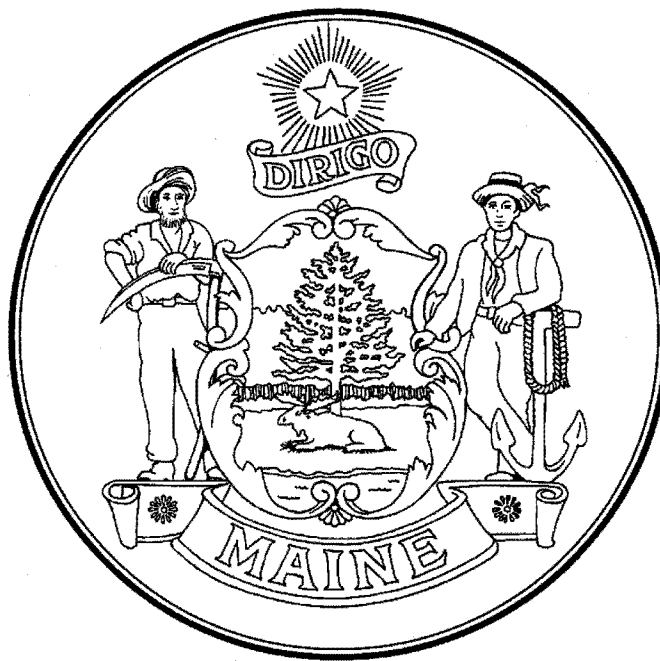


MAINE STATE LEGISLATURE

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Inter-Departmental Memorandum Date October 16, 1970

To Samuel H. Slosberg, Director

Dept. Legislative Research

From Charles R. Larouche, Assistant

Dept. Attorney General

Subject Municipal Home Rule

On November 4, 1969, the people of Maine voted to amend the State Constitution by adoption of Article VIII-A, entitled "Municipal Home Rule." That amendment, which had been presented to the Governor by legislative resolve on June 11, 1969, states:

"The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character."

The Resolve proposing this amendment, as initially submitted in Legislative Document No. 451, reads:

"Municipal corporations shall have the exclusive power to alter and amend their charters on all matters which are local and municipal in character."

House Amendment "A" to that Resolve was then adopted by the Legislature, deleting the word "exclusive" which preceded the word "power," and adding the words "not prohibited by Constitution or general law," following the word "matters." During the debate on this Resolve, one of its supporters stated that through this Amendment, "Home Rule would be given by the State of Maine to the cities and municipalities to draft and to adopt and to amend their charters." Legislative Record, page 3260.

On January 30, 1970, the Legislature enacted Chapter 563 of the Public Laws of 1969, amending Title 30 of the Revised Statutes by adding a new chapter 201-A. Its stated purpose is "to implement the home rule powers granted to municipalities by Article VIII-A of the Constitution of the State of Maine." Section 1912 of that Chapter reads, in pertinent part:

"§ 1912. Charter revisions, adoptions, procedure

"1. Municipal officers. The municipal officers may determine that the revision of the municipal charter is necessary or that adoption of a new municipal charter is necessary and, by order, provide for the establishment of a charter commission to carry out such purpose as provided in this chapter.

"2. Alternative method, initiative. . . . "

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Section 1914 of that Chapter reads, in pertinent part:

"§ 1914. Charter amendments, procedure

"1. Municipal officers. The municipal officers may determine that amendments to the municipal charter are necessary and, by order, provide that such proposed amendments be placed on a ballot at the next regular municipal election held not less than 60 days after such order is passed.

"2. Alternative method, initiative. . . . "

The following provision was inserted by Committee Amendment A which, however, was deleted prior to enactment of P.L. 1969, Ch. 563:

"§ 1921. Legislative right

"This Act shall not be exclusive and the Legislature shall have the right to grant, amend or revise the charter of any municipality."

When this Bill, Legislative Document 1630, was being debated, one of its opponents declared that - "it is just a drafted bill of unlimited home rule." Legislative Record, page 407.

The Director of Legislative Research has submitted the two following questions to this Department:

"1. Should this office accept for drafting from legislators, material for new municipal charters?"

