
Home Rule and Local Control in Connecticut

A Report by the
Connecticut
Advisory Commission on Intergovernmental Relations

January 2022

ACIR

The Advisory Commission on Intergovernmental Relations (ACIR) is a 25-member agency of the State of Connecticut created in 1985 to study system issues between the state and local governments and to recommend solutions as appropriate. The membership is designed to represent the state legislative and executive branches, municipalities and other local interests, and the general public.

The role of ACIR, as contained in Section 2-79a of the Connecticut General Statutes, is to: (1) serve as a forum for consultation between state and local officials; (2) conduct research on intergovernmental issues; (3) encourage and coordinate studies of intergovernmental issues by universities and others; and (4) initiate policy development and make recommendations to all levels of government.

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Purpose

The purpose of this report is to:

- Provide the legal context for **home rule**;
- Explain the meaning of **local control**; and,
- Discuss how home rule can be used to bolster the **Local Government of the Future** initiative of ACIR.

Introduction

Public discussion during the 2021 legislative session elevated the terms “Home Rule” and “Local Control” to the forefront of usage. These phrases were used with regularity in the discussion of multiple legislative proposals and Executive Orders related to the pandemic. Often they were used interchangeably and consistently with strong conviction by members of the General Assembly, local elected officials and the public. These terms were associated with debates on legislation and executive orders where the belief was that there was an attempt to either remove or restrict the right of a city or town to decide its own particular policy or actions.

During debate (public hearing and House and Senate) on multiple use/affordable housing bills which eventually became House Bill 6107, An Act Concerning the Zoning Enabling Act, Accessory Apartments, Training For Certain Land Use Officials, Municipal Affordable Housing Plans and a Commission on Connecticut’s Development and Future (Now Public Act 21-29) raised much concern that local rights were being usurped by the state. One lawmaker, during the public hearing stated: “..there is a reason why we have local control, there is a reason why, it’s because we know what’s good for our towns, we know what we need to be doing in our towns to promote economic development and the type of development that we want to see.”¹ and another: “We have local control for a reason. We have trusted in local control; we need to continue to trust in local control. And more importantly, we just simply need to respect that folks know what their communities need better than we do. It really is that simple.”² When the legislation was debated in the Senate, Senator Needleman (33rd), who is also a first selectman, placed the discussion in this context:

“I know that my good colleague keeps coming back to the idea of local control. And I do know that there are members of this chamber -- members of the General Assembly and colleagues of mine who are first selectman, who believe that we are 169 autonomous countries. But the reality is we are one state. We are one state out of 50 in the United States. There are many mandates there are many requirements. There are many restrictions and regulations on what we all do every day as municipal leaders that we have to follow. For example, I would like to know if any town in this state has their own Building Code. It's a rhetorical question, not necessary for an answer. The answer is no. Municipalities don't have their own Building Codes. Does any town have their own Public Health Code? No. No town has that Public Health code. Does any town have their own Fire Code? No, one town has their own Fire Code. The state and the federal government prescribed guidelines that we all operate under. It is not a shock that the state has their hand in what municipalities do. As a First

¹ REP. ZULLO (99TH) , House Bill No. 6107, AN ACT CONCERNING THE REORGANIZATION OF THE ZONING ENABLING ACT AND THE PROMOTION OF MUNICIPAL COMPLIANCE , page 163 May 20, 2021

² REP. PERILLO (113TH) , page 278

Selectman, frequently, I and my colleagues lament some of them, I will tell you that honestly, some of them are more onerous. Some of them cost us a lot of money. Some of them have a great impact. There are many times in this room in this circle in this body, in this building, where I question, the wisdom of adding more of those. ..., and I know that time after time, we are having a conversation about Home Rule.³

In August of 2020, Governor Lamont, with the issuance of Executive Order 13A enabled individual towns to determine their own masking requirements for “indoor public places.” In response to this the Southeastern Connecticut Council of Governments and the Capital Region Council of Governments sent a joint letter to the governor asking for a change to that executive order noting that they “acknowledged the difficulty individual towns would have in enforcing a mandate at the municipal level. Since the transmission of COVID-19 does not stop at municipal borders or regional boundaries, we also worry that an imposition of a mask mandate on a town-by-town basis would not be as impactful as a statewide mandate...As municipal leaders, we urge you to use your office and authority to establish a statewide mandate instead of a patchwork of municipal mandates.”⁴ The 58 towns covered by the two COGs demonstrates another side to the state-local relationship.

The balance, if such is possible or advisable, between the state’s authority and the practicality of allow towns to make decisions based on local circumstances may never be resolved. However, the more understanding of what the relationship is in terms of the State Constitution, court decisions and the powers provided municipalities by the Legislature the better the discussion toward addressing issues impacting all levels of governance in our state.

The Advisory Commission on Intergovernmental Relations (ACIR), in light of this growing discussion, felt it important to examine home rule and local control to provide a proper legal and contextual understanding of the terms. The intention of this work is clear away misunderstandings so that a clearer focus can be had in discussing and formulating public policy.

This is the second time that ACIR has explored this topic. In 1987 as a result of Special Act 86-31, ACIR developed a comprehensive report⁵ on home rule. This report will additionally examine the findings and recommendations from that study as most are still relevant today.

