Defining Home Rule for a Digital, Mobile and Global Era.

Drafted by Steven Mednick – 26 August 2021

"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[1]." 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 century[2]. 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: "There exist within the broad domain of sovereignty but these two[3]." 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 century[4]. 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 legislature[5]. 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 state[6]" or "creatures of the state[7]" by affirming that municipalities had no inherent power to modify legislative acts[8]; or any "inherent legislative authority[9]" 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 subdivisions[10]." At the same time the legislature retained a more limited use of "special legislation" with respect to "…the powers, organization, terms of elective 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 legislation[11]." 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 enactment[12]".* In other words, when it comes to the governance of municipalities, silence is not authority.

Think of these "creatures of the state" as if sprung full from a gothic novel by Mary Shelley. This idea is reinforced when you read the words of her 19th century contemporary, Judge Dillon, when he opined that state legislatures "breathe into them

(municipalities) the breath of life, without which they cannot exist. As it so creates, so it may destroy[13]." That just about sums it up.

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.

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.

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.

Moving forward, the question for municipalities is how to reform Connecticut law, policy and/or practice to permit more flexibility or latitude in the operation of local government. How do we give our municipalities, alone or in a compact with others, the ability to reach out and come up with more flexible governing structures that break away from the conventions of the current legal construct?

Should policy-makers study other forms of "home rule" and seek constitutional reform? Just think of the panoply of unintended consequences of a constitutional convention. Or, should state and local officials take a long hard look at Title 7 in order to create a balance and a blueprint for a digital, mobile and global century[A]?

This subcommittee will take a look at a number of areas that illustrate the challenges behind and ahead of us if we decide not to change our ways.

1. Authority to Adopt Ordinances
2. The Role of Boards of Education: Local and Regional: Interactions, constraints and impact on local authority;
3. The Municipal Employee Relations Act. A system of legal constraints on local authority control from the negotiation and interpretation of collective bargaining agreements to management/employee interactions including grievances and discipline. Perhaps we should look at a model for reform: (a) creation of a Department of Public Health and Safety [consolidation of health, police, fire and safety inspection]; or, (b) inter-local service agreements; or. (c) uniform disciplinary systems.
4. Budget and Finance: Federal, state and other regulatory impacts.
5. Planning and Land Use: Federal and state relationships and impacts

[A] Another concept raised in a recent discussion. Reform of our current laws will allow municipalities an opportunity to explore ways and means to make government more responsive, effective, and efficient? Some reforms will require legal reform; others may require policy and/or practice; although practices may invoke collective bargaining agreements that could impede change. Consideration needs to be given to a reevaluation of rights, roles, and responsibilities in federal-state-regional-local government structure? Finally, even within regions there exist tensions between big (slow, ungovernable, captive to special interests inexpensive) vs. small (uneven, inefficient, etc.), centralized vs. devolved

[1] Clark v. City of Des Moines, 19 Iowa 199 (1865) and Clinton v. Cedar Rapids and the Missouri River Railroad, 24 Iowa 455 (1868).

[2] 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).

[3] 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.

[4] 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 la*w;" 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 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.

[5] See, C.G.S. §7-148 entitled: "Scope of Municipal Powers."

[6] Simons v. Canty, 195 Conn. 524, 528 (1985)

[7] LaCava v. Carfi, 140 Conn. 517, 519 (1953)

[8] 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).

[9] New Haven Commission on Equal Opportunities v. Yale University, 183 Conn. 495, 499 (1981)

[10] 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."

[11] 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.”

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

[13] City of Clinton v. Cedar Rapids and Missouri river Railroad, at 475 (1868).