HOME RULE

[Maine. Intergovernmental Relations Commission.]

HOME RULE

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WHAT IS HOME RULE? The concept of home rule has many different meanings even to those who advocate the principle. Home rule government simply means local self-government or local autonomy.

WHAT ARE THE OBJECTIVES OF HOME RULE? Rodney L. Mott very effectively summarized the three primary objectives of municipal home rule in his 1949 study of that subject for the American Municipal Association (now the National League of Cities):

1....to prevent legislative interference with local government.

2....to enable municipalities to adopt the kind of government they desire.

3....to provide municipalities with sufficient powers to meet the increasing needs for local services.

WHAT TYPES OF HOME RULE EXIST IN THE VARIOUS STATES TODAY? Approximately one-half of the states provide for some degree of municipal home rule. Basically there are two types: (1) Legislative home rule and (2) Constitutional home rule.

Legislative home rule, as the title implies is an act enabling municipalities to govern themselves in specified areas. Historically, authorities on municipal government have regarded municipalities operating under this type of home rule as little better off than cities and towns in non-home rule states. Why? State legislatures can take away what it grants and have done so.

Constitutional home rule provides authorization for local self-government in a state's constitution. Such constitutional provisions can be written to be self-executing or to require legislative implementation.

DO MUNICIPALITIES CONTINUE AS CREATURES OF THE STATE? Where home rule is adopted the state legislature continues to regulate municipalities through general laws which are of "state-wide" concern. Powers granted to municipalities under home rule restricts municipal powers to matters of "local concern".

FUNDAMENTAL POLICY QUESTIONS RELATED TO ADOPTION OF MUNICIPAL HOME RULE FOR MAINE COMMUNITIES

1. Should Maine have legislative or constitutional home rule?

2. If a constitutional home rule is recommended, should it be self-executing or should supplemental legislative action be required?

3. What provisions does the Maine Constitution presently contain concerning municipal government? e.g. Article IV Section 21, Article IX Section 15, etc. Will implementation of the home rule concept require that other amendments to the constitution be made?

4. What procedures should be used for home rule charter adoption or amendment?

5. What activities are purely local affairs? Forms of government? Regulation of traffic? Regulation of land use? Size of tax levies?

6. Should the State legislature be restricted from adopting legislation requiring increased local expenditure? e.g. minimum salaries, codes, etc.?

7. Should municipalities be classified according to population, valuation, etc?

8. With local governmental problems becoming more and more regional in scope, should the home rule recommendation be flexible and provide for consolidation, annexation or procedures for inter-local cooperation?

9. Should optional charters be provided by the Maine Legislature for adoption by Maine communities?

SUGGESTED CONSTITUTIONAL PROVISIONS FOR HOME RULE

Mail Longer Cities

SECTION 1
GENERAL
LEGISLATION

The legislature may act in relation to municipal corporations only by laws which are general in terms and effect.

COMMENT: (For convenience the term "city" is used in this and subsequent comments in lieu of "municipal corporation" or "municipality.") Special and local legislation as to cities is excluded entirely. A home rule charter is the means made available to a city to provide for its problems in ways which depart from the pattern set by the general municipal corporation statutes.

The reference to laws which are general both in terms and in effect is designed to make it clear that the requisite generality is not present where a measure is couched in general terms but is actually special in application.

SECTION 2
INCORPORATION AND
CORPORATE CHANGES

The legislature shall provide by law, general in terms and effect, for the incorporation and government of municipal corporations and the methods by which municipal boundaries may be altered, municipal corporations may be merged or consolidated and municipal corporations may be dissolved. The legislature shall, by such law, facilitate the extension of municipal boundaries to the end that municipal territory may readily be made to conform to the actual urban area.

COMMENT: 1. Provision for original incorporation of cities is left to the legislature. Original incorporation under a home rule charter would not be permitted; charter-making powers are conferred by later sections upon cities which means governmental units already in esse. It

is not considered wise to enable a community, which is without experience as a city, to exercise home rule powers. The draft places no serious obstacle in the path of local autonomy by postponing charter-making in this way.

2. Much state legislation on annexation and disannexation is meagre in policy content and hostile to municipal expansion despite the tremendous outward growth of urban communities in recent years. The subject is one which, as recognized by the existing Virginia statute, affects three areas of interest: the state, the general area in which the city is located and the city proper. Thus, there is ground for hesitancy over leaving the subject to municipal control by direct constitutional devolution of power. While a liberal policy toward municipal expansion is much needed, it is not proposed here to take responsibility away from the legislature.

The legislature, by language which is plainly hortatory, is told that what is desired is legislation which facilitates municipal expansion to include areas which are urban in character with a view to making the organized community conform to the actual urban community.

3. This section also leaves provision for merger or consolidation and for dissolution to the legislature. This is an approach which has not been questioned. There is, however, an important problem as to whether the legislature should have power to make a charter city subject to merger, consolidation and dissolution without its consent. The position here taken is that the legislature should have the power. The reason is that the continued independent existence of a city is a matter which transcends in its concern to the larger community the boundaries and people of the city. Thus, to make a charter unit indestructible would be to permit a primary city to be ringed by insulated suburban

cities without hope of genuine metropolitan integration being achieved.

SECTION 3
CLASSIFICATION; OPTIONAL PLANS OF GOVERNMENT.

The legislature may classify municipal corporations by grouping them into not more than four classes based upon population to be determined by the most recent census made under the authority of the United States or of this State. No other classification may be made but the legislature may, from time to time, change the grouping within the maximum limitation of four groups. Legislation in relation to municipal corporations in any class shall apply alike to all municipal corporations in that class. No class shall include less than two (or whatever minimum a particular state prefers) municipal corporations at the time it is established. Classification legislation shall provide for transition from class to class in keeping with population changes.

The legislature may, by a law applicable to all classes of municipal corporations or to a particular class, provide optional plans of municipal organization and government, under which an authorized optional plan may be adopted or abandoned by majority vote of the qualified voters of a municipal corporation voting thereon.

COMMENT: 1. Under the general scheme of the draft a city may have three major choices as to organization and powers. (a) It may continue to operate with the form of government and powers afforded by the general law under which it was incorporated, as modified by any general classification provisions enacted pursuant to this section. (b) If optional charter legislation has been enacted pursuant to this section, the city may elect one of the optional forms. (c) A home rule charter may be framed and adopted.

2. If classification and the optional charter idea were given liberal effect by a legis-

lature very considerable flexibility in city government would be possible, quite apart from home rule charter-making. This is particularly true of the optional charter device; it can be made available on an extremely flexible basis affording wide freedom of choice as to organization of city government.

3. It is recognized that population is not an ideal classification factor; there are other factors, like geographical situation and economic and social conditions, which bear on local governmental organization and objectives. Nor is the maximum of four classes a definitive figure. Population is, however, as good a rough simple basis of classification as we have found and it is thought that there should be a bar to excessive classification.

4. In each of a number of states whose constitutions ban special legislation as to cities, the largest city is actually dealt with specially by so defining the classes of cities by population as to put it in a class by itself. So it is, for example, with Milwaukee, Omaha and Philadelphia. This is obviated in the draft by the requirement that no class have less than two cities (or some greater number, as the particular state may prefer).

SECTION 4
HOME RULE
CHARTER
MAKING

The qualified voters of any municipal corporation are granted power to adopt a home rule charter of government and to amend or repeal the same. The adoption of a charter or the amendment or repeal of a charter shall be proposed either by a resolution of the legislative body of a municipal corporation or by a charter commission of not less than seven members, elected by the qualified voters of the municipal corporation from their membership at large, pursuant to petition for such an election bearing the signatures of at least ___ per centum of the qualified voters of the municipal corporation and filed with the clerk or

other chief recording officer of the legislative body of the municipal corporation. The charter commission candidates in a number equal to the number to be elected, who receive the most votes, shall constitute the commission. On the death, resignation or inability of any member of a charter commission to serve, the remaining members shall elect a successor. The commission shall have authority to propose (1) the adoption of a charter, (2) amendment of a charter or particular part or parts of a charter, or (3) repeal of a charter, or any of these actions, as specified in the petition.

The legislature shall provide by statute for procedure, not inconsistent with the provisions of this section, necessary to effectuate this section, and may provide by statute for a number of charter commission members in excess of seven on the basis of population. In the absence of such legislation the legislative body of a municipal corporation in which the adoption, amendment or repeal of a charter is proposed shall provide by ordinance or resolution for that procedure and the number of charter commission members shall be seven. The legislative body may, if it defaults in the exercise of this authority, be compelled, by judicial mandate and at the instance of at least ten signers of a sufficient petition filed under this section, to exercise such authority.