The Town as Place

Connecticut has 169 towns. Towns have always been the the identification of “place” in Connecticut. “Throughout our history, the township has been the fundamental unit of government. The state’s educational system and many other important public functions are administered primarily at the local level. The town meeting, in its various adaptations, remains a widely-used form of local organization. And in recent years, attempts in the General Assembly to override local autonomy in such areas as zoning have been rebuffed by nearly religious intonations of the need to preserve Connecticut’s “strong home rule tradition.”⁶ There is no indication that this belief is any less than it has been for the state’s history.

This more than 350 year history explains which explains the deep seated connection to local government. “[T]he town’s relationship to political theory was unique in that it referred to a place as much as to an institution, or, more specifically, to the unification of geography and polity. In its original sense, the town was a settlement unit adapted for the ecological and economic conditions of small-scale colonial agriculture in the New England environment. But upon this material geography, the town stacked layers of legal and associative power; it was a jurisdiction as well as a social bloc. It therefore expressed an attitude often assumed but rarely made explicit in theories of

³ Senator Needleman (33RD) pages 171-172, May 27, 2021

⁴ <https://crocog.org/wp-content/uploads/2021/08/CRCOG-mask-mandate-letter-to-Governor-Lamont-Final.pdf>

⁵ Home Rule in Connecticut, Its History, Status and Recommendations for Change, ACIR, January 1987

⁶ The Myth and Reality of Home Rule Powers in Connecticut By Timothy S. Hollister, 1985 - Connecticut Bar journal, pg. 389

democracy: the self in self-government is constituted geographically.”⁷ If the saying that “all politics is local” is true, (there is no reason to believe that it is not) then there is a built in wall to changing the current system.

The relationship of town and state dates back to the 1600s. Unlike most of the nation, counties (although present) were of little significance. Connecticut actually had counties in place for 292 years (they actually first came into existence 32 years after the State was formed) until they were formally abolished on October 1, 1960 by the General Assembly with the passage Public Act 59-152. Their elimination was not the result of anything more than their increasing limited functions and the growth of the modern day state agencies in Connecticut. “Prior to their elimination, county governments had limited functions. They primarily operated jails but also maintained courthouse buildings; inspected weights and measures; resolved disputes over the maintenance of roads, highways, and sidewalks; administered certain kinds of trust funds; and contributed financial aid for agricultural extension services, hospitals, and forest fire fighting.”

The interesting aspect of the strong identification to town is that for the most part people and businesses identify with the various subdivisions (more than 300) within the 169 cities and towns. The best example of this are broadcasts of UCONN basketball where the announcers welcome the viewers to “Storrs, Connecticut” - even though there is no such town. This reality further complicates any discussion of the town-state relationship.

Home Rule - The Legal Reality

Note: This section of the paper was written by Attorney Steven G. Mednick (www.mednicklaw.com) with more than 30 years experience in municipal law in Connecticut and has graciously assisted ACIR in the development of this paper.

“Home Rule” is a term that seems self-evident on its face. Yet, as these two words are uttered by elected officials and citizens you will find that they frequently mean different things to different people. Some actually believe the words invoke a degree of “local authority,” “local control” or, even, sovereignty. If the truth be told, they are not what they appear. Arguably, the term is a misnomer rife with ambiguity and misunderstanding.

Why is this the case? It is the objective of this brief analysis to come up with a simple, direct, readable, and understandable definition of “home rule.” Not an easy task; yet, if we want to build a foundation for thriving municipalities in the 21st century it makes great sense to understand how two simple words have been misconstrued.

Connecticut’s form of home rule traces its roots to several judicial decisions in the post-Civil War era that molded the controlling legal maxim known as “Dillon’s Rule.”⁸ The rule holds that a municipal corporation can exercise only the powers:

- Explicitly granted to them;
- Necessarily or fairly implied in or incident to the powers expressly granted; and,
- Essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable

The rule was validated and nationalized by the U.S. Supreme Court in the first quarter of the 20th century⁹. More recently, the Supreme Court commented on the rule and the issue of local government legal authority by asserting that “all sovereign authority” in the United States resides with either the federal or state governments:

⁷ The Town Was Us - How the New England town became the mythical landscape of American democracy, Garrett Dash Nelson, July 2018, <https://placesjournal.org/article/the-town-was-us/?cn-reloaded=1>

⁸ Clark v. City of Des Moines, 19 Iowa 199 (1865) and Clinton v. Cedar Rapids and the Missouri River Railroad, 24 Iowa 455 (1869).

⁹ Atkins v. Kansas, 191 U.S. 207 (1903); Municipal corporations are only auxiliaries of the state for the purposes of local government. They may be created, or having been created, may be destroyed or their powers may be restricted, enlarged or withdrawn at the will of the legislature; See also, Hunter v. City of Pittsburgh, 207 U.S. 161 (1907). See also, City of Trenton v. New Jersey 262 U.S. 182 (1923).

“There exist within the broad domain of sovereignty but these two¹⁰.” In other words, municipal corporations have no inherent legal or sovereign authority.

While the Constitution of 1818 was silent on “home rule” and there was barely any mention of local government in that document, the notion of limited municipal authority was addressed by our courts in the 19th century¹¹. Up to and including 1957 the General Assembly made the rules for local governance by enacting Special Acts.

