



# Candidate Bulletin

August 2002

## LOCAL GOVERNMENT AUTONOMY

*“The Senate and the House of Representatives...may...grant charters of incorporation, subject to the provisions of Section 69, constitute towns, boroughs, cities and counties...”*

(Vermont Constitution, Section 6)

*“No charter of incorporation shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as are to be and remain under the patronage or control of the State; but the General Assembly shall provide by general laws for the organization of all corporations hereafter to be created. All general laws passed pursuant to this action may be altered from time to time or repealed.”*

(Vermont Constitution, Section 69)

“Towns are creatures of the state” is a concept given force of law by the Vermont Constitution. It is often the reflexive response when a town in Vermont attempts to claim an authority that has not been specifically granted by the state. We hear the argument frequently, such as when South Burlington required the State of Vermont, in the form of the Department of Corrections, to respect its zoning process (a case decided in favor of the city in 2000), and again when Windsor required the same department to respect its zoning process in 2002, a case decided in favor of Windsor at the Environmental Court level. Vermont is a *Dillon’s Rule* state. The reference is to the 19<sup>th</sup> century Justice of the Iowa Supreme Court who, in 1863, spelled out the rule that municipal corporations may exercise only those powers specifically granted to them or that are necessary and absolutely essential to the declared purposes of the municipal corporation. For good measure, Justice Dillon added that any doubt as to the existence of a municipal power is resolved against the existence of that power. He basically said that a municipality is found to be powerless unless and until it is proven – beyond a shadow of a doubt – that it indeed has been given a specific authority.

The Dillon’s Rule doctrine has an alarming air of finality. But it does not follow that the status quo is necessary or desirable in Vermont. These creatures of the state, our cities and towns, may be given the *constitutional* authority to act, which establishes local government units as having a life independent of ongoing state legislative control. And indeed, in most states in the US, this is exactly what has been done. Thirty-six states have some form of constitutional “home rule” and six states have legislative home rule. Home rule is the philosophical opposite of Dillon’s Rule, and in the 42 states with home rule, municipalities have authority to enact those measures not specifically prohibited to them by state constitutions or legislation.

When Vermonters come together in Town Meeting, we may feel as though we are functioning as autonomous, self-governing bodies, with an existence independent of other jurisdictions. We are in fact acting as administrative sub-units of the state. The great paradox is that, despite its reputation of direct democracy and robust local control, Vermont is among the most absolutist in terms of the power relationship between the legislature and the municipalities on the one hand, and the state and its individual citizens on the other.

It is in the context of innovative approaches of other states, as well as our own recent history toward the issue of municipal autonomy, that the woeful status of Vermont towns and cities becomes most vivid. Voters in Vermont's municipalities may decide by local referendum to create or amend a charter to create their own special laws to deal with purely local issues. Despite the fact that 100 percent of the registered voters of a town may approve a charter change and the change affects only the residents of that town, that local ratification results only in the filing of the charter with the Legislature. Unless the charter is approved by a majority of the members of both the Vermont House of Representatives and the Senate, and then signed by the Governor, the actions of the voters are void.

Prior to 1984, ratified charters were filed only with the state attorney general's office, where they were evaluated for statutory and constitutional compliance. Concern over certain US Supreme Court decisions which appeared to cloud states' abilities to delegate to the town voters certain functions, combined with the unique wording of the Vermont Constitution, caused the Legislature to add language to the statute, 17 V.S.A. § 2645, requiring that charters receive affirmative ratification. (Subsequent Vermont Supreme Court decisions also stated that the Legislature could alter, amend, nullify, and exercise any authority over all charters at any time.)

Nothing at any time has required the Legislature to conduct anything other than a pro forma review of charters, to satisfy statutory requirements. Nothing says that the Legislature could not simply introduce and enact a bill reflecting the actions of the voters. Indeed, for a time, this is what happened. Were the issue only that there needs to be the formality of the exercise of the "subsisting patronage and control of municipal corporations," there might not be an issue between the municipalities and the Legislature in Vermont. However, such is not the case. The recent history of charter amendments, and proposals for legislation granting flexibility to cities and towns, lead one to believe that local democracy – grass-roots democracy, the closest and most direct form of citizen participation in government – is not held in very high esteem in Montpelier.

- In the 1999-2000 biennial legislative session, 17 municipal (city, town or village) charter amendments were approved by the local voters and introduced in the Legislature. Of those, 12 were passed into law. Of those twelve, only three, or under one-sixth, were approved by the Legislature in the same form as the voters of the municipality had passed them.
- In the 2001-2002 biennial legislative session, 13 municipal charter amendments were approved by local voters and introduced in the Legislature. Of those, nine were passed into law and only one was passed into law by the Legislature without amendment.
- In 2001, five senators introduced S. 128, a bill that would allow municipalities to amend their charters, adopt new charters or repeal charters without the approval of the general assembly

unless the attorney general, six senators, or thirty representatives petitioned for legislative approval within thirty days after the first day that notice of the voter approved amendment was published in the legislative calendars. The concept was to allow non-controversial charter proposals to proceed without impediment. Beyond a cursory hearing in a senate committee, the proposal never saw the light of day.

