



STATE OF CONNECTICUT
Advisory Commission on Intergovernmental Relations

February 11, 2022

To: The Honorable Steve Cassano, Chair, Planning & Development Committee
The Honorable Cristin McCarthy Vahey, Chair, Planning & Development Committee
The Honorable Tony Hwang, Ranking Member, Planning & Development Committee
The Honorable Joseph Zullo, Ranking Member, Planning & Development Committee
Members of the Planning & Development Committee

From: Brendan Sharkey, Chair, CT Advisory Commission on Intergovernmental Relations
Lyle Wray, Vice-Chair, CT Advisory Commission on Intergovernmental Relations

RE: Home Rule and Local Control

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.

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.

The attached report, in our view, should be viewed as a starting point for a larger discussion and inquiry into the local-state relationship. While home rule as defined in the State Constitution is not subject to debate, how the General Assembly enables local control is far more complex. Our recommendation is that the Committee direct ACIR to conduct an in-depth analysis of the subject that would include, but not be limited to:

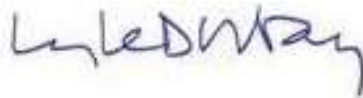
- A recommendation for restructuring and update of Title 7 (the primary place in the statutes where local authority is found) as well as the consolidation, to the degree feasible, into Title 7 of other local powers found in other statutory sections. The current statutes are often dated and lacking clarity.
- How to distinguish between matters which may be of statewide concern as opposed to those of local concern.
- The degree of flexibility of functional powers that should be in place for municipalities to enable local, shared and regional solutions.
- What are the needed flexibilities for the General Assembly to make adjustments to the state-local relationship as compared to the current constitutional process

Thank you for your consideration of this report and we look forward to working with you on this important issue. Please feel free to contact Bruce Wittchen at bruce.wittchen@ct.gov or (860) 418-6323 if you have any questions or comments.

Sincerely:



Brendan Sharkey, Chair



Lyle Wray, Vice-Chair

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.

For Further Information, Please Contact:

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Home Rule and Local Control in Connecticut

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 multiplicant 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, stated: “I know that my good colleague keeps coming back to the idea of local control. 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 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

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

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

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 allowing 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.

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.”⁵ 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 democracy: the self in self-government is constituted geographically.”⁶ If the saying that “all politics is local” is true, 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 and were formally abolished on October 1, 1960 by the General Assembly with the passage Public Act 59-152. A 1987 report by ACIR on home rule in Connecticut, noted 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 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.”⁷

Home Rule - The Legal Reality⁸

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

⁵ The Myth and Reality of Home Rule Powers in Connecticut By Timothy S. Hollister, 1985 - Connecticut Bar journal, pg. 389

⁶ 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>

⁷IBID, Page 10.

⁸ 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.”⁹ 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 century¹⁰. 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 two¹¹.” 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 century¹². Up to and including 1957 the General Assembly made the rules for local governance by enacting Special Acts.

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.

⁹ Clark v. City of Des Moines, 19 Iowa 199 (1865) and Clinton v. Cedar Rapids and the Missouri River Railroad, 24 Iowa 455 (1868).

¹⁰ 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).

¹¹ 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.

¹² 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.

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 legislature¹³. 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 state¹⁴” or “creatures of the state¹⁵” by affirming that municipalities had no inherent power to modify legislative acts¹⁶; or any “inherent legislative authority¹⁷” whatsoever.

...local governments have no inherent authority for self-government because the capacity for governance is derived entirely from the authority of the state...

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 subdivisions¹⁸.” 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 legislation¹⁹.” 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 enactment²⁰”. 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

¹³ See, C.G.S. §7-148 entitled: “Scope of Municipal Powers.”

¹⁴ *Simons v. Canty*, 195 Conn. 524, 528 (1985)

¹⁵ *LaCava v. Carfi*, 140 Conn. 517, 519 (1953)

¹⁶ *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).

¹⁷ *New Haven Commission on Equal Opportunities v. Yale University*, 183 Conn. 495, 499 (1981)

¹⁸ 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.”

¹⁹ 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.”

²⁰ *Avonside, Inc. v. Zoning & Planning Commission*, 153 Conn. 232, 236 (1965).

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.

Local Control

In contrast to home rule, which is grounded in the state’s constitution, the term “local control” is an expression for the use of authority granted to municipalities by the General Assembly. “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.”²¹

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 high degree of local control within the statute - but the statute ultimately provides the guardrails for the extent of whatever local control is exercised.

“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.”²²

“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.”²³

The 1987 ACIR report found that: “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.”²⁴ The report did also noted 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.”²⁵
- “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

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

²¹ 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>.

²² Attorney Steven G. Mednick (www.mednicklaw.com)

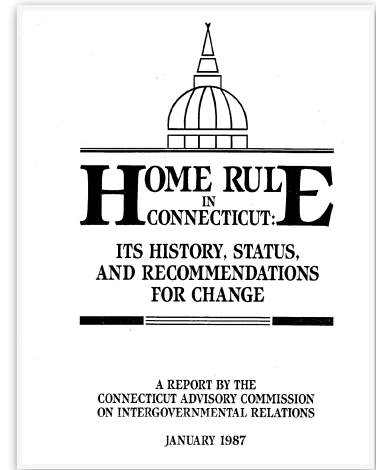
²³ IBID

²⁴ IBID page 26

²⁵ IBID, Page 26

difficult for municipal officials, particularly those new to office, to have a full, clear view of their responsibilities and limitations.”²⁶

The 1987 report found that the Legislature is better situated to make adjustments to the state-local relationship than the current constitutional process. The study 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. [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.”²⁷



The study 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 then go on to recommend that the legislature should existing preemptions or prohibitions in statute be identified, research and codified or clarified.

Finally, the study 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.”²⁸ 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 found 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:

²⁶ IBID, Page 27

²⁷ IBID, page 29

²⁸ 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

“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 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.”²⁹ 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...”³⁰ 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.³¹

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

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

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

²⁹ 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

³⁰ IBID, page 77

³¹ IBID, page 85

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.”³²

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 Section 366 of Public Act 19-117