After 1957, the General Assembly curtailed the Special Act regimen for local governance by adopting the Home Rule Act which allowed any municipality to write, adopt, and, as desired, amend, its own charter and to conduct municipal business within the scope of powers granted by the legislature¹². Municipal authority is primarily found in Title 7 of the General Statutes, although additional “explicit” or “express” grants of authority can be found throughout our codified state laws. Once again, this legislative framework confirmed the notion that municipalities are “creations of the state¹³” or “creatures of the state¹⁴” by affirming that municipalities had no inherent power to modify legislative acts¹⁵; or any “inherent legislative authority¹⁶” whatsoever.

This conception of “home rule” was fully constitutionalized in 1965 with the adoption of Article Tenth of the 1965 Constitution, entitled “Of Home Rule.” The Constitution now permits the General Assembly “by general law” to delegate to municipalities “such legislative authority as from time to time it deems appropriate...relative to the powers, organization, and form of government of such political subdivisions¹⁷.” At the same time the legislature retained a more limited use of “special legislation” with respect to “...the powers, organization, terms of elective

Constitution Of The State Of Connecticut

Adopted December 14, 1965. Proclaimed by governor as adopted December 30, 1965.

ARTICLE TENTH. X OF HOME RULE.

Sec. 1. The general assembly shall by general law delegate such legislative authority as from time to time it deems appropriate to towns, cities and boroughs relative to the powers, organization, and form of government of such political subdivisions. The general assembly shall from time to time by general law determine the maximum terms of office of the various town, city and borough elective offices. After July 1, 1969, the general assembly shall enact no special legislation relative to the powers, organization, terms of elective offices or form of government of any single town, city or borough, except as to (a) borrowing power, (b) validating acts, and (c) formation, consolidation or dissolution of any town, city or borough, unless in the delegation of legislative authority by general law the general assembly shall have failed to prescribe the powers necessary to effect the purpose of such special legislation.

Sec. 2. The general assembly may prescribe the methods by which towns, cities and boroughs may establish regional governments and the methods by which towns, cities, boroughs and regional governments may enter into compacts. The general assembly shall prescribe the powers, organization, form, and method of dissolution of any government so established.

¹⁰ *Communication Co. v. Boulder*, 455 U.S. 40 (1982). The case did not address the legal status of tribal law in the United States and is not relevant to this discussion.

¹¹ *State ex rel. Bulkeley v. Williams*, 68 Conn. 131, 149 (1896). The 1818 Constitution addressed a few local issues: (1) While local officials could “decide on the qualifications of electors” they had to do so “...in such manner as may be prescribed by law;” See, Art. 6, Sec. 5, as follows: “...selectmen and town clerk had authority to “decide on the qualifications of electors, at such time, and in such manner as may be prescribed by law.” See also, Art. 38. Section five of Article VI is amended to read as follows: “The selectmen and town clerks or an assistant town clerk of the several towns, shall decide on the qualifications of electors, at such times and in such manner as prescribed by law” and Art. 39: “The general assembly shall have power to provide by law for voting by qualified voters of the state who are absent from the city or town of which they are inhabitants at the time of an election or because of sickness or physical disability are unable to appear at the polling places on the day of election, in the choice of any officer to be elected or upon any question to be voted on at such election.” Arts. 38 and 39. Adopted 1932; (2) Likewise, annual (and later biennially) elections were permitted for selectman and “officers of local police as the laws may prescribe.” See, Art. 32: “Each town shall, annually, or biennially, as the electors of the town may determine, elect selectmen and such officers of local police as the laws may prescribe.” Art. 32. Adopted October, 1905 and “Each town shall annually elect selectman, and such officers of local police as the laws may prescribe”. (3) Extra or increased compensation of local “public officers” and contractors was constricted by the constitution. See, Art. 24 “Neither the general assembly nor any county, city, borough, town, or school district, shall have power to pay or grant any extra compensation to any public officer, employee, agent or, servant, or increase the compensation of any public officer or employee, to take effect during the continuance in office of any person whose salary might be increased thereby, or increase the pay or compensation of any public contractor above the amount specified in the contract.” Art. 24. Adopted in October, 1877. (4) The constitutional also regulated the ability of local towns to invest in railroad corporations. See, Art. 25 “No county, city, town, borough, or other municipality, shall ever subscribe to the capital stock of any railroad corporation, or become a purchaser of the bonds, or make donation to, or loan its credit, directly or indirectly, in aid of any such corporation; but nothing herein contained shall affect the validity of any bonds or debts incurred under existing laws, nor be construed to prohibit the general assembly from authorizing any town or city to protect by additional appropriations of money or credit, any railroad debt contracted prior to the adoption of this amendment.” Art. 25. Adopted October, 1877.

¹² See, C.G.S. §7-148 entitled: “Scope of Municipal Powers.”

¹³ *Simons v. Cauty*, 195 Conn. 524, 528 (1985)

¹⁴ *LaCava v. Carfi*, 140 Conn. 517, 519 (1953)

¹⁵ *Kelly v. City of Bridgeport*, 111 Conn. 667, 673 (1930); *Connelly v. Bridgeport*, 104 Conn. 238, 252 (1926); *State ex rel. Bulkeley v. Williams*, 68 Conn. 131, 149 (1896).

¹⁶ *New Haven Commission on Equal Opportunities v. Yale University*, 183 Conn. 495, 499 (1981)

¹⁷ See, the first and second sentences of section 1 of Article Tenth: “The general assembly shall “...by general law delegate such legislative authority as from time to time it deems appropriate to towns, cities and boroughs relative to the powers, organization, and form of government of such political subdivisions. The general assembly shall from time to time by general law determine the maximum terms of office of the various town, city and borough elective offices.”

offices or form of government of any single” municipality as well as the ability of the General Assembly to address (a) borrowing power, (b) validating acts, and (c) formation, consolidation or dissolution of any town, city or borough.”

