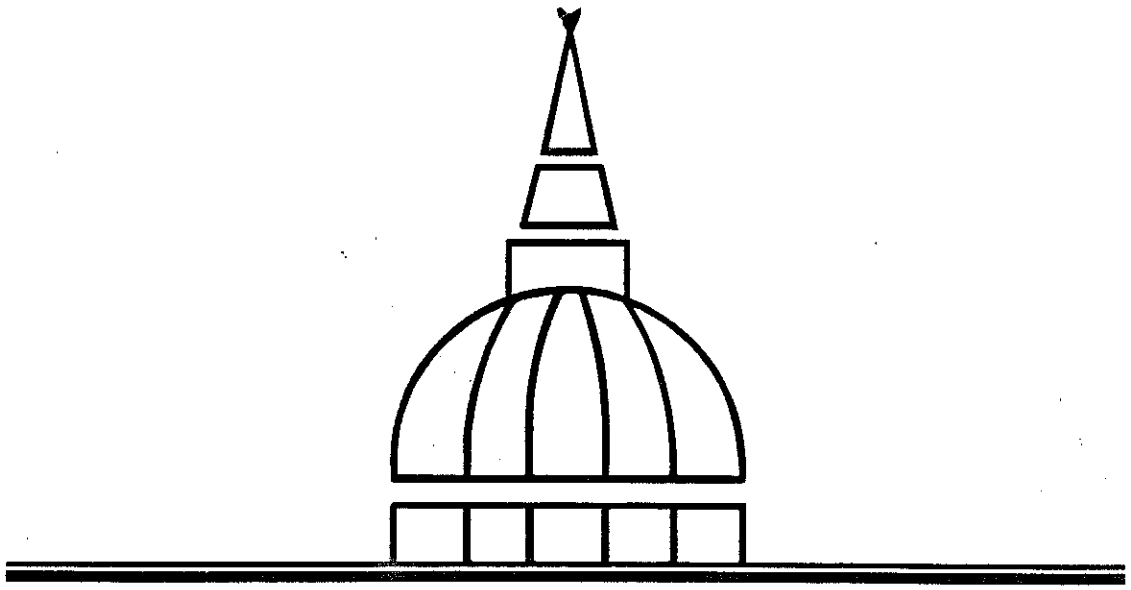

HOME RULE IN CONNECTICUT:

ITS HISTORY, STATUS, AND RECOMMENDATIONS FOR CHANGE

A REPORT BY THE
CONNECTICUT ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS

JANUARY 1987

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ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

The Advisory Commission on Intergovernmental Relations (ACIR) is a 25-member legislative branch agency created in 1985 to study system issues between the State and its 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 Sec. 2-79a of the General Statutes, requires that the Commission shall (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.

The commission is served by a two person staff, including an executive director and a research assistant. The staff, which began in the Fall of 1986, is located at 80 Washington Street, Hartford.

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Any report on a subject as significant to the State of Connecticut and its municipalities as the 350 year history of state-local relations must rely on the knowledge, expertise and cooperation of many people. State legislators and employees, local officials, municipal and private sector attorneys, local government organizations, and representatives of the educational community have all been most generous in sharing with us their extensive theoretical and practical experience in the area of home rule in Connecticut.

We would particularly like to express our sincere appreciation to all of the individual members of the Connecticut Advisory Commission on Intergovernmental Relations for their dynamic contributions to making this report a reality. Commission discussions were comprehensive and lively, and this document is very much a Commission-generated effort.

Others who have given generously of their time and expertise include: Professor Janice C. Griffith of the University of Bridgeport School of Law, Attorney Mary P. Howard, Robinson & Cole, P.C., Edwin Van Selden of the Office of Policy and Management, Attorney Edwin Maley of the Legislative Commissioner's Office, and James Finley of the Connecticut Conference of Municipalities, all of whom made significant written and participatory contributions to the effort.

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David B. Walker
Chairman

David W. Russell
Executive Director

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INTRODUCTION

In 1986 the General Assembly, in S.A. 86-31 (see Appendix A), directed the Advisory Commission on Intergovernmental Relations (ACIR) to "conduct a study of the philosophy, legal status and practical effects of the present form of municipal home rule in Connecticut". This action was taken in order to assist all parties in understanding the background of local governmental powers and responsibilities, to create a framework for consideration of the specific local governmental questions which are continually brought to the General Assembly, and to make such recommendations as the Commission deemed appropriate.

This study was directed to the ACIR because that Commission contains representation from all of the key elements affected by, and experienced in, the issues of state-local relationships: the state legislative and executive branches, municipalities and the general public.

The Commission began its research with a review of the basic concepts of home rule and descriptions of its operation both in Connecticut and nationwide. The basic documents implementing state-local legal relationships in Connecticut were studied, and the national literature characterizing and comparing the various forms of home rule were reviewed for their value in assisting our consideration of the Connecticut situation.

We also conducted a survey of all of the municipalities in Connecticut, requesting input from each local chief elected official and municipal legal counsel, and from city/town managers where existing. Responses were received from over 70% of the municipalities, providing the Commission with an excellent cross-section of informed and involved opinion.

Our research outline, now reflected in this report, contained:

(1) A background in the basic philosophies of home rule;
(2) Determination of the current status of state-local legal relations in Connecticut; and
(3) Our resulting findings and recommendations.

In examining the philosophy of home rule, we have attempted to define its basic forms while recognizing that in practice, most states contain elements of each form. We have also presented a brief, and necessarily broad, historical perspective of home rule in the United States (section II, subsection 1) and in Connecticut (subsection 2).

The determination of the legal status centered on reviews of the Connecticut Constitution, key sections of the General Statutes, and decisions of the Connecticut Supreme Court.

Commission discussions of the elements of the research outlines were extensive, lively and productive. They led us to a recognition of the strengths and weaknesses of the current status, both legally and in practical terms. The Commission discussed at length the distinctions between the strict legal status (both adjudicated and unadjudicated) and practical occurrences in the routine operation of a city or town in Connecticut. We recognize and acknowledge that no legal framework ever will, or even should, cover all contingencies or "real world" situations, and that our recommendations should reflect this reality.

Ultimately, our findings and recommendations have been organized into six categories. Inevitably there are overlaps among the categories. The findings are best considered as one whole because recommendations in one category are often influenced by, or linked to, recommendations in another category.

Our overall and key objectives in making the recommendations contained in this report are (1) to improve the clarity of the legal status of state-local relationships so as to assist all parties in understanding their responsibilities and limitations; and (2) to assure that maximum flexibility is given to local governments to operate their own local affairs in the manner they determine, so long as such local operations are not inconsistent with appropriate state goals and objectives as determined by the General Assembly.

