

MAINE STATE LEGISLATURE

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Report by

THE MAINE
INTERGOVERNMENTAL RELATIONS COMMISSION

ON

H O M E R U L E

TO

Governor
Members of the 104th Legislature
General Public

December 1968

M E M B E R S O F T H E
MAINE INTERGOVERNMENTAL RELATIONS COMMISSION

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I. DEFINITION OF HOME RULE

Home Rule is the autonomy of operation of a municipal unit within its own framework. Home Rule allows the body to govern itself and the procedure for accomplishing the same.

II. THE PURPOSE OF HOME RULE

Home Rule accomplishes the basic philosophy of government in allowing the people most directly affected by the governing body, to rule the governing body. Whether it be municipal, state or federal, the United States has been a country whereby "no taxation without representation" has been the motto. The establishment of Municipal Home Rule creates a local government that must be responsible to the people it governs. If it is not responsible to the local community, then the local government will no longer be in office.

In addition to the more democratic administration of government, Home Rule creates a greater flexibility in the operation of community services. Through charter amendments and alterations, municipalities may readily merge service functions and provide more efficient and complete services to the community. The broader functions will also permit the municipality to exercise the necessary alternatives that it may encounter as circumstances change.

Indirectly, Municipal Home Rule will relieve the state of a cumbersome (and to many state legislators, a responsibility that bears little interest to state affairs) obligation of altering the local charters to meet the local need (such can only be done on a biannual basis). The state incurs considerable expense when such matters are considered during the legislative session. The matters

are considered in the absence of the people who are most affected and on many occasions the state legislators could care less.

In relieving the state legislature of this burden, the Courts assume a new function in an appellate capacity. If the municipality fails to adhere to the law allowing Home Rule, abuses the enacting legislation, or fails to operate under Home Rule in a manner consistent with the philosophy therein, the Courts will be called upon to act. The Courts in replacing a legislature in this role will furnish stability to decisions that are made. The stability stems from the doctrine of "stare decisis" whereby one decision is rule or law as to how the Court will act in a similar set of circumstances. This is not the case in a legislature, as there is a constant turnover in the make-up of the legislature. A second advantage of the Courts is that the Courts are always in session and any aggrieved person may quickly seek relief.

III. DOES CONSTITUTIONAL HOME RULE FULFILL THE PURPOSES OF HOME RULE?

MUNICIPAL CORPORATIONS SHALL HAVE THE EXCLUSIVE POWER TO ALTER AND AMEND THEIR CHARTERS ON ALL MATTERS WHICH ARE LOCAL AND MUNICIPAL IN CHARACTER.

The above proposed constitutional amendment is preferred over any form of Legislative Home Rule. In the State of Maine, the Legislature is compelled by the Constitution of the State to exercise its dominion over the municipal corporation charters. If the legislative branch assigned this power (responsibility) to the municipal corporations, such assignment may be unconstitutional as a constitutionally charged obligation may not be assigned without reservation. In practice, Legislative Home Rule is inoperative due to the inherent instability of the legislative process, as there is

a turnover from one legislature to the next with no precedent to follow the policies of the proceeding governing body. Instability is further reflected in that one legislature could pass the prospective Home Rule Laws and a simple majority would only be needed to repeal these Laws in a subsequent legislature.

The Constitutional method eliminates any possible question as to the constitutionality of a legislative assignment of powers; but still allows the Legislature certain control on these municipal corporations by virtue of the enacting legislation which must accompany any Home Rule constitutional amendment. The fact that the Courts will be deciding many of the powers of the municipal corporations in altering their charters should add some stability to the system by virtue of the judicial doctrine of "stare decisis". An added advantage of the constitutional amendment is that it prevents the legislature from whittling away the powers conveyed to the municipal corporation and allows Home Rule to be given a true test. There are several methods of Constitutional Home Rule and we would like to explore them separately.

IV. WHAT WILL ACCOMPLISH HOME RULE?

To accomplish Home Rule, we will need a broad constitutional amendment such as has been previously suggested. After the amendment has been secured, the Legislature will be called upon to enact enabling legislation so the municipalities will be provided with charters that safeguard the rights of the individuals in the community. An example would be a provision in the enabling legislation that provides for referendums in the municipality if a charter is to be altered or amended. The enabling legislation also provides the legislature of the state with some degree of control as to how

Home Rule is established. The enabling legislation provides the Courts with a set of rules to govern the activity of the municipalities. Out of these rules, the Courts will develop laws and precedent as to what a municipal corporation may or may not do. Home Rule at this point will not affect quasi-municipal corporations or districts (such as a local sanitary district).

CONCLUSION

Home Rule should accomplish the independence within the municipality as was required and requested by this country from England in the years 1775-1783. The towns and cities will be given the opportunity to operate within their domain in a sphere of independence such as was won during the Revolutionary War.

DOCUMENTATION

The proposed Home Rule Constitutional Amendment has been developed by the Intergovernmental Relations Commission as result of the following conferences, meetings and hearings:

November 7, 1967	Organizational Meeting
December 1, 1967	Public Hearing, Bangor City Hall
April 24, 1968	Full Commission Meeting
May 29, 1968	Full Commission Meeting
August 13, 1968	Sub-committee Meeting with Legal Counsel
August 20, 1968	Sub-committee Meeting with Maine Municipal Association and Legal Counsel
September 4, 1968	Sub-committee Meeting with Legal Counsel
September 9, 1968	Sub-committee Meeting with Legal Counsel
October 13, 1968	Sub-committee with Legal Counsel
October 14, 1968	Full Commission Meeting
October 29, 1968	Sub-committee Meeting with Legal Counsel
October 31, 1968	Sub-committee Meeting with Legal Counsel
December 18, 1968	Full Commission Meeting with Legal Counsel
January 6, 1969	Sub-committee Meeting with Legal Counsel
January 8, 1969	Full Commission Meeting with Legal Counsel