Moreover, the 1965 Constitution reserved the right of the General Assembly to adopt Special Acts if “in the delegation of legislative authority by general law the general assembly shall have failed to prescribe the powers necessary to effect the purpose of such special legislation¹⁸.” Thus, under the 1965 Constitution municipalities conduct their business within a limited and circumscribed delegation of authority.

One can better regard Connecticut “home rule” as an artifice or construct for the orderly operation of local government under the superior constitutional and legislative authority of the state. As a result, local governments have no inherent authority for self- government because the capacity for governance is derived entirely from the authority of the state. In the last analysis the question for municipal decision-makers is not whether there is “a statutory prohibition against (an) enactment)” but whether there is “statutory authority for the enactment¹⁹”. In other words, when it comes to the governance of municipalities, silence is not authority.

As a consequence, Connecticut municipal governments are authorized only to conduct their affairs when “expressly granted” the right to do so by the General Assembly. This covers the range of government activities from the ability to address the “structure” of government; that is, the power to choose the form of government, a municipal charter and to enact charter revisions. Paradoxically, this power is one most clearly conferred yet infrequently exercised.

The reach of Title 7 and other statutes also impacts the government and how local officials exercise the authority granted to them on the “functional” issues of management operations of government. Often there is an ambiguity as to whether a Mayor or own Manager act in a certain way. If the grant of authority is not directly on point, the question usually comes down to whether a local official or their legal advisor can construe a function or power “necessarily or fairly implied in or incident to” the express grant of authority.

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Local Control

In contrast to home rule, the term “local control” has no legal footing. It is not found in the state’s constitution or the statutes. Local control is an expression for the use of authority granted to municipalities. “In some respects, local control is a convenient “legal fiction” that has been enshrined in our history and incorporated in our system of government operations through a device known as home rule.”²⁰

Local control varies, in direct correlation to authorities granted by the General Assembly.. For example, the General Assembly in Title 8 enables any municipality to adopt the zoning authorities as detailed in the statute. It is not open ended authority - but prescriptive authority detailing the process for adoption, size of commissions, fees that may be charged and the parameters as to how a set of municipal zoning regulations are to be formulated. There is a degree of local control within the statute - but the statute ultimately provides the guardrails for the extent of whatever local control is exercised.

More worrisome than the existence of the myth [Home Rule], however, is the occasional reliance upon it by municipal officials.

THE MYTH AND REALITY OF HOME RULE POWERS IN CONNECTICUT BY TIMOTHY S. HOLLISTER

¹⁸ See, the third sentence of section 1 of Article tenth: “After July 1, 1969, the general assembly shall enact no special legislation relative to the powers, organization, terms of elective offices or form of government of any single town, city or borough, except as to (a) borrowing power, (b) validating acts, and (c) formation, consolidation or dissolution of any town, city or borough, unless in the delegation of legislative authority by general law the general assembly shall have failed to prescribe the powers necessary to effect the purpose

of such special legislation.” See also, section 2 of Article Tenth which addresses the issue inter-local or regional compacts: “The general assembly may prescribe the methods by which towns, cities and boroughs may establish regional governments and the methods by which towns, cities, boroughs and regional governments may enter into compacts. The general assembly shall prescribe the powers, organization, form, and method of dissolution of any government so established.”

¹⁹ Avonside, Inc. v. Zoning & Planning Commission, 153 Conn. 232, 236 (1965).

²⁰ Perlman, Bruce J. “The Illusion of Local Control: The Paradox of Local Government Home Rule.” State & Local Government Review 48, no. 3 (2016): 189–93. <http://www.jstor.org/stable/44651996>.

"It is evident that one can have local control with limited authority. For example, a municipal police department is responsible for the prevention and suppression of crime; yet a municipality has no legal authority to control firearms within its geographic limits. Conversely, a municipality can have authority yet limited control. A mayor is legally authorized to represent the municipality and the legislative body is responsible for approving agreements in the collective bargaining process. Yet, if the agreement is not reached or there is a dispute about the interpretation of a provision, local control is ceded to an arbitration system that controls the final decisions on behalf of the parties involved with virtually no public input, involvement or control."²¹

"The issue of constricted authority is also present on matters of "fiscal" authority; that is, the ability to set its budget and tax rates. Questions of municipal authority can arise with respect to compliance with laws that govern the borrowing of funds or state mandates (funded or unfunded). The simple fact that the state sets the rules on what can be taxed or collected is likewise a major factor. Finally, there are issues of constricted authority involving "personnel" whose job is to administer the affairs of local government. Again, Title 7 comes into play. The Municipal-Employee Relations Act ("MERA") occupies the field by narrowing the ability of municipalities to set employment rules, remuneration rates, employment conditions and collective bargaining. MERA also impacts on the processes of collective bargaining as well as the mediation and arbitration of disputes."²²

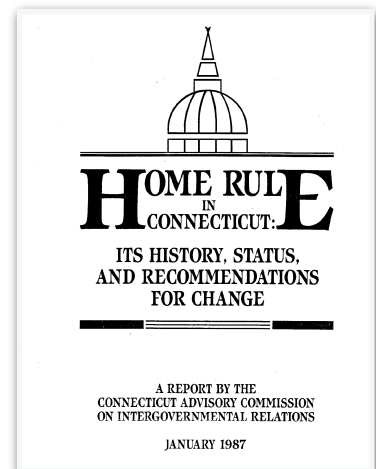
Dillon's Rule chills local autonomy in practice, by causing the invalidation of local measures and by inducing local residents (and local governments) to seek state political solutions to local problems out of a concern that a local ordinance might not withstand judicial scrutiny. And Dillon's Rule is hostile to local autonomy in theory because it embodies a view of local governments as limited agents of the state rather than plenary representatives of local people.