The first question is construed as referring to a charter for a municipal corporation that does not yet exist, i.e., the creation of new municipal corporation. As thus construed, this first question is answered in the affirmative.

"2. Should this office accept for drafting from legislators, material for revising, altering or amending existing municipal charters?"

The second question is answered in the negative.

The State Legislature may enact any law of any character or on any subject unless it is prohibited either in express terms or by necessary implication by the Federal or State Constitutions.

Baxter v. Waterville Sewerage Dist., 146 Me. 211.

Prior to the Article VIII-A amendment to the Constitution of the State of Maine, the Legislature had power to create, abolish, amend, alter and revise municipal corporations. Article IV, Part 3, Section 14, Constitution of the State of Maine; North Yarmouth v. Skillings, 45 Me. 133; Bayville Village v. Boothbay Harbor, 110 Me. 46; and Coogins v. Kilpatrick, 131 Me. 23. By the Article VIII-A amendment, "the power to alter and amend their charters" was conferred upon the "inhabitants of any municipality." The term "municipality" refers to "cities and towns." 30 M.R.S.A. § 1901, subsection 6. Cf 30 M.R.S.A. §§ 1902, 2051, 5602, 5603 and 5701. The grant of power is limited to action upon previously existing charters. The word "amendment" means to add something to or withdraw something from that which has previously existed. Vol. 1 Words and Phrases, First Series, page 369. "The power to 'amend' must not be confounded with the power to create." Gagnon v. U. S. 24 S. Ct. 510, 193 U.S. 451. It seems clear, therefore, that the Article VIII-A amendment does not grant to anyone the power to create new municipal corporations. Accordingly, that power remains in the Legislature.

The Article VIII-A grant is further limited to matters "not prohibited by Constitution or general law, which are local and municipal in character." Accordingly, it is also clear that the power to amend and alter municipal charters as to non-local and non-municipal matters remains in the Legislature, However -

"There is no objective test by which a court can determine whether a matter relates to the local or municipal affairs of a municipality. The term 'local or municipal affairs' is not a fixed quantity, but fluctuates with every change in the conditions upon which it is to operate. . . ."

" . . . in Missouri, it has been held that control over a municipal police department is a matter of state-wide concern, while in California, Minnesota and Ohio this is a municipal affair. Generally speaking, however, there is a wide area of agreement

by the courts of the various jurisdictions on specific subjects. For example, municipal affairs generally include the opening and maintenance of streets, the advertisement of a city's advantages, the administration of local health affairs, and the assessment and collection of street paving costs. On the other hand, 'state affairs' have been held to include the administration of justice, the creation of general legal rights, municipal tort liability, the administration of police and pension funds, the care of neglected and delinquent children, the regulation of banks, the mediation of labor disputes, the destruction of public records, and the control of a free public school system."

(Pages 55, 64 and 65, Rhyne, Municipal Law.)

Our next point of inquiry is whether a proposed amendment to an existing municipal charter which clearly relates to a "local" and "municipal" matter is the proper subject for State legislative action? The test is whether or not the grant of the power in Article VIII-A is, by necessary implication, a limitation on the Legislature. The historical development of this power grant seems to indicate that such a limitation was intended. Inhabitants of municipalities had the power to petition the legislature for such charter amendments prior to the Article VIII-A amendment. Article I, Section 15, Constitution of Maine. A grant of power to inhabitants of municipalities to amend and alter their own charters, subject to disapproval by the State Legislature, could have been accomplished by a mere Act of the Legislature. The only apparent purpose for the use of a Constitutional Amendment to confer this power was to provide a limitation on the power of the Legislature. Furthermore, a fair reading of the amendment seems to convey that as its clear intent. In the fact statement above, it was noted that the Resolve initially included the word "exclusive," but that such word was deleted before its passage. While no explanation for that deletion was provided by the legislators, it seems fair to conclude that it was deemed redundant. This construction is reinforced by the seemingly contemporaneous interpretation of that amendment made by the same Legislature in a Special Session six months later, in rejecting that portion of a Committee Amendment to P.L. 1969, Ch. 563, which contained a proposed Section 1921, declaring a reservation of the right of the State Legislature to amend such charters. Accordingly, the State Legislature does not have the power to amend or alter an existing municipal charter as to a local or municipal matter.