HISTORICAL PERSPECTIVE

HOME RULE IN THE UNITED STATES

Modern concepts of American local self-government have, as their backdrop, a basic theoretical history beginning in colonial times. Until the mid-1800's, there was an interesting dichotomy in local government between practical and legal factors. Much of America consisted of rural areas with relatively slow communication and transportation, leading to considerably less interaction among local governments than is the case in today's technological society. Thus, local affairs were de facto handled locally to a great extent, with little state (and virtually no federal) interference. Legally, however, local powers and operations were governed quite specifically by state legislatures, most often through special acts designed to have the state decide on local issues.

As society in the late 19th century increasingly became urbanized and more interdependent, the more complex local governments began to seek changes in the traditional state-local legal relationships to allow greater local flexibility. In doing so, however, they were facing firmly entrenched theories of state domination of local governments which can reasonably be generalized into two basic concepts.

"The creature theory" holds that, under American law, there is no inherent right to local self government. In describing this theory, the U.S. Supreme Court said that:

> A municipal corporation is simply a political subdivision of the State, and exists by virtue of the exercise of the power of the State through its legislative department. The legislature could at any time terminate the existence of the corporation itself, and provide other and different means for the government of the district comprised within the limits of the former city. The city is the creature of the State.[1]

"Dillon's Rule", the second basic theory, was originally put forth in an 1868 Iowa case, Merriam v. Moody's Executors. It was codified in 1911 in Dillon's Commentaries on the Law of Municipal Corporations in which Judge Dillon, drawing from the law of private corporations without distinction, stated, in part,

> It is a general and undisputed proposition of law that a municipal corporation possesses and can

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[1] Worcester v. Worcester Consolidated Ry. Co., 196 U.S. 539 at 548-49 (1905), as quoted in Neil O. Littlefield, Home Rule in Connecticut, A Legal Commentary, Storrs, CT: Institute of Public Service, University of Connecticut, 1964, p. 8.

> exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation,--not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of the power is resolved by the courts against the corporation, and the power is denied.

Under these constraints, local governments faced severe limits on local flexibility, and legislatures faced continuous requirements (or opportunities) to be the referee in local issues regarding powers. Special legislation (bills designed to apply to one specific local situation) abounded, with the attendant problems for both local governments and the states. Dissatisfaction with this situation, in large part, led both local and state officials to seek solutions in the direction of increased local self-determination under strict guidelines (home rule).

In responding to the changing conditions which were creating problems for local governments with significantly restricted powers, states began granting discretionary powers to local governments through one or both of two newer theories.[2]

"Imperium in Imperio" is the establishment of a "state within a state" by a constitutional provision wherein local government affairs are enumerated and placed beyond the legislature's power to affect. In 1921, the National Municipal League proposed a model constitutional provision based upon this type of federalism within the state, with governmental powers divided between state and local governments. In theory, this approach to local discretionary authority is inflexible since a constitutional amendment is needed to change the distribution of authority. In practice, the effectiveness of the "Imperium in Imperio" approach has been limited by narrow judicial interpretation of the scope of local affairs.[3]

The "Imperium in Imperio" approach to providing a constitutional grant of power to local governments was a defensive movement to stop state interference in what were perceived to be local affairs. This "layer cake" division of powers and functional responsibilities was more feasible when the approach was developed, since society was less complex at that time and fewer local governmental functions had broad state

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[2] Advisory Commission on Intergovernmental Relations, Measuring Local Discretionary Authority, Washington, D.C.: U.S. Government Printing Office, 1981, pp. 18-21.

[3] Ibid.

implications. The growing interdependence of levels of government has led courts to perceive a "state concern" in most functional areas and often to severely limit the scope of local discretionary powers.

A second theory, "devolution of powers", is the delegation to municipal governments, through the state constitution, of all the powers that the legislature can delegate, but subject to the legislature's taking back these powers as it sees fit. In 1953, the "devolution of powers" approach to local discretionary authority was developed by Dean Jefferson B. Fordham of the University of Pennsylvania, who was commissioned by the American Municipal Association (now the National League of Cities). His model constitutional provisions recognized the fact that local affairs cannot be divorced completely from state affairs. He also emphasized that authority is granted to political subdivisions to enable them to discharge responsibilities.

Under this approach, the function of determining the dividing line between state and local powers is removed as much as possible from the judiciary and shared between the constitution and the legislature. Under the "devolution of powers" theory, the state constitution delegates to a municipal government, with whatever exceptions are deemed necessary, all powers capable of delegation, subject to preemption by general law. Since it is self-executing, an "Imperium in Imperio" in effect is established automatically if the legislature fails to exercise its powers of preemption.

However, the "devolution of powers" approach does not eliminate all state-local conflicts because the legislature, in exercising its police power, may clash with a local government which maintains that the legislature is invading the sphere of local responsibility. If this occurs, the courts are called upon to adjudicate the dispute on grounds of public policy rather than law.

Because the "devolution of powers" generally offers localities the greatest amount of discretionary authority, all states (with the exception of Oregon) which have amended their constitutions since 1953, have followed the "devolution of powers" approach in general but reserved specific powers to the legislature. Only Alaska, Montana and Pennsylvania have adopted the "devolution of powers" proposal in toto.

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Home Rule Development

Properly speaking, home rule means the granting of substantial general powers to municipalities--that is, a

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[4] This section is essentially a paraphrase of Neil O. Littlefield's Home Rule in Connecticut, A Legal Commentary, Storrs, CT: Institute of Public Service, University of Connecticut, 1964.

relaxation of the rigors of Dillon's Rule. Interference with municipal affairs was the first target of municipal leaders. Constitutional amendments which prohibited "special" or "local" legislation pertaining to local government were proposed and adopted in a number of states.

Prohibitions on special legislation led to a power vacuum. Municipalities measured their total powers by those expressly granted in general acts and in special acts. General acts apply to all municipalities of a state or, in certain states (though not in Connecticut), to all municipalities in a certain population class and therefore are express grants of power to all municipalities or to municipalities in that population class. Special acts make express grants of power to named cities, and, therefore, the grant of power is tailored to the peculiar needs of that particular city. Universally, non-home rule municipal charters are special acts of the state legislature. Where special legislation is prohibited, it becomes difficult for a city of unusual size or one confronted with a problem not common to municipalities throughout the state to obtain the necessary grant of legislative power to respond to its peculiar problems. The legislature may be unwilling to grant an unusual or atypical power to all cities and unable to enact valid legislation pertaining to the one city needing the power. Thus, in states where special legislation was prohibited, cities with special power needs (and reflection will lead to the conclusion that this includes many cities) had to seek a new means of acquiring power adapted to their needs.

The movement then began for what is properly termed home rule. A city was to be enabled to frame its own charter and to include in it the specific powers which the government needs. Legislation from the State Capitol may determine limits of municipal power, but need not spell out the specific contents of local governmental power. Home rule in this sense may be constitutional or legislative.