Richard Briffault, Home Rule, Majority Rule, and Dillon's Rule
Columbia Law School, briff@law.columbia.edu
Chicago-Kent Law Review, page 1024

1987 ACIR Report on Home Rule

With the passage of Special Act 86-31, the General Assembly directed ACIR to "...conduct a study of the philosophy, legal status and practical effects of the present form of municipal home rule in Connecticut, with particular attention to the strengths and weaknesses of the present constitutional, statutory and common law elements of the home rule system. ... The report shall include recommendations for: (1) Clarification of existing statutes relative to the powers of municipalities; (2) clarification of ambiguities in or conflicts between court decisions on home rule issues, and (3) a definition of matters which may be of statewide concern as opposed to those of local concern"²³

The 1987 report summarizes the development and application home rule in Connecticut, noting that: "It is argued by some that since the State of Connecticut was originally created by the joining together of the three original towns, towns could be entitled to "inherent power of local self-government". This right", however, has not been upheld in judicial decisions, which historically have determined that the State has all basic governmental powers and that the Towns, as creatures of the state, have only such powers as are granted by the State."²⁴ The 1987 report makes multiple findings and recommendations that are still valid today and warrant revisiting and discussion. This material will be addressed later in this paper.



²¹ Attorney Steven G. Mednick (www.mednicklaw.com)

²² IBID

²³ emphasis added

²⁴IBID, Page 10.

The report details the legislative attempts to both delegate and control municipal government through actions from 1915 through 1981. The legislative session of 1981 is notable in the discussion of home rule due to the passage of two bills. "The first Act, P.A. 81-219, The Municipal Powers Act, granted to all municipalities the broad range of powers that the 1957 Home Rule Act had granted only to charter municipalities. Home rule powers, which were codified in Section 7-194 of the General Statutes, and the more limited powers granted to towns, cities and boroughs under Section 7-148 of the General Statutes, were combined in a new Section 7-148 to create a revised set of delegated general powers for all municipalities to exercise."²⁵ The second was "P.A. 81-451, codified into Sections 7-187 through 7-193, which amends the 1957 Home Rule Act by clarifying the procedures to be followed in adopting and revising a charter. The major provision of this legislation, however, is that a "charter or revised charter shall not be inconsistent with the Constitution or General Statutes". This language added to the legal framework the provision that charters could not be inconsistent with the General Statutes."²⁶

A precept common to all forms of home rule as well as to local governmental law in general is that municipalities have no inherent powers. The state is the level of government with basic inherent powers, and only it can dispense power to local governments.

Home Rule in Connecticut, Its History, Status and Recommendations for Change, ACIR, January 1987, Page 14

ACIR made multiple findings in the 1987 report including "Connecticut municipalities have been granted a broad array of authority and responsibilities, enabling them in most areas to function creatively and effectively in meeting local needs. They have also been given reasonable flexibility in determining their own local organizational structure to reflect their local situations."²⁷ The report did note some weaknesses with the system:

- "The degree of flexibility of functional powers for municipalities is considerably more of a problem than is flexibility in organizational structure. Enumerated powers are often construed narrowly by the courts, resulting in restrictions on local ability to solve local problems."²⁸
- "The body of Connecticut municipal law has grown over the 350 year history of the State. At this time, enabling and limiting statutes dealing with municipalities are found throughout state law. It is extremely difficult for municipal officials, particularly those new to office, to have a full, clear view of their responsibilities and limitations."²⁹

The Commission found that while the State Constitution is clear on home rule authority - it nonetheless "...restricts the ability of the General Assembly to enact special legislation relative to the powers, organization, terms of elective offices, or form of government of any single town...". The Commission found that the Legislature is better situated to make adjustments to the state-local relationship than the current constitutional process. They further opened the door in terms of suggesting that the constitution be amended should "...safeguards to local control prove inadequate to avoid intrusion...". The Commission additionally found that the statutes lack clarity as to the intent and scope of local powers. They recommended they be amended to "...clearly establish the intent of the legislature with respect to enumerated powers of local governments." This recommendation is further refined to add that the legislature should "...declare its intent that local governments possess all powers necessary for or incidental to the exercise of their expressed powers except those specifically prohibited or preempted by state statute..." and that "...statutory provision should indicate to the court that the legislature's intent with respect to local powers, organization, and procedures is to grant the maximum flexibility possible to local governments.