The final point of inquiry concerns the precise scope of the power granted to the inhabitants of municipalities by the Article VIII-A amendment. That amendment states that they are empowered to "alter and amend their charters" on all local matters. Black's Law Dictionary, Fourth Edition, defines the word "alter" as follows:

"Alter. To make a change in; to modify; to vary in some degree; to change some of the elements or ingredients or details without substituting an entirely new thing or destroying the identity of the thing affected. Davis v. Campbell, 93 Iowa, 524, 61 N.W. 1053. To change partially. Cross v. Nee, D.C.Mo., 18 F.Supp. 589, 594. To change in one or more respects, but without destruction of existence or identity of the thing changed; to increase or diminish. Kraus v. Kraus, 301 Ill.App. 606, 22 N.E.2d 862. See Alteration; Change.

"To change may import the substitution of an entirely different thing, while to alter is to operate upon a subject-matter which continues objectively the same while modified in some particular. To 'amend' implies that the modification made in the subject improves it, which is not necessarily the case with an alteration. See Ex parte Woo Jan, D.C.Ky, 228 F. 927, 940.

"But 'alter' is sometimes used synonymously with 'change,' Board of Sup'rs of Yavapai County v. Stephens, 20 Ariz. 115, 177 P. 261, 264, and with 'enlarge' City of Jamestown v. Pennsylvania Gas Co., C.C.A.N.Y., 1 F. 2d 871, 883.

"The other; the opposite party. See Alt."

That Dictionary defines the words "amend" and "amendment" as follows:

"Amend. To improve. to change for the better by removing defects or faults. Cross v. Nee, D.C. Mo., 18 F.Supp. 589, 594. To change, correct, revise. Texas Co. v. Fort, 168 Tenn. 679, 80 S.W. 2d 658, 660.

"

"Amendment. A change, ordinarily for the better. Musher v. Perera, 162 Md. 44, 158 A. 14, 15.

An amelioration of the thing without involving the idea of any change in substance or essence. *Van Deusen v. Ruth*, 343 Mo. 1096, 125 S.W.2d 1, 3.

"Any writing made or proposed as an improvement of some principal writing. *Ex parte Woo Jan*, D.C.Ky., 228 F. 927, 941; *Couch v. Southern Methodist University*, Tex. Civ. App., 290 S.W. 256, 260.

"In legislation, it is a modification or alteration proposed to be made in a bill on its passage, or an enacted law; also such modification or change when made. *Brake v. Callison*, C.C.Fla., 122 Fed. 722; *State v. MacQueen*, 82 W.Va. 44, 95 S.E. 666, 668.

"It is to be distinguished from a 'substitute for a bill.' *In re Ross*, 86 N.J. Law, 387, 94 A. 304, 306. It is an alteration in the law already existing, leaving some part of the original still standing. *State ex inf. Crain ex rel. Peebles v. Moore*, 339 Mo. 492, 99 S.W.2d 17, 19. To effect an improvement or better carry out the purpose for which statute was framed. *State ex rel. Foster v. Evatt*, 144 Ohio St. 65, 56 N.E.2d 265, 282. And it includes additions to, as well as corrections of, matters already treated. *Christian Feigenspan, Inc., v. Bodine*, D.C.N.J. 264 F. 186, 190. See also, *State v. Fulton*, 99 Ohio St. 168, 124 N.E. 172, 175."

For an extensive discussion of the words "alter" and "amend" see *State v. City Commission of San Angelo*, 101 S.W. 2d 360.

It is noted that the implementing statute, 30 M.R.S.A., Chapter 201-A, uses the words "revision of the municipal charter" and "adoption of a new municipal charter."