Constitutional Home Rule

Constitutional home rule came to American politics in the Missouri Constitution of 1875. Sections 20 to 26 of Article IX of that constitution endowed the City of St. Louis with certain powers of local self-determination. The city was authorized, by popular vote, to extend the boundaries of the city, to separate itself from the county of St. Louis, and "to frame a charter for the government of the city thus enlarged." The charter must, however, "always be in harmony with and subject to the Constitution and laws of Missouri."[5] The same constitution empowered cities of over 100,000 population similarly to frame a charter for their own government.

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[5] Missouri Constitution, Art. IX, sec. 23 (1875).

The basic feature of the Missouri home rule provision is that it empowers a city to frame a charter for its own government, the charter to be consistent with, and subject to, the laws and constitution of the state. When California included in its Constitution of 1879 provisions with respect to local self-government, it was again in terms of a grant of charter-framing powers to cities of over 100,000 population. By 1890, this constitutional beneficence was extended to all cities of over 3,500 inhabitants.6 However, the California constitution went further than its Missouri counterpart in conferring home rule powers upon municipalities. The 1879 constitution contained the following:

> Any county, city, town or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.7

Note that the Missouri and California constitutional home rule provisions set out here differ slightly. Missouri's original provision allows a city to frame a charter. Hence the charter, rather than general legislation, indicates what powers the city has and how it exercises them. The California provision gives outright the power to enact local legislation by ordinance. Enabling legislation is unnecessary. Hence Dillon's Rule is modified by constitutional amendment.

Greater freedom from the state legislature is given to cities in a 1914 California constitutional amendment. Section 6 of Article XI, by that amendment, reads that cities and towns migh amend their charters so as to become empowered "to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters, and in respect of other matters they shall be subject to and controlled by general laws." Notice the important feature of this provision. Previously, both in Missouri and California, all home rule powers were subject to conflicting general statutes. That is, if a general act of the state legislature commanded all municipalities to elect the assessor, a home rule charter provision for the appointment of an assessor was invalid. But, under the 1914 California amendment, cities were now free from conflicting general legislation within the area of "municipal affairs."

The common feature of constitutional home rule is the one which empowers the city to frame its own charter. The general rule is that the charter is subject to general law. Thus, it is evident that the reason for home rule to be in a state

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6 California Constitution, Art. XI, sec. 8 (1879, as amended 1890).

7 Ibid., Art. XI, sec. 11 (1879).

constitution is not so much protection from legislative interference as it is protection from legislative inaction. That is, the legislature may be unwilling to grant charter making powers to its cities. This actually was the case in the nineteenth century when legislatures were more rural dominated than now. In some states, however, legislative home rule is the case.

Legislative Home Rule

Under the concept of legislative home rule, the state legislature enables municipalities to frame or revise their own charters in accordance with certain basic principles outlined in the home rule act. The act is not only subject to amendment or repeal from time to time by succeeding legislatures, but is also subject to any general legislative enactment which by its terms and obvious intent applies to all cities in a mandatory or prohibitive fashion.

Advantages and Disadvantages

The disadvantage of legislative home rule is that theoretically municipalities are not free of legislative interference. Therefore, home rule advocates claim that the state legislature will take away what it has given if a constitutional provision does not protect home rule.

However, this disadvantage of legislative home rule is balanced by its advantages. Legislative home rule is flexible; it is flexible because the legislature can change the overall effect of home rule if necessary. In our complex times, any notion of "local" problems, "area" problems, and "state-wide" problems is fluid. Is education a local or state problem? Are welfare and its cost basically state or local? In early Connecticut history, poor farms, aid to the needy, and unemployment were handled locally. Today, the size of the budget of welfare agencies and the mobility of the state's population may make the solutions to welfare problems more appropriate to a state agency.

Modern economics highlights the corresponding disadvantage of constitutionally protected home rule. Constitutional home rule assumes that there are "municipal affairs" or matters of "local self-government." This language is written into the constitutional provision to indicate the scope of home rule charter powers. The courts are then faced with the problem of judicially determining whether any given function is a "municipal affair."

The growth of Connecticut into a highly developed urban complex as part of the "megalopolis" of the Eastern Seaboard is an obvious fact. Problems of local government with respect to metropolitan area sewer and water service, police and fire

protection, and governmental costs cannot be solved in one town or in one city. But to protect certain areas of local government activity from legislative interference is also to restrict the flexibility of the state legislature to enact general legislation for regional or state-wide attack on urban problems. It is clear that legislative home rule can provide the maximum of local self-government in areas of concern where the legislature is silent, while preserving desirable legislative flexibility.

HOME RULE IN CONNECTICUT

The development of home rule in Connecticut is embedded in history which predates the establishment of the State of Connecticut. It is argued by some that since the State of Connecticut was orginally 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. Early court decisions in Connecticut, as was the case in much of the rest of the United States, affirmed and re-affirmed the principles inherent in Dillon's rule (see page 3). Local governments needed specific grants of power from the State in order for their actions to be legal.

[8]

20th Century Home Rule

At the beginning of the 20th century a movement for Home Rule swelled in Connecticut. This resulted in the enactment of the 1915 General Statute providing for greater local control by authorizing municipalities to adopt charters. While the Selectmen-Town Meeting form of government has continued to remain the sole standardized form of local government prescribed in the General Statutes, as Connecticut and its towns grew, this traditional form no longer served the needs of the State's more populous areas. By the 1900's the legislature had adopted the habit of enacting a special act to cope with each municipality's need for greater flexibility that could not be met by the general statutory form. This practice resulted in a tremendous number of local laws in each session of the legislature. There was also a desire on the part of towns to have greater control over the management of their affairs. Even if powers delegated to municipalities by special act were intended to be liberal, their method of exercise was often restricted. Whenever any change was desired in either the substance or procedure outlined in a special act, including the special act granting the municipality's charter, it would be necessary to go to the General Assembly to obtain the enactment of yet another special act. This supplicant position before the then rural-dominated legislature was especially distasteful to the larger municipalities.

Connecticut's first attempt at home rule failed. While the 1915 act provided that a municipality whose government was

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[8] This section is taken essentially as excerpts from an article by Janice C. Griffith, J.D., "Connecticut's Home Rule: The Judicial Resolution of State and Local Conflicts", University of Bridgeport Law Review, 1983, with permission from the author and the publication.

conducted under the provisions of a special act was empowered "to enact a charter for its government, or to amend a charter or special act under which its government is organized", the requirement that there be a vote of 60% of the registered voters on the proposed charter made the act unworkable.

The 1915 home rule act, however, should not be summarily dismissed. It took a leap forward by empowering municipalities to adopt and amend a charter without first obtaining the consent of the legislature. This power is perhaps the single most significant change in the concept of local authority to have occurred in Connecticut. It also established the fact that a locality could amend its charter granted by a prior special act through its own legislative body.