All expenses of elections conducted under this section and all necessary or proper expenses of a charter commission shall be paid by the municipal corporation.

COMMENT: 1. The qualified voters should be recognized as the repository of political authority in a city for home rule purposes. It is they who constitute the municipal sovereign. The draft, accordingly, vests charter-making power in the qualified voters. A city legislative body or charter commission may draft and propose but it does not partake of the character of a constituent assembly; it does not make the ultimate political determination.

2. This section, unlike the initiative available to municipal electors in many states, does not permit of direct submissions to the electorate without opportunity for intermediate

consideration by an appropriate deliberative body. It does not enable voters to formulate charter matter in the first instance. This stresses the importance of the deliberative process in shaping charter provisions.

3. No population minimum is provided; charter-making powers are granted to all cities. There is, of course, room for difference of opinion on this, since large urban centers have been the crux of the home rule problem. The inclusion of a minimum figure would be a simple drafting matter in any event.

4. The percentage of qualified voters required as signatories on a petition for a charter commission election is a matter of state preference. The figure is, accordingly, left open in the draft.

5. Charter-making processes should not be subject to defeat by city legislative body inaction as to procedure. It is, thus, expressly provided that petitioners may obtain a judicial mandate compelling action. This means that the legislative body can be required to exercise its discretion; it does not mean that the body can be told how to exercise its discretion.

SECTION 5 SUBMISSION TO ELECTORS OF SEPARATE OR ALTERNATIVE CHARTER PROVISIONS

Any part of a proposed home rule charter may be submitted for separate vote.

Alternative sections or articles of a proposed home rule charter may be submitted and the section or article receiving the larger vote shall, in each instance, prevail if a charter is adopted.

In the case of proposed charter amendments there may likewise be separate or alternative submission.

COMMENT: This section expresses what is, of

course, an old idea. It affords greater flexibility in charter-making.

SECTION 6
HOME RULE
CHARTER POWERS

A municipal corporation which adopts a home rule charter may exercise any power or perform any function which the legislature has power to devolve upon a non-home rule charter municipal corporation and which is not denied to that municipal corporation by its home rule charter, is not denied to all home rule charter municipal corporations by statute and is within such limitations as may be established by statute. This devolution of power does not include the power to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power, nor does it include power to define and provide for the punishment of a felony.

A home rule charter municipal corporation shall, in addition to its home rule powers and except as otherwise provided in its charter, have all the powers conferred by general law upon municipal corporations of its population class.

Charter provisions with respect to municipal executive, legislative and administrative structure, organization, personnel and procedure are of superior authority to statute, subject to the requirement that the members of a municipal legislative body be chosen by popular election, and except as to judicial review of administrative proceedings, which shall be subject to the superior authority of statute.

COMMENT: 1. This section embraces, with a significant modification, what may be called the McBain or classic conception of home rule. Professor McBain thought that the availability of substantive home rule powers should be made to depend upon the exercise of the adjective process of charter making. So conceived, a home rule charter is an instrument of grant rather than of limitation. This conception draws a rather clear line between charter and non-charter cities. This is considered desirable in the interest of clarity as to what law governs.

The present draft departs from McBain to the extent of providing a direct constitutional devolution of substantive home rule powers dependent upon the adoption of a home rule charter. The adjective process must be pursued to render substantive powers available. The charter, however, becomes an instrument of limitation and not of grant. This plan separates the charter from non-charter units as clearly as does the pure classic theory.

2. There is no question but that the draft does not go as far in its grant of home rule powers as many advocates of home rule would like. It does not place any substantive powers and functions beyond legislative control by general law. The theory of the draft is not to create an imperium in imperio with municipal freedom from legislative control, but to leave a charter municipality free to exercise any appropriate power or function except as expressly limited by charter or general statute. This emphatically reverses the old strict-constructionist presumption against the existence of municipal power and, so long as the legislature does not expressly deny a particular power, renders unnecessary petitioning the legislature for enabling legislation.

3. The familiar distinction between state or general concerns and municipal or local affairs, with which the courts are confronted in certain existing home rule states, has not been susceptible to satisfactory application. It has served to shift largely political questions to the judicial forum for decision. The approach here taken avoids this difficulty.

The draft rejects the assumption that governmental powers and functions are inherently of either general or local concern. Times change and what may at one time be considered a clearly local problem may be as readily labeled a state concern at a later juncture. It is the theory of the draft that there should be stress

upon flexibility and adaptability in our governmental arrangements and that, to that end, there should be a policy-making power in a state, short of the general electorate, competent to make the decisions as to adaptation and devolution of governmental powers and functions to serve the changing needs of society.

4. What has been said bears upon the desirability of some specification of municipal powers in a constitutional home rule grant in order to assure that a minimal list of desired powers can be counted on. An unqualified constitutional grant of enumerated powers would involve considerable sacrifice of flexibility and we would delude ourselves were we to assume that we could confine the enumeration to "strictly" or "purely" local matters.

5. One aspect of home rule which has not been given adequate thought is the matter of city enactment of private law. Traditionally, the states have not given local units any independent legislative power of this character for obvious reasons. Few would want a system under which the law of contracts and of property varied from city to city. At the same time, the exercise of municipal powers has a more or less direct bearing upon private interests and relationships. This is true, for example, of tax measures, regulatory measures and various utility and service activities. It is the theory of the draft that a proper balance can be achieved by enabling cities to enact private law only as an incident to the exercise of some independent municipal power.

6. A city should have the power to define and provide for the punishment of offenses within its governmental purview. It has been considered desirable to make it clear that this power stops short of serious offenses which fall in the felony category.

7. This section does grant full autonomy

as to governmental structure, organization, personnel and procedure, except in the judicial domain. The pertinent provision must, of course, be read with separate constitutional provisions governing such matters as qualifications for voting and office-holding.

SECTION 7
PROVISION FOR
TRANSITION IN EVENT
OF CHARTER REPEAL

A municipal legislative body or charter commission which proposes the termination of home rule charter status by repeal of a home rule charter shall incorporate in the proposition to be submitted to the qualified voters a specification of the form of government under which the municipal corporation would thereafter operate in the event of repeal, whether it be a form prescribed by general law for municipalities of its population class or one of such optional forms as may have been authorized by general law for municipalities of its population class. A municipal legislative body or charter commission proposing charter repeal shall also, by resolution of that body, determine when the transition to the new form of government would take place in the event of repeal and make such other provision, as may be appropriate, to effect an orderly transition from home rule charter to non-home rule charter status.

COMMENT: This section is designed to cover ground which has commonly been ignored in drafting home rule provisions in the past. It implements the grant, in Section 4, of the power of charter repeal. A municipality, under the total constitutional plan, has continuing freedom of choice between charter and non-charter government.

Since transition in the event of charter repeal involves many local variables, this section leaves provision for transition in any particular case to be marked out by local hands.

SECTION 8
PUBLICATION OF PROPOSED CHARTER, CHARTER AMENDMENT OR REPEAL PROPOSITION AND RESOLUTION

At least thirty days before an election thereon notice shall be given by publication in a newspaper of general circulation within the municipal corporation that copies of a proposed charter, charter amendment or repeal proposition and resolution are on file in the office of the clerk or other chief recording officer of the legislative body of the municipal corporation and that a copy will be furnished by him to any qualified voter or taxpayer of the municipal corporation upon request.

COMMENT: It is clear that there should be public notice of charter matters, but to require, as at least one state does, that copies be sent to the voters, is expensive and not manifestly effective. Newspaper publication may be questioned on like grounds. This section makes copies readily available while avoiding the burden of indiscriminate distribution.

SECTION 9
ONLY ONE CHARTER COMMISSION IN TWO YEARS

The qualified voters of a municipal corporation may not elect a charter commission more often than once in two years.

COMMENT: It will be observed that the draft places no limitation upon initiation of charter action by a city legislative body. This section would, however, prevent frequent recourse to the more ponderous and expensive charter commission machinery.

SECTION 10
LEGISLATION INCREASING MUNICIPAL FINANCIAL BURDENS

State legislation requiring increased municipal expenditures may not become effective in a municipal corporatiin until approved by ordinance enacted by the legislative body of the municipal corporation, unless the legislation is enacted by two-thirds vote of all the members elected to each house of the legislature or funds sufficient to meet the increased municipal expenditure are granted

to the municipal corporation by that legislation or separate legislation enacted at the same session of the legislature.