²⁵ IBID, page 12

²⁶ IBID, page 13

²⁷ IBID page 26

²⁸ IBID, Page 26

²⁹ IBID, Page 27

[That] In the future, only those provisions of statutes enacted which are specifically designated as prohibiting or preempting local authority should be deemed to be prohibitive or preemptive.”³⁰

The Commission further recommended:

- a reorganization of the statutes so that all sections of the “... statutes should be reorganized to centralize sections pertaining to organizational, procedural and functional powers...”
- that “all municipalities should have the same basic functional powers” whether they be charter or statutory.
- that any new legislation that sought to preempt or prohibit local authority be clearly marked as such and, if passed, be placed in the same section of the statutes. They when on to recommend that the legislature should existing preemptions or prohibitions in statute be identified, research and codified or clarified.

Finally, the Commission recommended that the legislature establish definitions of “issues of state concern” and “issues of local concern.” The report does not offer any suggestions for such definitions and there is no evidence that they were subsequently pursued.

Home Rule/Local Control and Local Government of the Future

ACIR, in the Fall of 2020 launched an initiative it terms Local Government of the Future “with the goal of re-imagining how local government should function in a more equitable, post-COVID world...By enabling our existing regional entities to become fully functional service providers for their members on a much broader scale, we can gradually move Connecticut toward a more collaborative footprint, where differences between urban, suburban and rural communities become less stark. By starting with the realization of the financial benefits of cooperation, including lower property taxes, communities may also recognize the benefits of breaking down the institutional structures that separate them.”³¹ Home rule and the corresponding enhancement or limits on local control may either enhance or limit the opportunities sought by this initiative.

Currently, the Legislature has provided cities and towns a range of local control regarding the operations of their communities. While most of these are fund in Title 7 (see appendix A), there are numerous places within the statutes that define (by limitation or expansion) the authority of a municipality. The legislature has enabled cities, towns and regions to act cooperatively or regionally. The most direct can be found with CGS Section 7-148cc: “Two or more municipalities may jointly perform any function that each municipality may perform separately under any provisions of the general statutes or of any special act, charter or home rule ordinance by entering into an interlocal agreement pursuant to sections 7-339a to 7-339l, inclusive. This simple sentence opens up a host of options for towns. Section 7-148bb “municipalities to enter into an agreement to share revenues received for payment of real and personal property taxes” and Section 8-31b enables COGs and RESCs to accept or participate in any grant, donation or program available to any political subdivision of the state, counties, other governmental or private entity and to provide a seemingly limitless array of services determined to be of need by their member municipalities or school districts. There are numerous examples of cooperative agreements amongst cities and towns and each of the COGs and RESCs has their own examples of regional services. The delegation of powers to municipalities and regions is an example of the state using its home rule authority to enable local control.

In a comprehensive study of the Boston metro region, “Dispelling the Myth of Home Rule-Local Power in greater Boston” (Barron, Frug and Su) examines the consequences of home rule for towns attempting to work collaboratively and with innovation. Massachusetts, while not identical, is very close in terms of the town-state relationship resulting from home rule and a system where counties are not of consequence. This study reveals

³⁰ IBID, page 29

³¹ Testimony Before the Committee on Planning and Development In Support Of H.B. 5448 - An Act Concerning Expanding Access to Local Government and Modernizing Local Government Operations March 22, 2021

that local officials viewed regionalism as a threat to home rule (despite the fact that local officials interviewed were well aware of minimal authority limits) and local control. “Most of the negative reactions to regionalism were rooted in a fear that it would lead to more regulation and control on top of already existing state regulations.”³² The report notes that this resistance is not only a local one - but one resulting from the structure of home rule at the state level. “The obstacles to regionalism...are not simply a function of local preferences to go it alone. State-imposed limitations on home rule...play a major role in inhibiting inter-municipal cooperative efforts...”³³ What the authors of the report suggest is:

A better alternative, we suggest, is to promote regionalism by responding seriously to the widespread sentiment that the state has unduly limited home rule. The idea would be for the state to enhance local power—and relax existing limitations on that power—as a carrot to induce greater regionalism. In this way, the state would help overcome the sense of opposition between home rule and regionalism that so many municipal officials we interviewed took as a given. To make this proposal more concrete, we offer some examples from the three substantive areas discussed in earlier sections of this report: revenues, land use, and education. What we offer here is not a menu for legislative reform. Our goal in presenting these ideas is much more limited: our proposals are designed to demonstrate that increasing local power and regionalism can go hand-in-hand.³⁴

The report outlines how home rule might be modified to foster better cooperative or regional results in the three areas cited. This is consistent with the ACIR 1987 recommendations that discussed the need for flexibility in the operations of municipalities. It is also consistent with the Report of the Task Force to Promote Municipal Shared Services Prepared by the Advisory Commission on Intergovernmental Relations Work Groups formed to “study ways to encourage greater and improved collaboration among the state and municipal governments and regional bodies.”³⁵

Conclusion

Any debate as to the legal meaning of home rule is decided. Towns are creatures of the state and have ONLY those powers provided them by the state through the General Assembly. However, the scope of powers, local control, provided cities and towns are many. Some of these are detailed, some have been the subject of legislative refinement and judicial decision. Many are vague - leaving municipalities to guess how far they can exercise the local control granted them. The question for policymakers has always been and will continue to be: what is the proper balance and with that balance, what are the opportunities to improve governance?