- In 2002, recognizing the severe fiscal constraints facing state budgets and municipal taxing capacity, the Senate voted by a margin of 18-10 to enable municipalities to enact 1% local option sales or meals and rooms taxes. The House never took up the matter and the measure died.

The issues the voters have considered in charter amendments run the gamut – some are contentious, some are even radical and some are mundane, but rarely does one have any effect on anyone outside the boundaries of the city or town passing the charter proposal.

Nor are charter amendments or local option taxes the only areas of state government heavy handedness when it comes to municipal government. In an editorial on February 23, 2000, prior to Town Meeting, a WCAX-TV commentator noted that elected town jobs are going unfilled. *“That most cherished of Vermont traditions, Town Meeting Day, could soon be a distant memory. The underlying problem, no one wants a meaningless job. Unless you work under the ‘Gold Dome’ in Montpelier, your elected job is in an advisory position. Your local efforts are subject to state approval....”*

Given this state of affairs, what should local officials insist on from our legislators? Benevolent paternalism from the Legislature is not enough. In addition to the needed change in attitude by state officials to respect the actions of local voters, structural changes must be made. Ultimately, we need the Vermont Constitution to be amended so that those decisions, which are purely local in character, are reserved in their entirety to the municipalities. That process can begin again with the legislative session beginning in 2003 if our elected legislators are willing to take up the challenge.

Municipal officials must assure that we elect legislators who will honor the will of the people and approve charters as the people who elected those same legislators approved them. The 2003 Legislature can also pass a law that will make the legislative approval process less onerous to local voters and limit the Legislature’s interference in a voter-approved charter, much as the bill described above, S. 128, would have accomplished.

And one more proviso: since there will be conflicts and gray areas concerning what is truly local and what is something else, there needs to be language in the Vermont Constitution similar to that found in other constitutions, that there is to be liberal construal in favor of municipalities in these cases. Remember Justice Dillon? That’s in there for his benefit.

## STATES WITH HOME RULE CURRENTLY

<b>Constitutional Home Rule States</b>				
	<b>STATE</b>	<b>DATE</b>	<b>TYPE</b>	<b>APPLICATION</b>
1	Alaska	1959	1	First class cities and boroughs
2	Arizona	1912	2	Cities of 3,500 or more
3	California	1879	2	Cities (& San Francisco city-county)
4	Colorado	1902	2	Any municipality
5	Connecticut	1965	1	Any city, town or borough
6	Hawaii	1959	2	All political subdivisions
7	Illinois	1971	2	For all cities over 25,000; smaller municipalities may adopt charters at local option
8	Iowa	1968	1	Any municipality
9	Kansas	1960	1	All cities
10	Louisiana	1974	2	Any municipality
11	Maine	1970	2	Any municipality
12	Maryland	1954	1	Cities and towns
13	Massachusetts	1966	1	Cities and towns
14	Michigan	1908	1	Each city and village
15	Minnesota	1898	1	Any city and village
16	Missouri	1875	2	Any city over 5,000
17	Montana	1972	2	Municipalities; voter review of 5 optional forms effective 1977
18	Nebraska	1912	2	Any city over 5,000
19	Nevada	1924	1	Any city or town
20	New Mexico	1970	2	Municipalities
21	New York	1923	1	Cities, towns and villages
22	North Dakota	1966	2	All cities
23	Ohio	1912	2	Any municipality
24	Oklahoma	1908	2	Any city of 2,000 or more
25	Oregon	1906	2	Every city and town
26	Pennsylvania	1969	1	Provides optional forms for all local governments
27	Rhode Island	1951	2	Every city and town
28	South Carolina	1975	1	Municipalities, 3 forms of government
29	South Dakota	1962	2	Any municipality
30	Tennessee	1953	2	Any municipality
31	Texas	1912	1	Cities over 5,000
32	Utah	1932	2	Any incorporated city or town
33	Washington	1889	2	Any city over 10,000
34	West Virginia	1936	1	Municipalities over 2,000
35	Wisconsin	1924	1	Cities and villages
36	Wyoming	1973	2	Municipalities
<b>Legislative Home Rule States</b>				
	<b>STATE</b>	<b>DATE</b>	<b>TYPE</b>	<b>APPLICATION</b>
37	Arkansas	1972		Any municipality
38	Florida	1968		Any municipality
39	Georgia	1947		Any municipality
40	New Hampshire	1966		Cities and towns
41	New Jersey	1050		Optional charter system for municipalities
42	North Carolina	1917		Any municipality

1 = requires enabling legislation  
 2 = self-executing