COMMENT: Empowering local units to raise and spend funds for indicated purposes is one thing; requiring them to do so is quite another. One of the difficult problems which have confronted cities derives from the willingness of legislatures, in response to group pressures, to impose new financial burdens upon cities without provision for the additional revenue required. Provisions as to the hours, compensation or retirement benefits of some classes of municipal employees have been established in this way. This is far from saying that the members of those classes should not be dealt with favorably in these respects. The point is that it is generally undesirable for the decision to be taken finally at the state level without heed to the local situation and, particularly, the financial burden involved.

National Mun. League

APPENDIX A.

HOME RULE PROVISIONS IN MODEL STATE CONSTITUTION OF NATIONAL MUNICIPAL LEAGUE[1]

ARTICLE VIII. LOCAL GOVERNMENT

Section 800. Organization of Local Government. Provision shall be made by general law for the incorporation of counties, cities, and other civil divisions; and for the alteration of boundaries, the consolidation of neighboring civil divisions, and the dissolution of any such civil divisions.

Provision shall also be made by general law (which may provide optional plans of organization and government) for the organization and government of counties, cities, and other civil divisions which do not secure locally framed and adopted charters in accordance with the provisions of section 801, but no such law hereafter enacted shall become operative in any county, city, or other civil division until submitted to the qualified voters thereof and approved by a majority of those voting thereon.

Section 801. Home Rule for Local Units. Any county or city may adopt or amend a charter for its own government, subject to such regulations as are provided in this constitution and may be provided by general law. The legislature shall provide one or more optional procedures for nonpartisan election of five, seven or nine charter commissioners and for framing, publishing, and adopting a charter or charter amendments.

Upon resolution approved by a majority of the members of the legislative authority of the county or city or upon petition of 10% of the qualified voters, the officer or agency responsible for certifying public questions shall submit to the people at the next regular

[1] National Municipal League, *Model State Constitution With Explanatory Articles*, 5th ed., New York, N. Y., 1948, pp. 15-17.

election not less than sixty days thereafter, or at a special election if authorized by law, the question "Shall a commission be chosen to frame a charter or charter amendments for the county (or city) of . . . ?" An affirmative vote of a majority of the qualified voters voting on the question shall authorize the creation of the commission.

A petition to have a charter commission may include the names of five, seven or nine commissioners, to be listed at the end of the question when it is voted on, so that an affirmative vote on the question is a vote to elect the persons named in the petition. Otherwise, the petition or resolution shall designate an optional election procedure provided by law.

Any proposed charter or charter amendments shall be published by the commission, distributed to the qualified voters and submitted to them at the next regular or special election not less than thirty days after publication. The procedure for publication and submission shall be as provided by law or by resolution of the charter commission not inconsistent with law. The legislative authority of the county or city shall, on request of the charter commission, appropriate money to provide for the reasonable expenses of the commission and for the publication, distribution and submission of its proposals.

A charter or charter amendments shall become effective if approved by a majority of the qualified voters voting thereon. A charter may provide for direct submission of future charter revisions or amendments by petition or by resolution of the local legislative authority.

Section 802. Powers of Local Units. Counties shall have such powers as shall be provided by general or optional law. Any city or other civil division may, by agreement, subject to a local referendum and the approval of a majority of the qualified voters voting on any such question, transfer to the county in which it is located any of its functions or powers, and may revoke the transfer of any such function or power, under regulations provided by general law; and any county may, in like manner, transfer to another county or to a city within its boundaries or adjacent thereto any of its functions or powers, and may revoke the transfer of any such function or power.

Delete

Section 803. County Government. Any county charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and county officers by law. Such charter may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of this state in cities and other civil divisions; it may provide for the succession by the county to the rights, properties and obligations of cities and other civil divisions therein incident to the powers so vested in the county, and for the division of the county into districts for purposes of administration or of taxation or of both. No provision of any charter or amendment vesting in the county any powers of a city or other civil division shall become effective unless it shall have been approved by a majority of those voting thereon (1) in the county, (2) in any city containing more than 25 percent of the total population of the county, and (3) in the county outside of such city or cities.

Delete

Section 804. City Government. Except as provided in sections 802 and 803, each city is hereby granted full power and authority to pass laws and ordinances relating to its local affairs, property and government; and no enumeration of powers in this constitution shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not be deemed to limit or restrict the power of the legislature to enact laws of statewide concern uniformly applicable to every city.[1]

The following shall be deemed to be a part of the powers conferred upon cities by this section when not inconsistent with general law:

(a) To adopt and enforce within their limits local police, sanitary and other similar regulations.

(b) To levy, assess and collect taxes, and to borrow money and issue bonds, and to levy and collect special assessments for benefits conferred.

(c) To furnish all local public services; and to acquire and main-

[1] General grant follows New York constitution. Last clause follows Wisconsin constitution.

tain, either within or without its corporate limits, cemeteries, hospitals, infirmaries, parks and boulevards, water supplies, and all works which involve the public health and safety.[1]

(d) To maintain art institutes, museums, theatres, operas, or orchestras, and to make any other provision for the cultural needs of the residents.

(e) To establish and alter the location of streets, to make local public improvements, and to acquire, by condemnation or otherwise, property within its corporate limits necessary for such improvements, and also to acquire additional property in order to preserve and protect such improvements, and to lease or sell such additional property, with restrictions to preserve and protect the improvements.

(f) To acquire, construct, hire, maintain and operate or lease local public utilities; to acquire, by condemnation or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and regulate the exercise thereof.

(g) To issue and sell bonds, outside of any general debt limit imposed by law, on the security in whole or in part of any public utility or property owned by the city, or of the revenues thereof, or of both, including in the case of a public utility, if deemed desirable by the city, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility.

(h) To organize and administer public schools and libraries.

(i) To provide for slum clearance, the rehabilitation of blighted areas, and safe and sanitary housing for families of low income, and for recreational and other facilities incidental or appurtenant thereto; and gifts of money or property, or loans of money or credit for such purposes, shall be deemed to be for a city purpose.[2]

Section 805. Public Reporting. Counties, cities and other civil divisions shall adopt an annual budget in such form as the legislature shall prescribe, and the legislature shall by general law provide

1 Michigan constitution. Article VIII, s. 22.

2 Paragraph (b) gives general bonding power, subject to general limitation by general law and paragraph (g) gives additional bonding power for public utilities, etc.

for the examination by qualified auditors of the accounts of all such civil divisions and of public utilities owned or operated by such civil divisions, and provide for reports from such civil divisions as to their transactions and financial conditions.

Section 806. Conduct of Elections. All elections and submissions of questions provided for in this article or in any charter or law adopted in accordance herewith shall be conducted by the election authorities provided by general law.

APPENDIX B

Headway has been made in some states by providing constitutionally for a system of optional charters to be defined by the legislature.[6] Such a system permits a county, with the approval of its people, to adopt a legislatively "packaged" charter providing for a modern governmental organization. Specific constitutional authority for the legislature to create optional forms should not be necessary but the abundance of constitutional detail on local government often requires the granting of specific authority in order to overcome the various constitutional obstacles to the reorganization of local government.

A related issue is whether a modern constitutional local government article can provide for an optional county charter system or an optional charter system applicable to all forms of local government along with a provision for home rule through which localities may develop a structure of government of their own choosing. There is no apparent incompatibility between the two systems and a state would do well to provide both plans. Optional charter arrangements may exist by themselves, as in New Jersey for municipalities, but the existence of home rule charter powers serves as a protection to the localities against any undesirable amendment of the optional charter statute by the legislature.

HOME RULE

Through the years the battle over home rule has generated far more heat than it has home rule. Traditionally the most active advocates of home rule have been representatives of the cities, who have argued passionately for the right of the cities to govern themselves, free from the meddling influence of their country cousins who dominate the legislature. These arguments are well known and need no further exposition.

In recent years, however, a new group of home rule advocates has appeared, desirous of seeing state and local governments play a more vigorous role in our federal system.[7] Their arguments seem valid. A well conceived system of home rule would free legislatures from spending time on purely local matters, enabling them to concentrate more effectively on statewide affairs. Legislative attention to local matters is not only time-consuming but legislative control of local affairs is less effective than local control and sometimes allows local officers to evade re-

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[6] See, for example, the constitutions of Montana (Art. XVI, sec. 7), Ohio (Art. X, sec. 1) and Virginia (Art. VII, sec. 110).