The 1915 act was repealed in 1929. In 1951, another Home Rule Act patterned on the 1915 model was passed which established the requirement that 51% of the electorate vote on a charter. This requirement also proved severe, and the 1951 act was amended in 1953 to reduce the percentage required to 26%. Still, few if any, municipalities took advantage of this Home Rule Act, and the General Assembly continued to be swamped with local government special act bills: 836 in the 1953 session.

In 1957 Home Rule in Connecticut was completely revised. The 1957 act prescribed a process by which municipalities, not wanting to be governed by the Selectmen-Town Meeting form of government or by special acts, could write their own charters within a statutory framework providing for freedom of choice among several different types of legislative bodies and six different types of local chief executive officers. The act imposed few mandated specific requirements upon municipalities, directing only that the towns select one from among the designated types of legislative bodies or chief executive officers. The act established a charter process to be initiated by popular petition or by two-thirds vote of the "appointing authority". It spelled out the process for appointment of a charter commission and the process the commission should follow in drafting a charter. It also prescribed a way to consolidate the town with political subdivisions operating within the town. Finally, the act barred the General Assembly from enacting special legislation relating to the powers, organization or form of government for any municipality except at the request of the municipality itself.

A number of general functional and optional powers were granted to municipalities that adopted a charter under the 1957 act's provisions. These powers were more expansive than those granted to towns operating solely under the General Statutes and were "in addition to such powers as it (the municipality) has under the provisions of the General Statutes or any special act". The possible variations in the form of government selected and in the powers that could be exercised not only made it possible for each charter town to tailor its governmental structure to its needs, but these variations also account in part for the

diversity of forms and functions performed today among local governments in Connecticut.

If the goals of the 1957 Act were to encourage local charters and discourage special acts of the legislature, the act has met with considerable success. Prior to 1957 there were 37 municipalities which were operating under special act charters.[9] Since the 1957 Home Rule Act was enacted, more than 60 additional municipalities have adopted Home Rule Charters. With respect to special acts, in 1957, 17.3% of the bills passed were for specific local governments; in 1959, this number was reduced to 7.2%.

The 1965 Constitutional Convention recommended the inclusion in the State Constitution of legislative authorization to grant home rule powers to municipalities by general law. The voters agreed with this policy by giving towns more local autonomy in Article 10, "Of Home Rule" (see provision on page 20 of this report), which became effective July 1, 1969. This Article more extensively restricted the power of the General Assembly to enact special legislation than did the 1957 Act. It terminated any remaining doubts as to whether the legislature could delegate powers to the towns to exercise home rule powers themselves.

Home rule in Connecticut remained essentially the same legally from the adoption of the 1969 Constitution until major legislation in 1981. The 1981 legislative package of two bills was recommended by the Commission on Local Government which had been created in 1980 by the General Assembly to study home rule.

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. The only power retained by charter towns and not available to all municipalities is technical language designed to allow municipalities to regulate and control their finances and property.[10] The Municipal Powers Act enables all towns to

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[9] Special act charters are charters which are approved by the General Assembly in order to grant organizational and functional powers uniquely to each municipality for which a special act is adopted.

[10] These powers are also available to all other municipalities through provisions of Sec. 7-148. The language regarding powers in Sec. 7-194 was retained essentially to assure the continuity of these powers in the same form for charter towns.

exercise any of the powers granted in Sec. 7-148 without explicit reference to them in its charter. Powers which are subsequently delegated may also be exercised without the necessity of making charter revisions.

In an equally important action, the 1981 General Assembly adopted 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.

There is considerable disagreement among local government legal experts and practitioners as to whether this language changes or simply codifies previous practice and as to how the specific meaning of the language establishes limitations on local charters. Prior judicial decisions had generally upheld State Statutes over local charters in almost all cases, but conflicting approaches exist in Supreme Court decisions. Discussion of key court cases appears in the next section of this report.

Special Act Charters

Article 10 of the Connecticut Constitution prohibits the General Assembly from enacting special legislation relating to the powers, organization, terms of elected offices or forms of government of any town, city or borough after July 1, 1969. Left unanswered is the effect of such special acts enacted prior to this date.

The 1957 Home Rule Act which was in effect prior to the adoption of the new Constitution indicates that all existing charters and special acts shall continue in effect until repealed, superseded or amended by the adoption of a charter, charter revision or amendment. The Home Rule Act also provides that a home rule charter "shall supersede any existing charter including amendments and all special acts inconsistent therewith". These provisions seem inconsistent. The question arises that, if a home rule charter supersedes a special act charter, what is the status of a special act charter if any action is taken with respect to that charter under the Home Rule Act.

The Advisory Commission on Intergovernmental Relations considers that this question, while important, is essentially separate from the basic issue of home rule, and can, and should be, considered an issue by itself at some point in the future.

HOME RULE MODELS

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. This grant of powers is made in various ways, but always with some enactment of state law and often (in at least 41 states) with at least some mention in the state constitution. A discussion of the development of home rule models is found on pages 10-12 of this report.

Since the concept of home rule for local governments was initiated, many very different forms have been enacted into law. Individual states vary so much in specific provisions that it can almost be said that each case is unique unto itself. In general, however, the specific provisions can be classified into two categories. Their characteristics are described below.

These approaches to home rule are important to understand in that the organizations and operations of local government are significantly influenced by the form and features of their basic grant of legal powers.

CONSTITUTIONAL HOME RULE

The key element of constitutional home rule is that the grant of power to local governments is not only given in general in the constitution, but is also defined and described in some reasonable degree of detail. Both positive grants of powers to local governments and negative limitations of the powers of state governments with respect to local issues are characteristic of constitutional home rule states.

A useful, although not necessarily totally consistent feature of a constitutional home rule state is that it has "self-executing" home rule in its constitution. That is, the constitutional grant of home rule powers does not require any implementing action by the state legislature. This is the case in 24 state constitutions where local governments derive their powers directly from the constitution and basic changes in these powers can only be made through constitutional amendment.

The fact that a state is considered to have constitutional home rule does not automatically carry a presumption that that home rule is necessarily broad or extensive. Varying degrees of powers can be granted through the constitution. The essential distinction is the method of granting and withholding of powers and the method required for change in that grant.

LEGISLATIVE HOME RULE

In 26 states, the grant of powers to local governments is either mostly or totally found in statutes enacted by the state legislative body with only general authorization, at most, contained in the constitutions. Again, as in the constitutional home rule states, the powers to be exercised by local governments can be either broad or narrow. The meaningful factor is that changes in these powers, except those specifically created in the constitutions, can be made by the legislature. In this form of home rule, changes are less difficult to make, and it is generally considered that more changes are actually made. While this feature can be considered either positive or negative, depending on one's perspective, it is generally agreed that legislative home rule is more flexible than constitutional home rule.

