

Home Rule: Do New Hampshire Towns and Cities Have It?

Much attention has been focused recently on whether towns and cities may include certain information on their ballots and warrants, such as the estimated tax impact of a proposed appropriation. The answer to this and many other questions regarding municipal authority to act comes down to one concept: Home Rule.

What is home rule? It refers to a municipality's ability to govern itself. What is often misunderstood is that it **is not an absolute** where towns and cities are concerned. While New Hampshire has a long tradition of rugged individualism, the reality is that towns and cities may only do those things that the New Hampshire legislature allows them to do. This is not a popular concept but it is the way local government was established in New Hampshire under our State Constitution.

In some states, the state constitution includes a direct grant of power to towns and cities to govern themselves. For example, Iowa's Constitution gives municipalities the authority to determine their own local affairs and government so long as they do not do something inconsistent with Iowa state law. Iowa Const. Art. III, §§ 38A and 39A. Even this broad grant of power has its limits, however; Iowa municipalities are not allowed to levy taxes without authorization from the state legislature and may not affect areas of government that the state legislature reserves to itself (such as regulating insurance companies). *Council Bluffs v. Cain*, 342 N.W.2d 810, 812 (Iowa 1983).

On the other hand, the New Hampshire Constitution grants no direct power to towns or cities. The only constitutional power that is granted is Part I, art. 39, which prohibits the legislature from changing the form of government of a town or city without the approval of the voters. Other than that single instance, the New Hampshire Constitution grants power to the legislature, which in turn may grant power to municipalities if it wishes to through statutes. The legislature may also take those powers back again by changing or repealing the laws. This concept has been firmly stated by the New Hampshire Supreme Court:

"...towns are but subdivisions of the State and have only the powers the State grants to them." *Piper v. Meredith*, 110 N.H. 291 (1970).

Further, "[u]nder our State Constitution '(t)he supreme legislative power...(is) vested in the senate and house of representatives' N.H. Const. pt. II, art. 2. See also N.H. Const., pt. I, art. 29. For these reasons, we have held that the towns only have 'such powers as are expressly granted to them by the legislature and such as are necessarily implied or incidental thereto.'" *Girard v. Allentown*, 121 N.H. 268, 270-71 (1981).

In other words, towns and cities are not allowed to add to their authority or reduce their responsibilities unless the legislature permits it. The only things towns and cities may do in New Hampshire are those things which the state legislature has directly authorized them to do in a statute, or which are "necessarily implied" by such a grant of authority. For instance, towns are allowed by statute to appropriate money (RSA 31:4), to take land by eminent domain (RSA 31:92), and to adopt zoning ordinances (RSA 674:16). Municipalities may also do other things which are necessarily implied by a direct grant of power, such as spending money as required to enforce zoning requirements and other ordinances.

Well, one might ask, what about RSA Chapters 49-B, 49-C and 49-C? Those statutes are titled “Home Rule – Municipal Charters,” “Local Option – City Charters,” and “Local Option – Town Charters.” Sounds like home rule, doesn’t it? It isn’t, at least not the way people commonly think of it. All these statutes do is to allow towns and cities to adopt a charter to organize the way in which their government is organized and functions. Nothing in these statutes allows a municipality to add to their authority or reduce their responsibilities under other laws. It is, really, authority to determine the **form** of local government but not the **substance**. See *Girard v. Allenstown*, 121 N.H. 268, 272-73 (1981). For example, a city may determine how to organize (city council and manager? board of aldermen and mayor?), and a town may decide how to divide authority between town meeting and a town council or selectmen (all authority to a council, or reserve budgetary and other specific questions to the voters?). However, neither may exercise other powers not granted by the legislature just because they have adopted a charter. See *Hooksett v. Baines*, 148 N.H. 625 (2002) (charter may not impose term limits on elected officials).

Three times in the past 35 years, New Hampshire voters have been asked to vote on a proposed amendment to the state Constitution to grant expanded home rule authority to municipalities. The most recent proposal, in 2000, would have permitted towns and cities to exercise any power and perform any function regarding its affairs that was not prohibited by the state Constitution, state law or common law; the State would have retained its right of pre-emption over municipal powers and functions. However, this proposal failed to get the required two-thirds vote and did not pass.

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