[7] See, for example, The Commission on Intergovernmental Relations, *A Report to the President for Transmittal to the Congress* (Washington, D. C., the Commission, 1955), especially pp. 49-50.

sponsibility for the discharge of local business. And, finally, if governmental problems are not dealt with at the local levels, when they can and should be handled at such levels, the natural result will be further acceleration of the centralist tendencies that have moved so much of our public decision-making to Washington and the state capitals. The challenge of these arguments is sufficient to justify a full scale investigation by any state of its constitutional and statutory arrangements for state-local relations.

The Salient Issue

The essential problem of home rule is that of providing a legal framework that will accommodate both state responsibility and local freedom in the conduct of local affairs. This problem, as experience has indicated, would be difficult enough in a relatively static society but is particularly pressing in our dynamic age. Thus the salient issue is whether a constitutional provision can be formulated which will give local communities greater freedom to exercise initiative in dealing with local affairs, thus obviating or reducing the need for specially enacted state legislation, without restricting the power of the state to deal with matters of genuine statewide or regional concern.

Constitutional provisions on home rule involve both negative and positive factors. The negative factors specifically limit the state's lawmaking body in its relationships with the localities. The positive factors either devolve authority directly upon the localities or require or permit the legislature to bestow powers upon the local governments.

The negative forces usually limit the power of the legislature to enact special or local laws relating to a single local government or a class of local governments. The inclusion of such provisions in the constitutional article on local government is essential in order to protect localities from unwarranted interference by the legislature in matters of local concern. Most states have some sort of restriction of this kind in their constitutions. The various provisions take at least five different forms.[8] They include the prescribing of special legislative procedures for the enactment of local laws, e.g., New York (Art. IX, sec. 11); prohibitions against the enactment of certain kinds of local laws, e.g., Wyoming (Art. III, sec. 27); limitations upon the maximum number of classes of each type or form of local government, e.g., Pennsylvania (Art. III, sec. 34); bestowing of a local veto over local acts passed by the legislature, e.g., Illi-

[8] This material is drawn from Rodney L. Mott, *Home Rule for America's Cities* (Chicago, American Municipal Association, 1949), pp. 15-17.

nois (Art. IV, sec. 34); and general restrictions prohibiting all special acts. As to the last method of restricting special or local legislation it should be noted that without home rule powers, or at least classification, such a sweeping restriction on the legislature might have the adverse effect of creating a legislative strait-jacket in which all localities must receive identical treatment no matter what the demands of the particular situation require.

It is when the positive aspects of constitutional home rule are considered that more divergent points of view appear. Although significant variations could be developed for almost every state, two distinct basic approaches are generally recognized today.

Before discussing the actual approaches to home rule, a few words are in order on the purposes of a constitutional home rule provision. The provision should provide a constitutional basis for the local preparation of a local charter or frame of government. In addition, local government constitutional articles have attempted to identify functional areas of local responsibility or power.

Traditional Home Rule

The first and older approach to constitutional home rule grants authority through the constitution to a locality to adopt and amend a charter and to pass laws and ordinances relating to its local affairs. This general power to enact local legislation is often supplemented with an enumeration of some of the powers that the localities may exercise. The power to enact laws of statewide concern is retained by the legislature. This approach has been utilized in the *Model State Constitution* of the National Municipal League in its 1921, 1933 and 1948 editions.[9] Basically it is the approach used in such constitutions as those of Colorado (Art. XX, sec. 6), New York (Art. IX, sec. 12), and Ohio (Art. XVIII, secs. 3, 7, 8 and 9).

This first approach, distinguished as it is by the attempt to separate matters of local concern from those of state concern, has had to rely upon judicial interpretation of what may be considered a matter of local concern. Reliance upon the courts for a liberal interpretation of the powers of the localities often has led to bitter disappointment for some of the home rule advocates who have advanced this approach.

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[9] In the preliminary discussion draft of the forthcoming sixth edition of the *Model State Constitution,* the National Municipal League has modified its position on home rule. The traditional approach has been replaced by a provision which follows in principle the American Municipal Association plan.

The A. M. A. Plan

The second approach to constitutional home rule has been developed partly in recognition of the history of narrow judicial interpretation (based upon Dillon's Rule) of the powers of local government. This method attempts to reverse the traditional constitutional stance regarding the exercise of local powers by permitting the home rule localities to exercise *any* power not specifically denied them by general law or by their charters. This formulation has been advanced by the American Municipal Association.[10] It also is embodied in the Texas constitution (Art. XI, sec. 5) as judicially interpreted and in the Alaska constitution (Art. X, sec. 11) and has recently been recommended in New York as a substitute for that state's existing constitutional home rule provisions.

The A. M. A. approach endows the localities, through the constitution, with all the lawmaking power of the state legislature but permits the legislature to deny localities any power by general act. Thus the presumption in judicial interpretation would be that the locality has the power to act unless it has been specifically denied.

A Critique of the Two Plans

It is extremely important to note that both plans recognize the paramount power and obligation of the state to act on matters that are of concern to the state at large. The first gives specific recognition to this treatment of matters of statewide interest. The "state concern" problem is not as central in the second plan, which acknowledges at the outset that no powers of the localities are beyond the reach of the legislature.

Neither approach has escaped criticism.[11] The first has been described as oblivious to our metropolitan age in creating an *imperium in imperio* wherein certain local powers are beyond the reach of the state. Critics charge that few local powers of any import are now purely of local concern. A constitutional system, it is said, attempting to insulate local activities from the wider community is running counter to the trend of our times, particularly in view of the developing complexity of intergovernmental involvement in almost all public responsibilities.

On the other hand, those who question the A. M. A. plan admit that it

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[10] See Jefferson B. Fordham, *Model Constitutional Provisions for Municipal Home Rule* (Chicago, American Municipal Association, 1953).

[11] For excellent discussions of the divergent viewpoints in relation to constitutional home rule approaches see Arthur W. Bromage, "Home Rule—NML Model"; Jefferson B. Fordham, "Home Rule—AMA Model"; and John P. Keith, "Home Rule—Texas Style" in *New Look at Home Rule* (New York, National Municipal League, 1955). Reprinted from *National Municipal Review*, XLIV (March and April 1955).

alleviates some of the conflicts inherent in judicial interpretation of the "state or local concern" issue but maintain that new and equally difficult problems are created. These critics are concerned over the broad authority of the legislature to deny localities the power to act on any matter. It is their contention that the traditionally rural-dominated legislatures are not responsive enough to permit a sufficient degree of local freedom for the urban communities.

A defense of the A. M. A. plan is based upon the reversal in presumptions in regard to local power. It is felt that it is easier to block a legislature from denying a locality a power than it is to secure from a legislature the authority to perform an additional function of government. These advocates also point out that the traditional home rule plan, wherein the issue of state or local concern is central, creates hesitancy as to whether a local government has the authority to act. The presumption is *not* affirmative. Under the A. M. A. approach, it is argued, the presumption is affirmative and this should stimulate local initiative in the best tradition of home rule.

Other Approaches to Home Rule

Although the two approaches to constitutional home rule discussed above are the most widely debated ones, other forms have been explored in recent years. One such form has called for the creation of a state-local constitutional relationship patterned after our federal division of powers as outlined in the national constitution.[12] In such a scheme the residual powers would be lodged with the localities and the state functions would be limited to those of statewide concern and specifically granted by the constitution.

Another and more radical approach to constitutional state-local relations would permit local legislative bodies to ascertain what should be the local governmental services and activities and how they should be conducted and financed.[13] Under such a plan the localities would be completely free to act as long as their actions were not in conflict with either the federal or state constitutions.

Home Rule for Whom?

Throughout this discussion of home rule the terms "locality" and "local government" have been used when referring to the subdivisions of the state exercising home rule powers. Most home rule states today grant

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[12] Mott, *op. cit.*, p. 8.

[13] Harvey Walker, "Toward a New Theory of Municipal Home Rule," *Northwestern University Law Review*, 50 (November-December 1955), 583-585.

such powers only to cities, although some states also extend the grant to villages or other small incorporated municipalities. In recent years an increasing number of state constitutions have devolved some home rule powers upon counties. Each state must ascertain, within the framework of its traditions and stage of development in regard to local self-government, how widely the home rule principle should be applied and how uniform its application should be among the various types and classes of local government.

