



MUNICIPALITIES AND MARIJUANA

Taxation and Regulation Subcommittee Meeting
11/9/2017
Vermont League of Cities and Towns

Vermont's constitution does not actually grant any power or legal authority directly to the state's municipalities. Instead, towns and cities receive all of their legal authority from the Vermont Legislature. In Vermont, municipalities are truly political subdivisions of the state.

"We have consistently adhered to the so-called Dillon's rule that 'a municipality has only those powers and functions specifically authorized by the legislature, and such additional functions as may be incident, subordinate or necessary to the exercise thereof.'" *Petition of Ball Mountain Dam Hydroelectric Project*, 154 Vt. 189 (1990).

Dillon's Rule

Vermont is one of only *five* states that is considered a "pure" Dillon's Rule state.

What is Dillon's Rule?

In 1872, Iowa Judge John Dillon wrote a position paper on the powers of local government. He wrote that in contrast to the powers of states, which are unlimited but for express restrictions under the state or federal constitution, municipalities only have the powers that are expressly granted to them. This formulation of the scope of municipal power came to be known as "Dillon's Rule." It holds that municipal governments have only the powers expressly granted to them by the state legislature, those powers necessarily implied by the express powers, and those that are essential and indispensable to the municipality's existence and functioning. Further, the powers expressly granted to the municipality should be narrowly construed, and any ambiguities in the legislative grant of power should be resolved against the municipality. However, when the state has not specifically directed the method by which the municipality may implement its granted power, the municipality has the discretion to choose the method so long as its choice is reasonable.

Home Rule

What is Home Rule?

Home Rule involves the authority of a local government to prevent state government intervention with its operations. The extent of its power, however, is subject to limitations prescribed by state constitutions and statutes. Vermont is **not** a Home Rule state.

Pure or limited Home Rule states include:

- Colorado
- Nevada
- Maine
- Oregon
- Alaska
- California
- Washington
- Massachusetts

Municipal Considerations

- Voter Approval
- Land Use and Zoning
- Code Enforcement
- Ordinance Enforcement
- Licensing and Permitting
- Public Health
- Environmental Impacts
- Law Enforcement
- Public Safety



How will these considerations affect local budgets (property tax) and current resources available?

How will municipalities comply with the Cole Memo with the above considerations factored in?

Municipal Considerations

- Opt-in/opt-out authority for hosting marijuana establishments (voter approval)
 - Other states have allowed for communities to vote whether to allow establishments
 - Would only apply to establishments – not personal use
 - Consider impacts of “petitions for reconsideration” under 17 V.S.A. § 2261
- Local land use bylaws need to be updated to plan and zone for these establishments
 - Amending zoning bylaws is costly and takes time to work through the statutory process outlined in 24 V.S.A. Chapter 117. (Planning commission, SB vote [or voter], public hearings, etc.)
 - These are community and planning discussions – combinations of wants/needs, for/against, and complicated planning determinations. (Proper districting locations, impacts on service [transportation, sewer, wastewater, etc.], proximity to utilities, signage, lighting, hours of operation, distances from schools, etc.)
- State minimum standards and prohibitions
 - Some towns do not have zoning; therefore, unless Act 250 is triggered, development may occur in areas not suitable for such establishments.
 - Many towns may have zoning but no code enforcement (fire, building, health, electrical, etc.), and the state will need to fill in those gaps when necessary.

Municipal Considerations

- Building Inspection, Code Enforcement, Health, Fire and Safety Ordinances, Time/Place/Manner Restrictions, Nuisance Ordinances, and other “Police Power” Ordinances
 - (Those “police powers” delegated by the legislature regarding public health, safety, welfare, and convenience – see 24 V.S.A. §§ 1971, 2291)
 - Towns that have codes/ordinances/bylaws in place will have greater enforcement responsibilities
 - With facilities (grow, retail, manufacture) and personal use (home grows)
 - Odor complaints, public use complaints, fire hazards, electrical hazards
 - Water quality and use in public systems
 - Mold and electrical hazards (code enforcement, Town Health Officers)
- Licensing and Permitting
 - Tie into 7 V.S.A. Chapter 7 and related liquor/alcohol/tobacco control structure – (Washington and Alaska have a Liquor and Cannabis Board/Office)
 - Consider other approaches in addition to:
 - Registry and permit for home grows – minimal fee, but makes tracking illegal/legal operations easier for enforcement officials. May be a middle ground between Washington model and all other state models.
 - Requirement for “host community impact agreements” between town and licensee – establishment pays the “impact fee” to essentially help town pay for enforcement (Massachusetts model)

Municipal Considerations

- Deputy U.S. Attorney General James M. [Cole Memo](#) (Aug. 29, 2013)

“The Department’s guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice.”