Black's Law Dictionary, Fourth Edition, defines the word "revise" as follows:

"Revise. To review, re-examine for correction; to go over a thing for the purpose of amending, correcting, rearranging, or otherwise improving it; as, to revise statutes, or a judgment. *American Indemnity Co. v. City of Austin*, 112 Tex. 239, 246 S.W. 1019, 1023; *State ex rel. Taylor v. Scofield*, 184 Wash. 250, 50 P.2d 896, 897."

In Kelly v. Laing, 242 N.W. 891, 259 Mich. 212, the Court stated:

" 'Revision' and 'amendment' have the common characteristics of working changes in the charter, and are sometimes used inexactly, but there is an essential difference between them. Revision implies a re-examination of the whole law and a redraft without obligation to maintain the form, scheme, or structure of the old. As applied to fundamental law, such as a constitution or charter, it suggests a convention to examine the whole subject and to prepare and submit a new instrument, whether the desired changes from the old be few or many. Amendment implies continuance of the general plan and purport of the law, with corrections to better accomplish its purpose. Basically, revision suggests fundamental change, while amendment is a correction of detail."

Also see Staples v. Gilmer, 33 S.E. 2d 49, 183 Va. 613; State v. Taylor, 133 N.W. 1046, 22 N.D. 362; McFadden v. Jordan, 196 P. 2d 787, 32 Cal. 2d 330; City and County of Denver v. New York Trust Co., 33 S. Ct. 657, 229 U.S. 123.

In Wheeler v. Board of Trustees, 37 S.E. 2d 322, 200 Ga. 323, the Court held that the repeal of a constitution and creation of a new one is not an amendment of the former constitution but "on the contrary it is a completely revised or new constitution." People ex rel Moore v. Perkins, et al, 137 Pac. 55, 56 Colo. 17, held that "when the word 'amendment' is used without limitation, any matter which is germane to the principal subject, to wit, that of municipal government, is proper to be submitted as an amendment."

In Moore v. Oklahoma City, 254, P. 47, 122 Okl. 234, it was held that a change in the plan of governing and administering the municipal affairs of a city from commission to manager form did not constitute a repeal of its charter nor the adoption of a new charter, nor the surrendering of its charter rights, but that it is a valid amendment, "so long as its charter rights and powers of independent self-government are retained and brought forward in the proposed change."

In Boatman v. Waddle, 264 P. 2d 730, (Okla. 1953) a municipality, acting under a power to amend its own charter, submitted a question to its voters whether the existing charter should be repealed and a proposed new charter adopted. The Court stated:

"Under this broad constitutional authority, a municipal government presently existing under a charter form of government with Commissioners may amend its form of government to a council-manager form of government, or vice versa, or it may amend one or more designated articles or sections of its present charter, or all of them, or it may elect to continue in effect certain ordinances and abolish others, or may retain certain departments of municipal government or abolish others or consolidate them.

"

"We do not agree with protestants that the Initiative Petition which submits a proposition of changing the form of city government from a commission form to a council-manager form is an attempt to revise or adopt a new charter, but is in effect an amendment of the present charter."

It seems clear from the foregoing and from the debates on the Resolve and the implementing Act that the words "amend" and "alter" as used in the Article VIII-A amendment confer a broad power upon municipalities with regard to local and municipal matters. It seems clear that the Article VIII-A grant encompasses the concept of "revision" as used in the implementing Act. However, the term "adopting a new municipal charter" as used in the implementing Act raises a more difficult question. It seems that the recent constitutional grant to a municipality of the power to alter and to amend its charter does not confer upon it the power to abolish itself, nor to abandon its right of independent, municipal, self-government. Subject to these limitations, the power to alter and to amend seems to be broad enough to permit a change of each and every part of its charter and to substitute a new charter. Boatman v. Waddle, supra.

In summary, it appears that the Legislature retains the exclusive broad power to create new municipal corporations. On the other hand, it appears that existing municipalities have the exclusive broad power to alter and amend their charters as to local and municipal matters, including substitution of charters. Finally, while the Legislature can, in effect, alter and amend an existing municipal charter as to matters of State-wide interest, the appropriate method for doing that is general legislation.


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