DEGREE OF LOCAL POWERS

One factor useful in analyzing the degree of power available to local governments is whether or not those local governments have reserved or enumerated powers. The term "enumerated powers" means that a listing or "enumeration" of specific powers is contained in the enabling document (constitution or statutes) and that the exercise of local powers is limited to those areas mentioned in the enumeration.

The term "reserved powers" refers to those situations where local governments are granted all powers legally possible for the state to grant except those specifically reserved to the state. While reserved power states tend to have more powerful local governments, this is not automatically the case since the reservations of powers to the state can be narrow or extensive.

A second significant factor in the distribution of power is the breadth of the interpretation of powers granted to local governments. Interpretations of local powers varies significantly among the states, ranging from very narrow construction to broad, flexible construction. The reasons for this range also vary and tend to be based on combinations of such things as history, constitutional and statutory language and judicial philosophy.

The key factor is, however, that in addition to the constitutional or statutory basis of powers and their enumerated or reserved nature, the interpretation of the powers is a major element in the day to day, practical impact of the law on local governance.

LEGAL STATUS IN CONNECTICUT

THE CONNECTICUT CONSTITUTION

The Connecticut Constitution contains a specific article regarding the general treatment of home rule. Since it is quite brief, it is reproduced in full below.

CONSTITUTION OF CONNECTICUT

ARTICLE TENTH.
(Section 1)

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.

Given that the Constitution contains this direction to the state-local legal relationship, Connecticut is often referred to in national literature as having constitutional home rule. In a practical sense, however, it is more relevant to understand that, pursuant to this provision of the Constitution itself, the meaningful state-local legal relationships are defined by the General Assembly through the General Statutes.

STATUTORY BASIS OF LOCAL POWERS

In general terms, Connecticut can be categorized as having non-self-executing constitutional home rule. Connecticut has delegated a broad range of local governmental powers, making Connecticut cities and towns classic examples of general purpose local governments. The General Assembly has implemented Article 10 of the State Constitution by adopting, among other laws, a Home Rule Act for local organizational purposes (described later) and an extensive series of enumerated local powers. Implied is a general reservation of all other powers to the State.

Further, the State has granted considerable flexibility to municipalities in organizational structure matters through a statute allowing charter municipalities to organize their structures outside of statutory restrictions except where specifically prohibited.

Functional powers, however, are relatively narrowly construed. A description of these functional powers is contained below, and the judicial interpretations of this framework are contained in the next section of this report.

The index to the Connecticut General Statutes contains over sixty pages of references to statute sections dealing with various municipal powers and responsibilities. While the sections are spread extensively throughout the entire statutes, Title 7 contains the basic organizational arrangements and many of the general responsibilities, including 25 chapters and over 500 individual sections. These range from the Home Rule Act, Chapter 99, which prescribes the methods and procedures for adoption of local charters, to Chapter 98, which enumerates 87 basic municipal powers in Section 7-148, to the remaining 23 chapters which provide additional specific powers.

The Home Rule Act as amended, which was described previously in the background section on Home Rule in Connecticut, provides the authorization for local units of government to organize themselves through the adoption of local charters. The Act contains basic requirements but allows considerable flexibility in organizational structure. It specifies the process of charter adoption and amendment in considerable detail, however, with the consequent lessening of flexibility in this area.

From the time the Home Rule Act was adopted in 1957, until the major amendments to local governmental law in 1981, the Act contained numerous enumerated powers which were specified for charter municipalities. This resulted in considerable confusion in that the major municipal powers section was elsewhere in the law. This often led to questions as to what the differences were between the powers of charter and non-charter towns, particularly since the areas covered in these sections (Sec. 7-148 and Sec. 7-194) were clearly overlapping in many instances.

In 1981, Section 7-194 was substantially amended by switching most of its provisions to Section 7-148, making it clear that these powers were meant to pertain to all municipalities and not reserved to municipalities with charters. It should be noted here that a few powers were left in Section 7-194, where they specifically apply only to charter municipalities, but in each case an equivalent power appears to be also included for all municipalities in Section 7-148.

To date, 102 of Connecticut's 169 municipalities have chosen to organize themselves under local charters. The remaining 67 towns continue to operate exclusively under the General Statutes without a charter. Many cities and towns, both charter and non-charter, also operate partially under special acts of the legislature, conveying specific powers. Most of these were adopted prior to the 1965 Connecticut Constitution, which purported to make such special acts illegal, but which retained the effect of the existing acts.

Chapter 98, entitled Municipal Powers, contains the basic grant of powers to all Connecticut municipalities, including the 87 enumerated powers which are organized into Section 7-148 and granted in common to all municipalities regardless of their organizational structure. These powers are extensive and broad-ranging, and alone would be enough to qualify Connecticut municipalities as having among the most powers in the nation.

In addition to these powers, however, Title 7, and almost every other Title of the General Statutes, contains numerous additional municipal powers including such diverse areas as education, utilities, housing, elections, solid waste and zoning. Indeed, one of the issues which has consistently been raised by municipal officials has been the confusion caused by the seeming disorder of the Statutes granting their powers. This issue is addressed in the findings and recommendations section of this report.

Another area of confusion within the Statutes deals with limitations on local powers. Limitations, which the Commission generally terms preemptions, are contained in many different chapters and titles of the Statutes. A few examples, from among the many existing preemptions, are: Section 7-192, which contains a specific prohibition against municipalities levying any tax other than a property tax; that same section, which places significant limitations on the conduct of municipal elections; Title 10 of the General Statutes, which contains numerous education preemptions including such subjects as determining minimum school days (Sec.10-16), school year (Sec.10-15), and budgeting procedures (Sec. 10-222); and Title 52, which contains a complete preemption of the court system by the State.

State mandates, a subset of preemptions, are likewise found throughout the Statutes. For example, mandates concerning police and fire personnel disability payments required for heart disease or hypertension (Sec. 7-433a) and public employee binding

arbitration (Sec. 7-473c) are found in Title 7, while mandates concerning public meetings and public records are found in Title 1. Many mandates concerning solid waste and other environmental issues are found in Title 22a, and social service mandates are found in Title 17.

The confusion exists despite the presence of a generalized preemption section. A recommendation dealing with this issue is also included in the findings and recommendations section of this report.

In summary, it can basically be said that the General Statutes implement the constitutional delegation of home rule to municipalities through a flexible grant of organizational power and a comprehensive series of enumerated functional powers, subject to legislatively-imposed limitations. Connecticut's municipalities are full-purpose local governments with the basic tools to deal with local issues; some of the tools are available under general flexible grants of power, and others are specific and narrow.