The issue of the constitutional framework for the legal division of power between the state and its localities resolves itself into a choice of the best approach to meet the needs and traditions of a particular state. In almost all states the needs are changing with growing urbanization and problems of local government are crossing long-standing political boundary lines. As to traditions in state-local legal relations, almost every state has a pattern of its own. In some states there has been a history of liberal judicial interpretation of local authority; in others, the reverse has been the case. The same may be said for legislative willingness to implement home rule and generally to expand the opportunities for local initiative. Therefore, in the last analysis, a state must develop its approach to constitutional home rule in the context of its own growth and history.

Some Problems Related to Home Rule

One frequently used criterion for judging the effectiveness of a constitutional home rule provision is whether or not the provision is self-executing, that is, whether the people of a locality can take advantage of home rule even if the provision has never been given statutory implementation. It must be recognized that ideally a constitutional home rule scheme could and should benefit from legislative implementation.

Despite this there is much to be said for a constitutional plan that permits localities to exercise some charter-making and substantive powers without any additional legislative action. Such a self-executing plan would prevent a situation, such as occurred in Pennsylvania, wherein no locality could take advantage of constitutional home rule for over 25 years because the legislature had failed to enact the necessary implementing statutes. Caution must be exercised in developing a self-executing home rule provision that the language be free from excessive detail. Detail is to be generally avoided in a constitution and in this instance a complex, self-executing, constitutional proviso may generate a separate set of troubles. Citizen fear of the home rule device because of its complexity (which might invite judicial nullification because of pro-

cedural infractions) could result in local disregard of home rule opportunities.

As has already been observed, constitutional home rule embraces both the authority to draft a charter and the substantive powers of government. In most home rule situations the substantive powers can be exercised by a locality only after its adoption of a home rule charter; in other states this is not the case. For example, in New York home rule communities may enact local laws which in some cases amount to home rule charters but there is no requirement that charter adoption be a prerequisite for the enjoyment of substantive powers.

In recent years a number of states have established offices for local government designed to stimulate harmonious state-local relations and better equip localities in the exercise of their self-government responsibilities. Certainly a state constitution should not categorically specify a state office for local government as a separate entity in the administrative structure of the state government. Yet many states could probably benefit from a constitutional provision calling for an administrative agency without specifying its exact status or title. Such a provision would serve an educational purpose by reminding the state of its ever-present responsibility for stimulating home rule through a sympathetic program of state guidance and information. Such an office and program do not run counter to the principles of home rule; on the contrary they bolster it by making it more effective.

A word or two on the subject of home rule and the fiscal powers of the localities. Traditionally, the various home rule approaches do not envision a home rule community enjoying unlimited fiscal authority. Most students of the subject do not regard constitutional reservations to the legislature of the taxing power or the imposition of legal tax and debt limitations as necessarily an abridgement of home rule. On the other hand, there are numerous advocates who feel that the cities should, as a "right" of home rule, have the authority to raise revenues from any local source.[15]

INTERGOVERNMENTAL RELATIONS

In the post–World War II period, increased attention has been given to intergovernmental relations. As the nation becomes a more interde-

[14] This procedure is advocated in the A. M. A. model and is found, for example, in the constitution of Colorado (Art. XX, sec. 6), which uses the first approach, *supra*, p. 156, and also in the constitution of Alaska (Art. X, secs. 9 and 11), which uses the second approach, *supra*, p. 157.

[15] See, for example, American Municipal Association, *The National Municipal Policy, 1960* (Chicago, the Association, 1960), p. 12.

MUNICIPAL HOME RULE FOR MAINE CITIES AND TOWNS

A SPEECH BY

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DELIVERED AT THE 31ST ANNUAL CONVENTION OF THE

MAINE MUNICIPAL ASSOCIATION

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IN TWO WEEKS, THE CITIES AND TOWNS OF THE COMMONWEALTH OF MASSACHUSETTS WILL HAVE HAD MUNICIPAL HOME RULE FOR ONE YEAR.

YET, FOR THE PAST YEAR, SINCE THE ADOPTION OF THE MUNICIPAL HOME RULE AMENDMENT TO THE COMMONWEALTH'S CONSTITUTION, MUNICIPAL AFFAIRS IN OUR 351 CITIES AND TOWNS HAVE BEEN CONDUCTED IN THE SAME FASHION AS THEY WERE CONDUCTED DURING THE PRIOR YEAR AND FOR MANY, MANY YEARS BEFORE THAT.

YES, SOME INTERESTED CITIZENS -- NOTABLY FROM THE LEAGUE OF WOMEN VOTERS -- AND SOME FORWARD-LOOKING MUNICIPAL OFFICIALS HAVE EXPLORED THE POTENTIAL OF OUR AMENDMENT FOR THEIR OWN MUNICIPALITIES. IN ONE MASSACHUSETTS TOWN, A SELECTMAN WHO WAS WILLING TO WORK ON CHARTER REVISION AT HIS OWN EXPENSE IN AN EFFORT TO IMPROVE THE MUNICIPALITY'S ADMINISTRATIVE STRUCTURE FINALLY RESIGNED WHEN HE BECAME THE BUTT OF SEVERE CRITICISM FROM HIS FELLOW OFFICIALS AND CITIZENS. IN OTHER MUNICIPALITIES, THE [redacted] EFFORTS OF THOSE INTERESTED IN CHARTER REFORM ARE OFTEN RELEGATED TO THE KITCHENS OF [redacted] HOUSEWIVES WITH TIME ON THEIR HANDS RATHER THAN BEING GIVEN THE COMMUNITY PROMINENCE THESE EFFORTS DESERVE.

THIS IS NOT TO SAY THAT SOME PROGRESS HAS NOT BEEN MADE. ONE TOWN IS SERIOUSLY CONSIDERING THE POSSIBILITY OF BECOMING A CITY. IN THE PROCESS, ITS CITIZENS -- THROUGH A SERIES OF PUBLIC MEETINGS -- ARE LEARNING A GREAT DEAL ABOUT THE PRESENT STRUCTURE OF THEIR LOCAL GOVERNMENT. AND, THEY ARE DISCOVERING THAT TIME-HONORED INSTITUTIONS CAN BE IMPROVED.

DESPITE LOCAL INTEREST, IMPLEMENTATION OF THE MASSACHUSETTS MUNICIPAL HOME RULE AMENDMENT IS PROCEEDING AT A SNAIL'S PACE ON THE STATE LEVEL. THE SPECIAL COMMISSION WHICH WAS ESTABLISHED TO IMPLEMENT THE AMENDMENT HAS BUT ONE MAJOR LEGISLATIVE ENACTMENT TO ITS CREDIT,

DESPITE A YEAR OF WORK BY A LARGE STAFF AND A NUMBER OF RESPECTED MUNICIPAL ATTORNEYS. ITS LEGAL AUTHORITY FOR EXISTENCE WILL EXPIRE ON JANUARY 1, UNLESS THE GENERAL COURT ENACTS A NEW RESOLVE EXTENDING ITS LIFE. IN THIS LIGHT, NOTE THAT THE COMMISSION SECURED THE ASSISTANCE OF THE UNIVERSITY OF PITTSBURGH IN ITS EFFORT TO COMPUTERIZE THE COMMONWEALTH'S GENERAL MUNICIPAL LAWS. THE JOB HAS BEEN DONE FOR MONTHS, BUT THE PRODUCT CANNOT BE UTILIZED. THE GENERAL COURT REFUSES TO APPROPRIATE THE FUNDS WHICH ARE NEEDED TO PAY THE UNIVERSITY FOR ITS WORK. IF THE PRODUCT WERE AVAILABLE TODAY, RANDOM SEARCHS OF THE GENERAL LAWS COULD BE UNDERTAKEN FOR THE PURPOSE OF DISCOVERING THE EXACT NATURE OF THE COMPLEX RANGE OF STATE REQUIREMENTS WHICH HAVE BEEN IMPOSED ON THE CITIES AND TOWNS. THE COMMISSION'S TASK OF PREPARING LEGISLATION DESIGNED TO IMPLEMENT THE MUNICIPAL HOME RULE AMENDMENT WOULD BE MUCH EASIER. ALAS, BUT THIS MIGHT NEVER COME ABOUT.

ALL OF WHAT I HAVE JUST SAID, MAY NOT BE MUCH OF A SALES PITCH FOR THE CONCEPT OF MUNICIPAL HOME RULE AS A MEANS OF INSURING MORE SIGNIFICANT FREEDOM FOR GENERAL PURPOSE LOCAL GOVERNMENTS AND, MORE IMPORTANTLY, THEIR CITIZENS. BUT THESE POINTS SHOULD BE REMEMBERED AS YOU CONSIDER THE POSSIBILITY OF HAVING THE MAINE MUNICIPAL ASSOCIATION SEEK A HOME RULE AMENDMENT TO MAINE'S CONSTITUTION.