- Public Safety, Law Enforcement, Public Health

- Largely, this is where the rubber meets the road regarding compliance with the Cole Memo
- The State Police do not and cannot cover every jurisdiction – that’s where they will either need to step up, or provide towns the resources to staff, contract out, bolster enforcement needs accordingly
- Sheriff departments and local police agencies will carry the rest of the responsibilities in the gaps of coverage
- 246 municipalities, 56 local police departments, 14 county agencies
- Vermont public safety agencies (fire, police, EMT, paramedics, etc.) look nothing like those in the other states that have legalized (underfunded, unfunded, scattered, volunteer, geographically limited, etc. vs. the Burlingtons of the world.)
- According to the RAND Study, Vermont spends less than \$1 million on enforcing current marijuana laws each year – which will have to be ratcheted up for a new regulatory system

Municipal Considerations

- Public Safety, Law Enforcement, Public Health
 - Fire hazards (illegal grows, extraction)
 - EMT/paramedic response
 - Illegal grow operations (black and gray markets)
 - Legal grown, retail operations
 - Training/education (probable cause, search/seizure, etc.)
 - Tenant multi-family homes' use/grow
 - Highway safety (impaired driving)
 - Thefts/burglaries (rural grows, home grows especially)
 - Prioritization of enforcement with current resources
 - Technology (tracking data)
 - Diversion out of state
 - Schools
 - Public use
 - Odor complaints
 - Storage of evidence/contraband
 - Marijuana tourism

Taxation and Revenue Sharing

- Other Jurisdictions that Have Legalized
 - Every other state that has legalized has local taxing authority beyond property taxation
 - Sales, excise, option, etc.
 - All other states have SOME level of revenue sharing for municipalities from state revenues
- AK: \$50/per ounce excise tax – portion thereof distributed to local governments. State splits licensing fees with local governments. Local government can charge additional fees for administration, enforcement and inspection and have the option of applying local sales tax up to 7.5%.
- CO: Local sales and excise tax – between 1% and 15% – voted on by local voters. 10% of retail marijuana state sales tax divided among local governments based on retail sales in jurisdictions. State 15% excise tax – of it, \$40M transferred to school construction, any above to Public School Fund.
- OR: Local option tax up to 3% – voted on by local voters. State tax revenues – 10% to cities and 10% to counties. Prior to July, 2017 – distribution based on population. After July 2017, population, number of licenses create distribution formula. If you ban it, you get no local revenues.

Taxation and Revenue Sharing

- WA: In 2016-2017, \$6 million went go to cities and counties with licensed facilities. In 2018, the amount distributed, pursuant to a distribution formula, will start to increase. If revenue exceeds \$25 million, 30% of all marijuana excise taxes deposited in the General Fund the prior fiscal year will be distributed to local governments as follows: 30% to cities/towns/counties where retailers are located, based on the retail sales from stores within each jurisdiction; 70% to cities/towns/counties on a per capita basis – to jurisdiction that do not prohibit the siting of state licensed producers, processors, or retailers. Local sales taxes can be levies also – between 0.5% - 3.1%.
- MA: 6.25% state sales tax; 10.75% excise tax; local option tax cap to 3% of total sale price. Collected by state and returned to the municipality. Marijuana operations (retail/grow/etc.) must enter host community impact agreements with host municipalities to offset costs of impacts in town. Requires renegotiation every five years and community impact fees paid to the municipality by the licensee to 3% of the establishment's gross sales. State license revoked if impact agreements not in place.
- ME: (**vetoed** 11/3/2017 – stay tuned!) 10% sales tax and 10% excise tax based on weight. 5% of total monthly revenues generated within each municipality from a retail store or grow operation must be distributed to that municipality. 1% of total monthly revenues statewide distributed to municipalities hosting marijuana adult-use businesses. 6% state taxes after local shares are paid go to law enforcement, another 6% to public awareness and youth prevention, and the remaining goes into the state General Fund.
- NV: Municipalities can access own sales tax, average is 1%. 15% excise tax of the FMV of wholesale, 10% retail. Local/county government reimbursed for costs of carrying out legalization. Yearly, \$1.5M to each county, \$3.5M to municipalities in an amount equal to the percentage of population with marijuana establishments.

Taxation and Revenue Sharing

- Current Taxation and Revenue Sharing in Vermont
 - 95% of municipalities in Vermont are wholly reliant on property taxes for raising revenues
 - Municipalities cannot levy local option taxes or otherwise unless they have approval from the state legislature and local voters
 - 14 municipalities have local option tax
 - 19 municipalities have local meals and rooms, and alcoholic beverages tax
 - Previous legalization bills:
 - S.95 – had revenues going to host municipalities (never left committee)
 - S.241 – had no designated municipal revenue sharing, no local taxation – only a promise to look into the idea
 - H.490 – has local tax at 2.5% for host municipalities, but no revenue sharing (still in committee)
- Future Taxation and Revenue Sharing in Vermont after legalization
 - Unless the state takes over all the above municipal impacts, it is only reasonable that municipalities share in the revenue to enforce and administer new legalization laws
 - Municipalities should be able to levy local taxes and enter into agreements with marijuana businesses to subsidize enforcement costs
 - Communities without marijuana operations and business should also share in state revenues to address local impacts that may not directly stem from retail/grow operations (still have home use, grows, highway safety, odor, zoning, etc.)

In conclusion...

- Look to what other states have done (don't reinvent the wheel) but recognize where Vermont is situated differently
- Use the current systems as vehicles for administration and enforcement as much as possible (play to our strengths)
- Pay attention to the unintended consequences
- Ensure resources (money, training, authority, personnel, etc.) are available to state and local government officials/agencies charged with administering legalization
- Have the "industry" and "users" pay for the system (self-sufficient)
- Don't over-tax or under-tax
- What's the impact on enforcement with unregulated home grows?
- Ensure the law as written – not in theory – is enforceable and can be administered in a state like Vermont (Be realistic.)
- Pay attention to federal law (and memos)
- Don't forget about the interplay between medical and recreational marijuana