COMMON LAW:

SIGNIFICANT LEGAL DECISIONS IN CONNECTICUT[11]

The Supreme Court of Connecticut has stated that "(H)ome rule legislation was enacted to enable municipalities to conduct their own business and control their own affairs to the fullest possible extent in their own way..." Shelton v. Commissioner, 193 Conn. 506, 521, 479 A.2d 208, 216 (1984). However, an examination of Connecticut Supreme Court home rule decisions shows that the ability of local governments to exercise home rule powers by charter or ordinance is extremely limited. The Supreme Court has used strict standards to review the use of home rule powers and tends to reject municipal action when questions as to a clear statutory basis exist.

Typically, a court will begin by observing that municipalities, as creations of the state, do not have inherent legislative authority. Rather, municipalities only have those powers which have been delegated or are necessarily implied from an express delegation of power. In Connecticut, delegation of authority to municipalities is narrowly construed. Connecticut Supreme Court decisions have most often been decided on narrow, case-specific issues phrased in broad generalities rather than by establishing clear philosophical directions. Most of the cases cited below, when decided against the local government, have reflected a court judgement that the local action clearly exceeded statutory authority. In contrast, the cases cited which uphold local action are often pointed to as demonstrating a more expansive court view of local powers. They generally imply a court which, when faced with local action reasonably tied to enumerated powers, will uphold local authority unless it clearly frustrates state policy. The complexity of analyzing court reasoning in this area is such that one specific, clearly-articulated direction cannot be identified. Some generalizations, however, can be inferred from the decisions.

In Simons v. Canty, 195 Conn. 524, 488 A.2d 1267 (1985) the Court held that "(a)n enumeration of powers in a statute is uniformly held to forbid the things not enumerated... Delegation of authority to municipalities is therefore narrowly construed." 195 Conn. at 530, 488 A.2d at 1271. Applying this principle, the Court determined that delegation of the power to establish the terms of elected municipal officials did not include the

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[11] This section is based largely on research and a report to the Commission by Mary P. Howard, Esq., Robinson & Cole, P.C., Hartford, Connecticut, January 5, 1987.

authority to establish recall procedures. Similarly, in City Council v. Hall, 180 Conn. 243, 429 A.2d 481 (1980), the Court held that the power to promote "good government" did not include the power to issue subpoenas. In Buonocore v. Branford, 192 Conn. 399, 471 A.2d 961 (1984), the Court held that while municipalities had been delegated power to establish the manner in which elections are held they could not restrict the candidacy of unclassified state employees. In State ex rel Barnard v. Ambrogio 162 Conn. 491, 294 A.2d 529 (1972), the Court held that the provision of the Home Rule Act empowering municipalities to establish pension and tenure qualification systems for town employees did not empower a town to either create or amend an existing civil service system. In New Haven Water Company v. The City of New Haven, 152 Conn. 563, 210 A.2d 449, (1965), the Court held that the power to promote public health did not authorize a municipality to require the fluoridation of the public water supply. By interpreting delegated powers in this manner, courts severely restrict municipal powers. Municipalities are forbidden to adopt charter provisions or ordinances concerning matters that the State has not specifically delegated to the towns by statute.

Municipalities may also exercise authority which, though not expressly delegated, is necessarily implied. However, what is "necessary" to effectuate a delegated power has been narrowly construed. In Connecticut, "necessarily implied" powers seem to be restricted to actions that are essential to carry out specifically delegated powers, especially where the legislature has failed to express how a power may be exercised. In Journal Publishing Company of Rockville v. Enfield, 31 Conn. Supp. 392, 373 A.2d 193 (1974) what appeared to be a local agency's simple procedural rule on executive sessions was held to exceed the agency's power. In City Council v. Hall, 180 Conn. 243, 429 A.2d 481 (1980) while recogizing the town's statutory power to conduct investigations, the Court did not find the issuance of subpoena power to be a necessary adjunct. The Court was even more restrictive in Buonocore v. Branford, 192 Conn. 399, 471 A.2d 961 (1984) where it stated "(While) municipalities obviously have a strong interest in the qualifications of candidates for local office, "good government" cannot be read so broadly as to necessitate the grant of power to municipalities to determine candidate qualifications." 192 Conn. at 404, 471 A.2d at 964.

In reviewing the numerous decisions striking down municipal charter provisions and ordinances, an almost formulaic approach to home rule appears. First, the Court will announce that a municipality, as a creation of the State, has no inherent powers of its own. Second, a municipality has only those powers which are expressly granted to it by the State. Third, those substantive powers which are not expressly delegated are excluded. Fourth, municipalities only have implied powers which are necessary to "discharge duties." Fifth, the home rule power cited does not authorize the municipality to exercise whatever power is at issue. See City Council v. Hall, 180 Conn. 243, 429 A.2d 481 (1980) (issue a subpoena); Simons v. Canty, 195 Conn.

524, 488 A.2d 1267 (1985) (establish recall procedures); Buonocore v. Town of Branford, 192 Conn. 399; 471 A.2d 961 (1984) (establish candidate qualifications for unclassified state employees).

Municipalities are also hemmed in by state statutes which conflict with or preempt local enactments. The test for impermissible conflict and preemption is set forth in Dwyer v. Farrell, 193 Conn. 7, 12-14, 475 A.2d 257, 260-61 (1984) a test of a New Haven gun control ordinance.

> Whether an ordinance conflicts with a statute or statutes can only be determined by reviewing the policy and purposes behind the statute and measuring the degree to which the ordinance frustrates the achievement of the state's objective.
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> * * *
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> A local ordinance is preempted by a state statute whenever the legislature has demonstrated an intent to occupy the entire field of regulation on the matter;...or, as here, whenever the local ordinance irreconcilably conflicts with the statute...The fact that a local ordinance does not expressly conflict with a statute enacted by the General Assembly will not save it when the legislative purpose in enacting the statute is frustrated by the ordinance.

The Dwyer Court found the local ordinance to be irreconcilably in conflict with the legislative intent of the General Statutes. This analysis is similar to that used in Canavan v. Messina, 31 Conn. Supp. 447, 334 A.2d 237 (1973) where a town's minimum age requirement of 28 years for mayoral candidates was held to be in direct conflict with the State's 18 year old minimum age for voting rights.

State statutes also circumscribe local powers by preemption, which can occur in two ways. First, the State may "reserve the field" to itself by specifically prohibiting or implying a prohibition on local regulation. In New Haven Water Co. v. New Haven, 152 Conn. 563, 210 A.2d 449 (1965), the Court held that the regulation of public service companies has traditionally been reserved exclusively to the State where the company serves more than one community. Thus the local ordinances requiring the fluoridation of drinking water were invalid. Second, a state statute, though short of an express reservation of the field, may be so detailed as to prohibit any local regulation whatsoever. For example, in Journal Publishing Co. of Rockville v. Enfield, 31 Conn. Supp. 392, 373 A.2d 193 (1974), the Court held that the provisions of the Freedom of Information Act regarding the authority of an administrative or executive board to hold an executive session preempted the field.