THERE IS NO DOUBT OF THE VALUE OF A MUNICIPAL HOME RULE AMENDMENT PROVIDED IT IS PROPERLY DRAWN. FOR ONE THING, HOME RULE EVENS THE ODDS WHEN IT COMES TO DEALING WITH THE LEGISLATURE ON MANY ISSUES. FOR ANOTHER, HOME RULE WILL PERMIT THE RESOLUTION OF MANY POLICY ISSUES AT THE LOCAL LEVEL BY THE CITIZENS OF THE COMMUNITY, RATHER THAN HAVING PURELY LOCAL MATTERS DEBATED AND DECIDED BY A BODY WHOSE MEMBERSHIP PROBABLY COULDN'T CARE LESS. BUT IT IS IMPORTANT TO REMEMBER THE CONTEXT WITHIN WHICH MUNICIPAL HOME RULE HAS BECOME THE BY-WORD.

AS YOU KNOW, MUNICIPALITIES ARE POLITICAL SUBDIVISIONS OF THE STATE. THEY DERIVE ALL OF THEIR POWERS FROM THE STATE THROUGH ENACTMENT OF GENERAL AND SPECIAL LAWS BY THE LEGISLATURE. FROM A LEGAL STANDPOINT, THEY ARE REGARDED AS A SPECIAL TYPE OF CORPORATION -- A MUNICIPAL CORPORATION -- WHICH IS SUBJECT TO A SPECIAL VARIETY OF REGULATION BY THE SOVEREIGN STATE.

IN THE MIDDLE OF THE 19TH CENTURY AN IOWA JUDGE POSTULATED A RULE OF LAW WHICH BEARS HIS NAME. IT IS DILLON'S RULE. IT SAYS, QUITE SIMPLY, THAT A MUNICIPAL CORPORATION POSSESSES ONLY THOSE POWERS WHICH ARE EXPRESSLY GRANTED TO IT BY THE STATE LEGISLATURE OR WHICH MAY BE REASONABLY IMPLIED FROM SUCH EXPRESS GRANTS.

THE RESULT OF THIS RULE OF LAW IN TERMS OF THE OPERATION OF MUNICIPAL GOVERNMENT BECAME QUICKLY OBVIOUS. IT IS STILL OBVIOUS IN MANY STATES, PARTICULARLY THOSE IN NEW ENGLAND.

STATE LEGISLATURES FOUND THAT THEY COULD ACTUALLY OPERATE LOCAL AFFAIRS FROM THE STATEHOUSE. THIS POWER BECAME PARTICULARLY USEFUL WHEN CITY OR TOWN HALL WAS OCCUPIED BY A MAYOR OR SELECTMEN OF A DIFFERENT POLITICAL FAITH THAN THE ONE WHICH PREVAILED AT THE CAPITOL.

AS STATE LEGISLATURES IMPOSED GREATER AND GREATER SHACKLES ON MUNICIPALITIES, THE CIRCUMSTANCES FORCED A SOLUTION. THE RESULT WAS THE CONCEPT OF HOME RULE. MUNICIPALITIES WERE GIVEN CHARTERS -- SOMETIMES BY THE LEGISLATURE AND SOMETIMES BY THEIR OWN CITIZENS UNDER A CONSTITUTIONAL GRANT OF POWER. IT HAPPENED FIRST IN ST. LOUIS IN THE 1890'S. DENVER RECEIVED ITS FIRST CHARTER UNDER THE COLORADO CONSTITUTION IN 1906. TO DATE, SOME 40 STATES PROVIDE SOME MEASURE OF HOME RULE FOR THEIR MUNICIPALITIES. MASSACHUSETTS IS THE MOST RECENT EXAMPLE.

BASICALLY, THERE ARE TWO TYPES OF MUNICIPAL HOME RULE:

THE FIRST IS THAT FOUND IN COLORADO AND CALIFORNIA. IN A MANNER OF SPEAKING, IT IS THE STRONGEST. THE CONSTITUTIONS OF THESE STATES PROVIDE THAT THE CITIES AND TOWNS HAVE THE POWER TO ADOPT THEIR OWN CHARTERS AND TO REGULATE ALL OF THOSE MATTERS WHICH ARE "LOCAL AND MUNICIPAL" IN CHARACTER. THE DEFINITION OF WHAT IS "LOCAL AND MUNICIPAL" IS TYPICALLY WRITTEN BY THE COURTS.

THE SECOND IS THAT FOUND IN MASSACHUSETTS AND MOST OTHER STATES. SINCE OUR AMENDMENT IS TYPICAL, I WILL DESCRIBE IT IN SOME DETAIL. SECTION ONE OF THE MASSACHUSETTS MUNICIPAL HOME RULE AMENDMENT (ARTICLE 89 OF THE ARTICLES OF AMENDMENT TO THE COMMONWEALTH'S CONSTITUTION) STATES THAT THE PURPOSE OF THE AMENDMENT IS TO "REAFFIRM THE CUSTOMARY AND TRADITIONAL LIBERTIES OF THE PEOPLE WITH RESPECT TO THE CONDUCT OF THEIR LOCAL GOVERNMENT, AND TO GRANT AND CONFIRM TO THE PEOPLE OF EVERY CITY AND TOWN THE RIGHT OF SELF-GOVERNMENT IN LOCAL MATTERS," SUBJECT TO THE LIMITATIONS OF THE HOME RULE AMENDMENT ITSELF AND THOSE IMPOSED BY THE GENERAL COURT.

IT IS INTERESTING TO NOTE THAT THE LAWS AND LIBERTIES OF MASSACHUSETTS, 1648, CONTAIN THE FOLLOWING LANGUAGE:

> THE FREEMEN OF EVERY TOWNSHIP SHALL HAVE THE POWER TO MAKE SUCH BY-LAWS AND CONSTITUTIONS AS MAY CONCERN THE WELFARE OF THEIR TOWN, PROVIDED THEY BE NOT OF A CRIMINAL, BUT ONLY OF A PRUDENTIAL NATURE, AND THAT THEIR PENALITIES EXCEED NOT 20 SHILLINGS FOR ONE OFFENCE, AND THAT THEY BE NOT REPUGNANT TO THE PUBLIC LAWS AND ORDERS OF THE COUNTRY. AND IF ANY INHABITANT SHALL NEGLECT OR REFUSE TO OBSERVE THEM, THEY SHALL HAVE POWER TO LEVY THE APPOINTED PENALTIES BY DISTRESS.

COMPARE THAT LANGUAGE TO SECTION ONE OF THE MUNICIPAL HOME RULE AMENDMENT TO THE CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS. ONE MIGHT TERM OUR PRESENT LANGUAGE A THROWBACK.

SECTION TWO GIVES EVERY CITY OR TOWN THE POWER TO ADOPT OR REVISE A CHARTER OR TO AMEND ITS EXISTING CHARTER ACCORDING TO THE PROCEDURES OUTLINED IN THE AMENDMENT. SUCH CHARTERS MUST BE CONSISTENT WITH THE CONSTITUTION AND LAWS ENACTED BY THE GENERAL COURT IN CONFORMITY WITH THE POWERS VEST IN IT BY THE AMENDMENT.

SECTIONS THREE AND FOUR SPELL OUT THE PROCEDURE FOR ADOPTING, REVISING AND AMENDING LOCAL CHARTERS. THESE SECTIONS ARE QUITE LONG AND GO INTO CONSIDERABLE DETAIL-TOO MUCH DETAIL, AS A MATTER OF FACT. SECTION FIVE IS ALSO PROCEDURAL; IT REGULATES THE FILING AND RECORDING OF CHARTERS AND CHARTER AMENDMENTS.

SECTIONS SIX, SEVEN AND EIGHT ARE THE MOST IMPORTANT. NUMBER SIX SAYS THAT ANY CITY OR TOWN MAY, BY ORDINANCE OR BY-LAW, "EXERCISE ANY POWER OR FUNCTION WHICH THE GENERAL COURT HAS THE POWER TO CONFER UPON IT,..." A CITY OR TOWN NEED NOT HAVE ADOPTED ITS OWN CHARTER TO EXERCISE THIS POWER.

