v. City of Pittsburgh - 207 U.S. 161, 178-79) stating: “Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them . . . The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it

with another municipality, repeal the charter and destroy the corporation . . . In all these respects the state is supreme."

Under the Dillon Rule, Massachusetts municipalities were among those that were viewed as political subdivisions or creatures of the state. As a practical matter, this meant that cities and towns received their right to organize from the state and had no authority to act other than in ways granted by the General Court, or as implied by powers conveyed. Municipalities were permitted, in a limited way, to enact local laws provided the provisions were "not repugnant" to the state constitution, but all local laws were subject to annulment by the General Court.

With the adoption of Amendment Article 89 and M.G.L. Ch. 43B in 1966, Massachusetts created some separation from the Dillon Rule. In general, a city or town in the Commonwealth can exercise a power or function through the approval of its legislative body (town meeting, city council or town council) and its voters. They can exercise any power through the adoption of an ordinance, by-law or charter that the state legislature has the authority to delegate. In the strongest exercise of Home Rule rights, communities can enact charters (through a charter commission process), without state approval, in order to organize local government in a way that best meet the needs of their citizens.

However, there are significant limitations. Despite Home Rule, some local actions require approval of the state legislature. Others are allowed only through local acceptance of state statutes. In every instance, the legal doctrine of pre-emption prevails. That is, a provision of local law will stand only so long as it is not inconsistent with the state constitution or general laws. Lastly, specific constitutional language (Amendment Article 89, Section 7) reserves to the state sole authority to regulate elections; levy, assess and collect taxes; borrow money or pledge a municipality's credit; dispose of parkland; enact private or civil laws; and impose criminal penalties.

The initial responsibility to determine whether adopted local provisions may stand rests with the State Attorney General and specifically with the Municipal Law Unit within that office. As explained on the Municipal Law Unit website, "whenever a town adopts or amends its general by-laws or zoning by-laws, within 30 days of adjournment of town meeting, the Town Clerk is required to submit them to the Attorney General for review and approval. The Attorney General then has 90 days in which to decide whether the proposed amendments are consistent with the constitution and the laws of the Commonwealth. If the Attorney

General finds an inconsistency between the proposed amendments and state law, the amendments or portions thereof will be disapproved. The Municipal Law Unit is responsible for undertaking this review and for issuing a written decision approving or disapproving by-law amendments. The Municipal Law Unit does not, however, review proposed city ordinances.

In regard to charters, "whenever a city or town seeks to adopt or amend its charter pursuant to the Home Rule Procedures Act (General Laws, Chapter 43B), the proposed charter or charter amendments must be submitted to the Attorney General for his opinion as to the consistency between the charter (or charter amendments) and state law. The Attorney General then has 28 days in which to make this determination. The Municipal Law Unit is responsible for undertaking this review and for issuing a written decision."

Clearly, Home Rule, or self-governance, exists in Massachusetts when a city or town adopts a charter through the approval of its legislative body and its electorate. Beyond this charter commission process, however, the extent of Home Rule is limited. Today, as municipalities struggle financially, they are more frequently seeking to generate new revenue sources, as well as to act on seemingly routine matters, only to find that they lack the requisite authority to do so.

For a city or town, the process of drafting, authorizing, filing and waiting for the approval of a special act creates financial, administrative and political burdens. For the Massachusetts Legislature, the sheer volume of special acts overwhelms the docket of each chamber and diverts time and attention from issues of global importance to the Commonwealth. According to the Massachusetts General Court website, during each annual session since 2001, approximately 70 percent of all legislation approved, or 230 new laws on average, have been special acts. Among requests, cities and towns must seek the State's permission to issue liquor licenses; to reorganize government or manage local elections; to reserve their money in special revenue funds; and to convey or lease certain property.

Ultimately, more than the Dillon Rule, it is the General Court's exclusive constitutional right to legislate on certain matters and, in particular, the doctrine of pre-emption that work to restrict local self-rule and to perpetuate the ongoing involvement of the state in municipal affairs.