The manner in which courts have applied the rules of statutory construction to resolve local and state conflicts and the value that it has to the process of local government have

been much questioned. A leading articulation of this questioning has been presented in Janice Griffith, "Connecticut's Home Rule: The Judicial Resolution of State and Local Conflict", 4 Univ. of Bridgeport Law Review, p. 220-240 (1983). In this article, Professor Griffith maintains that when the judiciary is unable to ascertain the legislative intent it mechanically applies one or more rules of statutory construction. She questions the court for (1) not determining which statute will produce the most desirable result, (2) not identifying the purpose of the conflicting statutes, (3) not balancing the competing local and state interests, or (4) not evaluating the consequences of the decision. According to Griffith, this has resulted in arbitrary decisions with little precedential value, and she advocates a "reasonableness test" to balance competing local and state interests. Another thoughtful discussion of the difficulties involved in acceptance of the Supreme Court's application of the principles of judicial review and statutory construction is found in Timothy Hollister, "The Myth and Reality of Home Rule Powers in Connecticut", 59 Conn. Bar Journal, 6 (December 1985) in which he analyzes the contradictory character of court decisions and suggests that constitutional and/or statutory changes be made to clearly establish the rights of municipalities to "areas of local concern".

Interspersed among the Supreme Court's numerous decisions striking down municipal charter provisions and ordinances are a few opinions which have created hope that there is a realm of inherent municipal legislative authority in Connecticut. The "leading case" upholding a municipal charter provision in the face of a conflicting state statute is Caulfield v. Noble, 178 Conn. 81 420 A.2d 1160 (1979). At issue in Caulfield was the validity of a charter provision which provided that unexpended cash balances remaining at the end of any fiscal year may be either transferred to a surplus account or used to reduce the amount of taxes that must be raised for the ensuing year.

The Court upheld the charter provision, despite its apparent inconsistency with the General Statutes, on the ground that the Home Rule Act authorizes the delegation of the power to address issues of local concern, through the enactment of charter provisions, "exclusive of the provisions of the General Statutes", 178 Conn. at 80, 420 A.2d at 1163. The Court explicitly endorsed the principle that "a general law, in order to prevail over a conflicting charter provision of a city having a home rule charter, must pertain to those things of a general concern to the people of the state, and it cannot deprive cities of the right to legislate on purely local affairs germane to city purposes.", 178 Conn. at 87, 420 A.2d at 1163. Then, Court stated "(T)he great majority of home rule states have accepted the principle that general laws pertaining to municipal affairs...as distinguished from state affairs...do not supersede the provisions of home rule charters or ordinances of the same subject...", 178 Conn. at 90-91, 420 A.2d at 1165. See also Wallingford v. Board of Education, 152 Conn. 568, 210 A.2d 446

(1965) (Institution of civil service for town employees is a matter of local concern).

Although Caulfield is the clearest indication of some type of inherent municipal legislative authority, the Supreme Court has endorsed its holding implicitly in several other cases. In Shelton v. Commissioner, 193 Conn. 506, 521, 479 A.2d 208, 216 (1984) the Court stated, "Our constitutional home rule, therefore, prohibits the legislature from encroaching on the local authority to regulate matters of purely local concern, such as the organization of local government or local budgetary policy. Caulfield v. Noble..." Similarly in West Hartford Taxpayers Ass'n. Inc. v. Streeter, 190 Conn. 736, 742, 462 A.2d 379, 383 (1983) the Court stated

> It is well established that a (town's) charter is the fountainhead of municipal powers. The charter serves as an enabling act, both creating power and prescribing the form in which it must be exercised.

The Court has also hinted that in some instances municipalities may regulate where state statutes are silent on the subject. In Cheshire v. McKinney, 182 Conn. 253, 259, 438 A.2d 88, 91 (1980), the Court seemed to acknowledge that a municipality has some authority, in matters of local concern, to venture into areas unregulated by the State.

> (We) have only recently reiterated that the powers of local boards of education are not defined only by state statute, and that a local charter may limit the powers of the local board of education where its provisions are "not inconsistent with or inimical to the efficient and proper operation of the educational system otherwise entrusted by state law to the local boards."

While these decisions imply that municipalities have some type of inherent legislative authority in the area of "local concern", upon closer examination it becomes apparent that this concept is not so easily categorized. By classifying an issue as being of "state-wide concern", the courts have allowed the State to retain all its powers. Thus, if desired in another case the Court can return to its restrictive interpretation of municipal powers. See Carofano v. Bridgeport, 196 Conn. 662, 495 A.2d 1011 (1985) (avoiding strikes is a matter of state-wide concern); Larke v. Morrisse155 Conn. 163, 230 A.2d 562 (1967) (which authority designates the public accountant for a municipality is a matter of state-wide concern); Journal Publishing Company of Rockville v. Enfield, 31 Conn. Supp. 392, 373 A.2d 193 (1974) (whether meetings of administrative and executive agencies of a subdivision of the State may be closed to the public is a matter of state-wide concern).

FINDINGS AND RECOMMENDATIONS

As a result of our review of the background literature and operative documents setting the legal status of local governments in Connecticut, the Commission makes the findings and recommendations contained in this section of its report. The findings describe what we believe to be the existing situation or status of individual issues, and the recommendations reflect our considered opinion as to desirable changes which should be made in the system. Where appropriate, the recommendations are being translated into legislative language as proposed bills for consideration by the General Assembly.

As we have stated in the introduction to this report, we urge consideration of these recommendations as one unit because of their considerable interdependence.

GENERAL FINDINGS

In addition to the specific findings and recommendations contained in the six areas found below, the Commission makes four general findings.

1. Changing Times and Conditions

The practical responsibilities of Connecticut municipalities have evolved and increased tremendously over the last 350 years. The statutory authority and interpretation necessary for municipalities to discharge these responsibilities, however, has often not kept pace. As a result, municipalities exercise a wide array of powers that are on occasion legally questioned, but are practically necessary. This dilemma, between the need to deal with today's problems while held to yesterday's legal view of municipalities, poses significant problems for Connecticut's intergovernmental system.

2. "Dillon's Rule": Origin and Applicability

The Commission finds that much of the judicial interpretation and legislative orientation to changes in Connecticut's state-local legal relationships is still considered in terms of the basic theory known as "Dillon's Rule". This theory, described in the historical perspective section of this report, was first put forth in 1868 and has had considerable influence on decisions in Connecticut and many other states since that time. The Dillon theory was derived from the then-evolving theories of corporate law. At that time, private corporations were viewed as having no inherent powers and requiring limited grants of power from the states. This philosophy was carried over into the law of municipal corporations by Judge Dillon in an Iowa case, and has been utilized and expanded upon in municipal law since then.

In the intervening years, corporate law has undergone basic philosophical change, resulting in theories today where corporations have significant basic inherent powers and can exercise a broad range of activities unless specifically prohibited by law. In many respects however, municipal law has not followed this same line of change.

