



May We Govern Ourselves Yet?

“Ask most Vermonters what is special about their form of government and they will inevitably say ‘local control’ – the Town Meeting Day tradition, the Norman-Rockwell image of average residents running their own affairs. Hogwash! It’s all a myth. Vermonters have less control over their communities than most Americans. Power in Vermont is held not by town selectboards or city councils but by the Legislature. That’s because, unlike 42 other states, Vermont has no home rule allowing communities a great deal of say over what happens within their borders.” Burlington Free Press Editorial, May 11, 2003.

Town meeting is almost upon us. Around the world, people point to Vermont’s town meeting as a beacon of democracy in action. When we come together on that day, we may believe that the State of Vermont has faith in our ability to govern ourselves. Yet what do we really control at the local level? The answer is only those aspects of local government on which the legislature allows cities and towns to make decisions.

Vermont is neither as independent nor self-directed as the myth would have you believe. At town meeting, you may vote on the town and school budgets. And, yes, you may vote down the new grader and direct the road crew to make the current vehicle last two more years. Most of the items that comprise local budgets, however, are mandated or may be second-guessed by the legislature. If voters want to do something innovative – say, provide for recall of local elected officials, adopt a municipal plan for ten years, or adopt a local option tax – they need permission.

Vermont is a Dillon’s Rule state. Thus, our great paradox: despite its reputation of direct democracy and robust local control, Vermont has one of the most centralized governments in the country.

In 1872, Iowa Supreme Court Justice John F. Dillon ruled that municipalities may exercise only those powers specifically granted to them or essential to the declared purposes of the municipality. Thirty-six states have since incorporated Home Rule in their constitutions, Missouri having done so as early as 1875. (Home Rule states authorize local governments to govern themselves within limits established in state constitutions or laws.) An additional eight states enacted Home Rule in statute. Nevertheless, Vermont is stuck with Dillon’s Rule today because our legislature has refused to seriously consider any kind of Home Rule option. Vermont local governments may exercise *only* those powers:

1. that the legislature grants in express words in the law or in an approved governance charter;
2. that are necessarily implied or incident to the powers expressly granted; and
3. that are essential to the declared objects and purposes of the corporation.

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In Vermont, governance charters allow municipalities to deviate from statute in specific instances, when voters have acted, and when that locally voted action has been reviewed, dissected, frequently amended, and approved by the legislature. When legislators review a charter adopted by the voters, they may amend any part of it or let it die.

Fifty-two cities and towns – 53 percent of the state’s population – have adopted and legislatively approved governance charters, as do 25 incorporated villages. In the last three years, most charter amendments would merge a district or village into a town, adopt a local option tax, appoint the treasurer or clerk, provide for recall of local elected officers, adopt a conflict of interest policy, provide for bonding of officials, change the municipal fiscal year, consolidate services, or amend the method of adopting ordinances. Where charter amendment proposals have been controversial, the committees of jurisdiction – House and Senate Government Operations – have not approved them.

The debate about whether or not voters may exercise democracy on issues of municipal governance has raged between local government officials and state legislators for almost 150 years. According to “Home Rule In America, A Fifty-State Handbook” (Congressional Quarterly Press), *“What local governments may or may not do is a worthy topic because people live and confront the problems of daily life at the community level. People have established and operated cities, towns and villages throughout history for the individual and collective benefits to be achieved by living in an organized community with powers of government.”*

Vermont legislators remain opposed to any variation of Home Rule. Against this backdrop, a legislator and former local official introduced H.R.11, a resolution that would provide a more streamlined review process for considering municipal charter bills. A municipal charter amendment bill would be placed on the House Calendar for two legislative days. Upon the third day, unless the speaker or any member of the House so directed, the bill would be ripe for action by the entire House without having gone through the committee process. If the charter amendment might affect revenues of the state, it would be referred to the Appropriations or Ways and Means committee. We have no doubt that any proposed charter amendment that was the least bit controversial would garner at least one call for commitment to the House Government Operations Committee, in which case the same process that is in place today would ensue.

“[R]eal political power doesn’t lie with neighbors making decisions for their community, but with the 180 state legislators in Montpelier.” (*Burlington Free Press editorial, Tuesday, February 3, 2004.*)

In 2016, when more than half of Vermont’s population resides in cities and towns where voters have approved charters governing themselves and the legislature has also given its approval, it is high time to accord a measure of self-governance to those municipalities – which are some of the oldest in the nation. If H.R.11 were to pass, local voters’ efforts to govern themselves would be allowed to proceed in a manner that respects voter’s wishes and in a less time-consuming fashion.

February 16, 2016
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