³² Dispelling the Myth of Home Rule - Local Power in Greater Boston, By David J. Barron, Gerald E. Frug and Rick T. Su - Rappaport Institute for Greater Boston, Cambridge, Massachusetts - John F. Kennedy School of Government, Harvard University - www.rappaportinstitute.org, page 75

³³ IBID, page 77

³⁴ IBID, page 85

³⁵ Section 366 of Public Act 19-117

Appendix A

Sec. 7-148. Scope of Municipal Powers³⁶

- Establishing rules or regulations of general municipal application
- Contract and be contracted with, sue and be sued, and institute, prosecute, maintain and defend any action or proceeding in any court of competent jurisdiction;
- Provide for the authentication, execution and delivery of deeds, contracts, grants, and releases of municipal property and for the issuance of evidences of indebtedness of the municipality;
- Establish and maintain a budget system;
- Assess, levy and collect taxes for general or special purposes on all property)
- Make appropriations for the support of the municipality and pay its debts;
- Make appropriations for the purpose of meeting a public emergency threatening the lives, health or property of citizens(
- Make appropriations to military organizations, hospitals, health care facilities, public health nursing organizations, nonprofit museums and libraries, organizations providing drug abuse and dependency programs and any other private organization performing a public function;
- Provide for the manner in which contracts involving unusual expenditures shall be made;
- Prescribe the form of proceedings and mode of assessing benefits and appraising damages in taking land for public use, or in making public improvements;
- Provide for the bonding of municipal officials or employees;
- Regulate the method of borrowing money for any purpose for which taxes may be levied and borrow on the faith and credit of the municipality;
- Provide for the temporary borrowing of money;
- Create a sinking fund or funds or a trust fund or funds or other special funds, including funds which do not lapse at the end of the municipal fiscal year;
- Provide for the assignment of municipal tax liens on real property to the extent authorized by general statute;
- Take or acquire by gift, purchase, grant, including any grant from the United States or the state, bequest or devise and hold, condemn, lease, sell, manage, transfer, release and convey such real and personal property or interest therein absolutely or in trust as the purposes of the municipality or any public use or purpose, including that of education, art, ornament, health, charity or amusement, cemeteries, parks or gardens, or the erection or maintenance of statues, monuments, buildings or other structures, require. Any lease of real or personal property or any interest therein, either as lessee or lessor, may be for such term or any extensions thereof and upon such other terms and conditions as have been approved by the municipality, including without limitation the power to bind itself to appropriate funds as necessary to meet rent and other obligations as provided in any such lease;
- Provide for the proper administration of gifts, grants, bequests and devises and meet such terms or conditions as are prescribed by the grantor or donor and accepted by the municipality;
- Provide for police protection;
- Provide for fire protection;
- Provide for entertainment, amusements, concerts, celebrations and cultural activities, including the direct or indirect purchase, ownership and operation of the assets of one or more sports franchises;
- Provide for ambulance service by the municipality or any person, firm or corporation;
- Provide for the employment of nurses;
- Provide for lighting the streets, highways and other public places;
- Provide for the furnishing of water;
- Provide for or regulate the collection and disposal of waste material;
- Provide for the financing, construction, rehabilitation, repair, improvement or subsidization of housing for low and moderate income persons and families;
- Provide for and establish pension systems for the officers and employees of the municipality;
- Establish a merit system or civil service system for the selection and promotion of public officials and employees;
- Provide for the employment of and prescribe the salaries, compensation and hours of employment of all officers and employees of the municipality and the duties of such officers and employees not expressly defined by the Constitution of the state, the general statutes, charter or special act;
- Provide for the appointment of a municipal historian;
- Establish, lay out, construct, reconstruct, alter, maintain, repair, control and operate cemeteries, public burial grounds, hospitals, clinics, institutions for children and aged, infirm and chronically ill persons, bus terminals and airports and their accessories, docks, wharves, school houses, libraries, parks, playgrounds, playfields, field houses, baths, bathhouses, swimming pools, gymnasiums, comfort stations, recreation places, public beaches, beach facilities, public gardens, markets, garbage and refuse disposal facilities, parking lots and other off-street parking facilities, and any and all buildings or facilities necessary or convenient for carrying on the government of the municipality;
- Lay out, construct, reconstruct, repair, maintain, operate, alter, extend and discontinue sewer and drainage systems and sewage disposal plants;

³⁶ This list represents contains excerpts from the statutes and is intended only for illustrative purposes demonstrating the extent of municipal authority.