The Commission believes that "Dillon's Rule" was appropriate when created but that, as a basic theory of state-local relations today, it has little value. We believe that it should not be used as a basic yardstick in considering municipal powers in Connecticut today.

3. The System Contains Many Strengths

Our study of the system of local government in Connecticut, as well as our understanding of the situation in other states, has led us to the conclusion that the Connecticut state-local legal system has many strengths. 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. While experiencing significant constraints in labor relations and taxation, Connecticut municipalities have generally been able to attract qualified and dedicated local officials and employees, and, in general, are in sound fiscal condition. These strengths can be credited, at least in part, to the legal framework provided for municipalities by the State Constitution and General Statutes.

4. Weaknesses Center in Two Areas

The weaknesses found by the Commission which have resulted in the recommendations below center in two basic areas:

a. Flexibility

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.

b. Clarity

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. Even those trained in the law often have a hard time fathoming the intent of the statutes in this area. In addition to the organizational difficulties, there are significant areas where clarity in legislative intent in specific statutes is lacking. This is particularly true with respect to the degree of preemption the legislature intended when it adopted numerous statutes in which it specified its own responsibilities but did not define the relationship of these responsibilities to local governments.

Based on our research and these general findings, the Commission makes the following six findings and recommendations.

CONSTITUTIONAL BASIS OF LOCAL POWERS

FINDINGS

The Commission finds that the Constitution of the State of Connecticut, Article 10, clearly places decisions regarding the general magnitude and extent of home rule authority in the hands of the General Assembly. At the same time, it 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, city or borough. The Commission further finds that the constitutional basis for home rule in Connecticut municipalities is adequate and appropriate, at least for the present time.

RECOMMENDATION

While the Commission does believe that some changes should be made in basic state-local legal roles, those changes should be made by the General Assembly through the General Statutes rather than through constitutional amendment. The Commission further believes that statutory revisions are more flexible to meet changing needs and more feasible for adoption.

If the safeguards to local control prove inadequate to avoid unwarranted intrusion, the Commission recommends that constitutional revision should be considered.

STATUTORY BASIS OF LOCAL POWERS

FINDINGS

The Commission finds that a clarity in the intent of the legislature regarding its general view of local governmental powers is presently lacking and would have considerable value to local officials, state officials and the courts.

It further finds that a restrictive view of enumerated local powers by the legislature, courts and local legal counsel is often the case under the present framework, and that a more flexible, positive view could be implemented which would assist local governments without allowing compromise of the constitutional rights of individual citizens.

RECOMMENDATION

The Commission recommends that the General Statutes be amended to clearly establish the intent of the legislature with respect to interpretation of the enumerated powers of local governments. That legislative intent should show that enumerated powers should not be considered exclusive or restrictive.

We further recommend that the legislature 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.

The 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. 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.

ORGANIZATION OF THE GENERAL STATUTES

FINDING

The General Statutes serve as the basic organic law of all municipalities which have not adopted a local charter (with the exception of special acts specific to individual municipalities).

RECOMMENDATION

As such, the Commission recommends that the statutes should be reorganized to centralize sections pertaining to organizational, procedural and functional powers or, at a minimum, to create organized references to appropriate sections. Such a reorganization will benefit both state and local officials and the general public by clarifying powers and prohibitions which these officials should be aware of in their appropriate contexts.

MUNICIPAL CHARTERS

FINDINGS AND RECOMMENDATIONS

Municipal Powers

The Commission believes that all municipalities should have the same basic functional powers. It finds that no differences in functional power now exist between municipalities with and without charters, other than those few specified in Section 7-194 of the General Statutes, and we recommend that no further differences should be established.

Organizational Structures

The Commission finds that the adoption of a local charter enables a municipality, among other things, to avail itself of alternative organizational structures, as long as such organizational structures are not specifically prohibited by the Constitution or General Statutes. The ability of municipalities to so organize and structure their governments was clarified by P.A. 86-230. We recommend that no change be made.

STATE PREEMPTION AND PROHIBITION

FINDINGS AND RECOMMENDATIONS

The Commission recommends that the legislature require that any new areas in which local authority would be preempted or prohibited by the state, be clearly and specifically identified in any legislation so that all parties are aware that such an issue is being considered. We further recommend that any legislative bill which would preempt or prohibit local authority be required to be accompanied by an analysis of the impact, identifying the areas to be preempted or prohibited and analyzing the probable impacts on both the state and municipalities. We also recommend that any new preemptions or prohibitions be codified into, or at least referenced in, one general preemption section, including identification of the degree of preemption or prohibition where appropriate.

This codification will have the effect over time, as existing preemptions and prohibitions are revisited and reconsidered, of making considerably clearer precisely which areas of government have been preempted or prohibited by the state from local authority and the extent of that preemption or prohibition. In a practical sense, this single recommendation, if followed consistently in the future, will clarify many of the confusing and often controversial issues of state-local legal conflict which now exist.

The Commission further recommends that existing preemptions and prohibitions be researched and identified for codification and possible clarification beginning in 1987 and being completed in accordance with an implementation plan to be submitted by this Commission to the General Assembly at the beginning of the 1988 legislative session. While the performance of this research is beyond the capacity of the Commission in the present time frame, it is a valuable subject for future work by the appropriate agencies of the General Assembly.

As preemptions and prohibitions are identified, they should be referred to the appropriate legislative committees for confirmation of their status and potential reconsideration. Such a process will assure (1) consideration of the relative value of the preemptions and prohibitions in contrast to local autonomy, and (2) consideration in the appropriate context of subject area committees and their affected constituencies.

ISSUES OF STATEWIDE CONCERN

RECOMMENDATION FOR FURTHER STUDY

The Commission has discussed at length the feasibility of establishing legislative definitions of "issues of statewide concern" and "issues of local concern". These need to be defined with clarity, establishing a bright line test which both cuts across issue lines and stands up to changing times and conditions.

During the brief time we have had to study this issue, we have researched specific approaches utilized in numerous states, including the resulting court interpretations of statewide vs. local concern. We feel that this issue is of sufficient value, but also sufficient complexity, that we intend to continue our research in this area as a top priority.

There has been at least one well researched attempt at defining these terms in Connecticut Statutes, in the 1986 session of the General Assembly. Starting from that effort, we will endeavor to develop a set of threshold definitions which will be valuable to the legislature, the courts and local officials.

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APPENDIX A

Substitute House Bill No. 5864

SPECIAL ACT NO. 86-31

AN ACT CONCERNING A STUDY OF HOME RULE IN CONNECTICUT BY THE CONNECTICUT ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Be it enacted by the Senate and House of Representatives in General Assembly convened:

The Connecticut Advisory Commission on Intergovernmental Relations shall 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. Said commission shall report to the governor and the general assembly on the results of such study not later than January 1, 1987. 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.