SECTION SEVEN STATES THAT THE AMENDMENT DOES NOT GIVE CITIES AND TOWNS POWER TO:

1. REGULATE ELECTIONS OTHER THAN THOSE GOVERNED BY THE HOME RULE AMENDMENT ITSELF;
2. LEVY, ASSESS OR COLLECT TAXES;
3. BORROW MONEY OR PLEDGE THE CREDIT OF THE CITY OR TOWN;
4. DISPOSE OF PARK LAND;

5. ENACT PRIVATE OR CIVIL LAW GOVERNING CIVIL RELATIONSHIPS EXCEPT AS AN INCIDENT TO AN EXERCISE OF AN INDEPENDENT MUNICIPAL POWER; AND
6. DEFINE AND PROVIDE FOR THE PUNISHMENT OF A FELONY OR TO IMPOSE IMPRISONMENT AS A PUNISHMENT FOR ANY VIOLATION OF LAW.

THE GENERAL COURT MAY GRANT CITIES AND TOWNS POWER WITHIN THESE SIX AREAS BY GENERAL LAW AS LONG AS THE GRANT IS CONSISTENT WITH THE PROVISIONS OF THE CONSTITUTION.

SECTION EIGHT THEN DEFINES THE GENERAL COURT'S POWERS WITH REGARD TO LOCAL AND MUNICIPAL MATTERS. IT MAY ENACT GENERAL LAWS REGULATING THE AFFAIRS OF ALL CITIES AND TOWNS OR CLASSES OF TWO OR MORE CITIES AND TOWNS. THE GENERAL COURT MAY ENACT SPECIAL LAWS AFFECTING A SINGLE MUNICIPALITY UPON PETITION OF THE MAYOR WITH APPROVAL OF THE COUNCIL, IN THE CASE OF A CITY, OR OF THE TOWN MEETING, IN THE CASE OF A TOWN. SPECIAL LAWS MAY ALSO BE ENACTED BY TWO-THIRDS VOTE OF BOTH HOUSES OF THE GENERAL COURT FOLLOWING A RECOMMENDATION BY THE GOVERNOR. THE GENERAL COURT MAY ALSO CREATE REGIONAL OR METROPOLITAN ENTITIES CONTAINING TWO OR MORE MUNICIPALITIES AND PROVIDE FOR THE INCORPORATION, DISSOLUTION, AND CONSOLIDATION OF CITIES AND TOWNS BY SPECIAL ACT. THIS SECION ALSO GIVES THE GENERAL COURT POWER TO PROVIDE OPTIONAL PLANS OF CITY AND TOWN ORGANIZATION WHICH MAY BE ACCEPTED BY THE VOTERS OF A MUNICIPALITY.

FINALLY, SECTION NINE STATES THAT ALL SPECIAL ACTS AFFECTING GIVEN CITIES AND TOWNS SHALL REMAIN IN FULL FORCE AND EFFECT AND SHALL CONSTITUTE THE CITY OR TOWN CHARTER UNTIL CHANGED BY THE ADOPTION, REVISION OR AMENDMENT OF A CHARTER IN ACCORDANCE WITH THE PROVISIONS OF THE HOME RULE AMENDMENT.

HAVING SPENT SO LONG DESCRIBING THE SECOND FORM OF MUNICIPAL HOME RULE, PERHAPS I SHOULD DESCRIBE THE FIRST FORM AGAIN. AS YOU WILL RECALL, I SAID THAT SOME STATES GRANT THEIR MUNICIPALITIES THE POWER TO ADOPT AND AMEND CHARTERS AND TO EXERCISE ALL OF THOSE POWERS WHICH ARE "LOCAL AND MUNICIPAL" IN CHARACTER.

AS A LAWYER, I MUST SAY THAT THE FIRST FORM IS SIMPLE AND DIRECT. SIMPLE SENTENCES GRANT BROAD POWERS. THE SECOND FORM, AS WE HAVE FOUND IN MASSACHUSETTS, IS NOT ONLY COMPLEX BUT EMPLOYS CONFUSING AND AMBIGUOUS SENTENCES AND WORDS TO GET ITS MEANING ACROSS. I DARESAY THAT WHILE MANY LAWYERS HAVE MADE A LOT OF MONEY FILING AND ARGUING TAXPAYERS' SUITS IN AN EFFORT TO DEFINE "LOCAL AND MUNICIPAL" MANY MORE LAWYERS WILL MAKE A LOT OF MONEY ARGUING ABOUT THE MEANING OF OUR AMENDMENT, BOTH IN AND OUT OF COURT.

NOW THAT YOU KNOW WHAT OTHERS HAVE DONE, IT MIGHT BE BEST TO TALK ABOUT WHAT IT ALL MEANS.

THIS IS THE HARDEST PART. THE DEVELOPMENT OF THE COMPLEX LANGUAGE EMBODIED IN MASSACHUSETTS' HOME RULE AMENDMENT IS TESTIMONY TO THAT FACT. HOME RULE MEANS MANY DIFFERENT THINGS, EVEN TO THOSE WHO WANT IT. AN ANALYSIS OF THE REASONING OF THOSE WHO DO NOT WANT MUNICIPALITIES TO HAVE HOME RULE -- WHATEVER IT MEANS -- BECAUSE THE PRESENT SYSTEM SERVES THEIR OWN INTEREST IS EVEN MORE REVEALING.

ALSO NOTE THAT MANY EXPERTS HAVE WRITTEN LONG TREATISES ABOUT MUNICIPAL HOME RULE. THE ARTICULATE ARTHUR BROMAGE OF THE UNIVERSITY OF MICHIGAN IS AN EXAMPLE, AS IS DEAN JEFFERSON B. FORDHAM OF THE UNIVERSITY OF PENNSYLVANIA SCHOOL OF LAW. MODEL CHARTERS HAVE BEEN POSTULATED BY THE NATIONAL MUNICIPAL LEAGUE AND MODEL CONSTITUTIONAL AMENDMENTS HAVE EVEN BEEN DRAFTED BY YOUR OWN NATIONAL LEAGUE OF CITIES

(WHEN IT WAS THE AMERICAN MUNICIPAL ASSOCIATION).

UNFORTUNATELY, THESE PRONOUNCEMENTS ONLY TELL YOU THAT YOU WILL HAVE GREATER FREEDOM AT THE LOCAL LEVEL. BUT, WILL GREATER FREEDOM GIVE BETTER MUNICIPAL SERVICE TO THE CITIZEN? ONLY ACTUAL PERFORMANCE PROVIDES THE ANSWER TO THIS QUESTION.

YET, THIS IS THE CHALLENGE OF MUNICIPAL HOME RULE. SOMETIMES, IT IS MET. WHERE IT IS, MUNICIPAL OFFICIALS AND CITIZENS ALIKE PUT THE WHEELS IN MOTION. THEY ASSESS THEIR COMMUNITY PROBLEMS, AND, REGARDLESS OF THE DESIRES OF AN OFFICIAL WHO HAS BEEN ON TENURE FOR YEARS OR THE REAL AND IMAGINED NEEDS OF A VESTED INTEREST, THEY RESOLVE THAT THEY WILL DESIGN A MUNICIPAL STRUCTURE WHICH WILL FACILITATE THE SOLUTION OF COMMUNITY PROBLEMS. IN OTHER WORDS, THEY MEET THE CHALLENGE, EVEN IF THEY MUST OVERCOME RACIAL PREJUDICE TO SOLVE THE PROBLEMS OF THE GHETTO OR CHALLENGE THE AUTONOMY OF AN INDEPENDENT SCHOOL COMMITTEE TO GET MORE CONSTRUCTIVE EDUCATIONAL PROGRAMS.

IN THE PAST, THE CONCEPT OF HOME RULE FOR LOCAL GOVERNMENT WAS UTILIZED TO PRESERVE THE STATUS QUO, EVEN IN THE FACE OF A NEED TO SOLVE SOCIAL PROBLEMS OF UNPRECEDENTED SIGNIFICANCE. IN MANY SITUATIONS, THIS IS STILL WHAT IT MEANS. FRANKLY, I AM NOT INTERESTED IN HOME RULE ON THIS BASIS.