Home Rule and Local Control in Connecticut

ACIR

- Enter into energy-savings performance contracts;
- Lay out, construct, reconstruct, alter, maintain, repair, control, operate, and assign numbers to streets, alleys, highways, boulevards, bridges, underpasses, sidewalks, curbs, gutters, public walks and parkways;
- Make rules relating to the maintenance of safe and sanitary housing;
- Regulate and prohibit, in a manner not inconsistent with the general statutes, traffic, the operation of vehicles on streets and highways, off-street parking and on-street residential neighborhood parking areas in which on-street parking is limited to residents of a given neighborhood, as determined by the municipality;
- Regulate and prohibit the construction or use, and require the removal of sinks, cesspools, drains, sewers, privies, barns, outhouses and poultry pens and houses;
- Regulate and prohibit the going at large of dogs and other animals in the streets and public places of the municipality and prevent cruelty to animals and all inhuman sports, except that no municipality shall adopt breed-specific dog ordinances;
- Regulate and prohibit the keeping of wild or domestic animals, including reptiles, within the municipal limits or portions thereof;
- Define, prohibit and abate within the municipality all nuisances and causes thereof, and all things detrimental to the health, morals, safety, convenience and welfare of its inhabitants and cause the abatement of any nuisance at the expense of the owner or owners of the premises on which such nuisance exists;
- Keep streets, sidewalks and public places free from undue noise and nuisances, and prohibit loitering thereon;
- Prevent vice and suppress gambling houses, houses of ill-fame and disorderly houses;
- Secure the safety of persons in or passing through the municipality by regulation of shows, processions, parades and music;
- Regulate and prohibit the carrying on within the municipality of any trade, manufacture, business or profession which is, or may be, so carried on as to become prejudicial to public health, conducive to fraud and cheating, or dangerous to, or constituting an unreasonable annoyance to, those living or owning property in the vicinity;
- Regulate auctions and garage and tag sales;
- Prohibit, restrain, license and regulate the business of peddlers, auctioneers and junk dealers in a manner not inconsistent with the general statutes;
- Regulate and prohibit swimming or bathing in the public or exposed places within the municipality;
- Regulate and license the operation of amusement parks and amusement arcades including, but not limited to, the regulation of mechanical rides and the establishment of the hours of operation;
- Prohibit, restrain, license and regulate all sports, exhibitions, public amusements and performances and all places where games may be played;
- Preserve the public peace and good order, prevent and quell riots and disorderly assemblages and prevent disturbing noises;
- Establish a system to obtain a more accurate registration of births, marriages and deaths than the system provided by the general statutes in a manner not inconsistent with the general statutes;
- Control insect pests or plant diseases in any manner deemed appropriate;
- Provide for the health of the inhabitants of the municipality and do all things necessary or desirable to secure and promote the public health;
- Regulate the use of streets, sidewalks, highways, public places and grounds for public and private purposes;
- Make and enforce police, sanitary or other similar regulations and protect or promote the peace, safety, good government and welfare of the municipality and its inhabitants;
- Regulate the installation, maintenance and operation of any device or equipment in a residence or place of business which is capable of automatically calling and relaying recorded emergency messages to any state police or municipal police or fire department telephone number or which is capable of automatically calling and relaying recorded emergency messages or other forms of emergency signals to an intermediate third party which shall thereafter call and relay such emergency messages to a state police or municipal police or fire department telephone number. Such regulations may provide for penalties for the transmittal of false alarms by such devices or equipment;
- Make and enforce regulations for the prevention and remediation of housing blight;
- Provide for the protection and improvement of the environment including, but not limited to, coastal areas, wetlands and areas adjacent to waterways in a manner not inconsistent with the general statutes;
- Regulate the location and removal of any offensive manure or other substance or dead animals through the streets of the municipality and provide for the disposal of same;
- Except where there exists a local zoning commission, regulate the filling of, or removal of, soil, loam, sand or gravel from land not in public use in the whole, or in specified districts of, the municipality, and provide for the reestablishment of ground level and protection of the area by suitable cover;
- Regulate the emission of smoke from any chimney, smokestack or other source within the limits of the municipality, and provide for proper heating of buildings within the municipality;
- Provide for fair housing;
- Adopt a code of prohibited discriminatory practices;
- Make all lawful regulations and ordinances in furtherance of any general powers as enumerated in this section, and prescribe penalties for the violation of the same not to exceed two hundred fifty dollars, unless otherwise specifically provided by the general statutes. Such

- regulations and ordinances may be enforced by citations issued by designated municipal officers or employees, provided the regulations and ordinances have been designated specifically by the municipality for enforcement by citation in the same manner in which they were adopted and the designated municipal officers or employees issue a written warning providing notice of the specific violation before issuing the citation, except that no such written warning shall be required for violations of a municipal ordinance regulating the operation or use of a dirt bike, all-terrain vehicle or mini-motorcycle;
- Adopt a code of ethical conduct;
 - Establish and maintain free legal aid bureaus;
 - Perform data processing and related administrative computer services for a fee for another municipality;
 - Adopt the model ordinance concerning a municipal freedom of information advisory board created under subsection (f) of section 1-205 and establish a municipal freedom of information advisory board as provided by said ordinance and said section;
 - Protect the historic or architectural character of properties or districts that are listed on, or under consideration for listing on, the National Register of Historic Places, 16a USC 470, or the state register of historic places, as defined in section 10-410;
 - Create a fair rent commission to make studies and investigations, conduct hearings and receive complaints relative to rental charges on housing accommodations;
 - Establish a land bank authority;
 - Establish a corporation under chapter 601 for the purposes of engaging in the manufacture, distribution, purchase or sale, or any combination thereof, of compressed natural gas;
 - Agreement between municipalities to share revenue received for payment of property taxes;
 - Joint performance of municipal functions;
 - Any municipality that maintains an electric or gas utility may establish a corporation under chapter 601 for the purposes of engaging in the manufacture, distribution, purchase or sale, or any combination thereof, of electricity, gas or water for the sole purpose of providing electricity, gas or water within its franchise area, provided such franchise area does not encroach upon the service area or franchise area of another water or gas utility;
 - A special assessment on housing that is blighted;
 - Enter into an agreement to promote regional economic development and share the real and personal property tax revenue from new economic development;
 - Consolidate dispatch services;
 - Any town, city or borough may, by ordinance, designate highways or portions of highways as scenic roads and may regulate future alterations and improvements on such designated scenic roads;
 - Establishment of lake authorities;
 - Create a Climate Change and Coastal Resiliency Reserve Fund;
 - Each municipality may develop a municipal telecommunications coverage plan;
- Playing of bingo and games of chance;