HOWEVER, IF HOME RULE MEANS MUNICIPAL OFFICIALS WILL BE ABLE TO MEET THEIR OVERWHELMING RESPONSIBILITIES IN A MORE EQUITABLE AND EFFICIENT FASHION, I'M IN FAVOR OF IT. IF IT MEANS THAT THE MUNICIPAL CORPORATION WHICH JUDGE DILLON DETESTED WHEN HE MADE HIS PRONOUNCEMENT WILL BE ABLE TO RESPOND TO NEEDS AS THEY OCCUR, HOME RULE IS GREAT. IF IT MEANS THAT MUNICIPAL OFFICIALS WILL BE GIVEN THE POWER TO COMBAT THE SITUATIONS CONFRONTING THEM EACH DAY WITH EVER LEGAL AND FINANCIAL

TOOL WHICH THEIR COMMUNITY CAN AFFORD TO PUT AT THEIR DISPOSAL, I WILL FIGHT FOR IT.

MUNICIPAL HOME RULE SHOULD MEAN ALL OF THESE THINGS, BUT, UNFORTUNATELY, IT IS A MERE THREE WORDS. THE WORDS ARE OFTEN USED TO ARGUE, FOR EXAMPLE, THAT CITIES AND TOWNS SHOULD HAVE MORE CONTROL OVER BILLBOARD REGULATION OR MINIMUM SALARIES FOR TEACHERS AND POLICEMEN. THEY SHOULD HAVE SUCH CONTROL, BUT MUNICIPAL HOME RULE MUST MEAN SOMETHING MORE. IN MASSACHUSETTS THE VERY LEGISLATORS WHO VOTED AGAINST THE HOME RULE AMENDMENT NOW ARGUE AGAINST THIS SORT OF LEGISLATION ON THAT GROUNDS THAT IT VIOLATES THE PRINCIPLE THEY BELIEVE IS EMBODIED IN THE THREE WORDS. SOME OF THESE SAME LEGISLATORS WANT TO IMPLEMENT THE MUNICIPAL HOME RULE AMENDMENT BY PROVIDING A METHOD BY WHICH CAREER MUNICIPAL EMPLOYEES -- MANY OF WHOM SPEND THEIR LIVES IN THE MUNICIPAL SERVICE THROUGH THE GRATITUDE OF THE ELECTORATE -- MAY BE PLACED ON TENURE IN VIOLATION OF EVERY RULE OF SOUND MUNICIPAL ADMINISTRATION. THEY ALSO IMPLEMENT THE HOME RULE AMENDMENT BY CONSTANTLY ERRODING THE ONLY SOURCE OF REVENUE A MUNICIPALITY HAS -- THE PROPERTY TAX -- BY THE EXPANSION OF EXEMPTIONS FOR EVERY SPECIAL INTEREST GROUP WITH A POWERFUL LOBBY.

ALSO, A NEW DANGER SIGNAL FOR MUNICIPAL HOME RULE IS IN VOGUE. AS YOU KNOW, FEDERAL AND STATE OFFICIALS, ACADEMICIANS, AND PRIVATE OPINION LEADERS BELIEVE THE STATE GOVERNMENTS SHOULD HAVE A MORE DYNAMIC ROLE IN EFFORTS TO SOLVE COMMUNITY PROBLEMS. UNDERLYING ALL OF THIS, OF COURSE, IS THE DISCUSSION OF FEDERAL REVENUE SHARING. NOW THAT THE VAST POTENTIAL OF THE FEDERAL GOVERNMENT'S TAXING POWER HAS BEEN RECOGNIZED, THE STATES, WHICH ARE MORE EQUAL PARTNERS IN THE FEDERAL SYSTEM THAN LOCAL GOVERNMENTS, SUDDENLY SEE THE RATIONALE BEHIND THE FEDERAL GRANT-IN-AID SYSTEM. MANY CITIES AND TOWNS HAVE

REVITALIZED THEMSELVES WITH IT. PERHAPS THE STATES SHOULD TAKE EQUAL ADVANTAGE OF IT.

BUT THE FEDERAL GOVERNMENT IS NOT WILLING, IN MOST CASES, TO PUT MONEY ON THE STUMP. STATES MIGHT NOT MAINTAIN CURRENT FISCAL EFFORTS, MUCH LESS EXPAND THEM. AFTER ALL, CITIES AND TOWNS HAVE PARTICIPATED IN FEDERAL GRANT PROGRAMS ON THE CONDITION THAT THEY INCREASE LOCAL EFFORTS. WHY SHOULDN'T THE STATES DO THE SAME.

AS A RESULT OF THIS THINKING, THE FEDERAL GOVERNMENT IS NOW TRYING TO UP-GRADE STATE EFFORTS IN THE FIELD OF COMMUNITY DEVELOPMENT. NEW JERSEY, NEW YORK, PENNSLYVANIA, CONNECTICUT, AND SEVERAL OTHER STATES NOW HAVE DEPARTMENTS OF URBAN AFFAIRS OR COMMUNITY DEVELOPMENT. THEY ARE SUPPOSED TO HELP LOCAL GOVERNMENT UP-GRADE THEIR EFFORTS TO MEET THE URBAN CRISIS.

WHILE THIS MAY BE A LAUDABLE GOAL, I SUSPECT THAT NEW STATE EFFORTS IN THIS FIELD MAY WELL ERODE THE POTENTIAL OF LOCAL INNOVATION AND INITIATIVE. WITH THE STATE IN THE FIELD, EVEN IF IT SHOULD BE, THE TEMPTATION TO TELL CITIES AND TOWNS WHAT TO DO MAY BE EVEN GREATER THAN IT IS TODAY IN THOSE STATES WHICH DEAL WITH THEIR LOCAL GOVERNMENTS VIA SPECIAL ACTS.

IN THIS LIGHT, I THINK MUNICIPAL HOME RULLE IS VALID AS A CONCEPT, BUT ONLY IF MUNICIPAL OFFICIALS AND CONCERNED MUNICIPAL CITIZENS DO THE FOLLOWING:

---- SHOW A WILLINGNESS TO SOLVE COMMUNITY PROBLEMS, PARTICULARLY THOSE WHICH ARE RELATED TO THE SOCIAL DISEASES OF OUR SOCIETY.

---- RECOGNIZE THAT A GOVERNMENTAL UNIT WITH A BROADER POLITICAL AND ECONOMIC BASE COULD BE THE MOST

EFFICIENT DEVICE FOR SOLVING THESE COMMUNITY PROBLEMS.

---- FIND NEW WAYS TO SATISFY THE INDIVIDUAL'S INSATIABLE NEED FOR IDENTIFICATION WITH HIS NEIGHBORHOOD OR COMMUNITY.

---- LOOK CRITICALLY UPON THOSE WHO SEEK TO GIVE POLITICAL SUPPORT TO THE DRIVE FOR MUNICIPAL HOME RULE. THEY MAY WANT TO EXACT THEIR POUND OF FLESH.

---- BE WILLING TO CAST OFF RESPONSIBILITIES PRESENTLY HELD AT THE LOCAL LEVEL TO MORE APPROPRIATE LEVELS OR UNITS OF GOVERNMENT, MAINTAINING, IF AN EXCERISE OF THESE RESPONSIBILITIES WILL CONTINUE TO HAVE SOME LOCAL IMPACT, AN APPROPRIATE VOICE IN THE POLICY PROCESS FOR MUNICIPAL OFFICIALS.

---- FIND BETTER WAYS OF FINANCING NEEDED MUNICIPAL SERVICES, AND, IN THE PROCESS, BE WILLING TO GIVE THOSE MUNICIPALITIES WITH THE GREATEST PROBLEMS THE LARGEST SHARE OF AN EQUITABLE FINANCIAL PROGRAM.

MUNICIPAL HOME RULE HAS HAD A LONG HISTORY IN THE UNITED STATES. IT MAY BE UNFORTUNATE THAT THE CONCEPT HAS BEEN DEVELOPED IN REACTION AGAINST THE TRADITIONAL FORMAT OF STATE-LOCAL RELATIONS. I SUPPOSE THAT IT COULD NOT HAVE BEEN DEVELOPED IN ANY OTHER FASHION.

HOWEVER, THROUGH YOUR MAINE MUNICIPAL ASSOCIATION YOU HAVE A UNIQUE OPPORTUNITY. YOU CAN RECOGNIZE THAT THERE MIGHT BE A BETTER WAY TO ACHIEVE MUNICIPAL HOME RULE THAN WAS FOUND IN ANY OF THE OTHER 40 STATES WHICH NOW HAVE SOME FORM OF IT. SEEK THE ADVICE OF EXPERTS. ASK THEM TO HELP YOU INNOVATE.

IF YOU DO, MUNICIPAL HOME RULE CAN PROVIDE THE FRAMEWORK OF A BRIGHT FUTURE FOR THE CITIES AND TOWNS OF THE STATE OF MAINE.