

# A Discussion of Home Rule in Nevada

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## “Dillon’s Rule” and “Home Rule” Defined

The question of local governmental authority has always been a source of great political debate. By its very nature, the United States Constitution remains silent as to the rights, duties and powers of local government. The 10th Amendment states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Thus, the question has been left to each individual state to determine the inherent powers of local government. Over time, two diverging views have emerged: (1) A judicial common law doctrine entitled “Dillon’s Rule;” and (2) A concept of a self directed local government termed “Home Rule.”

### Dillon’s Rule

Many legal scholars have defined Dillon’s Rule as a strict interpretation of state laws that allows localities to possess only such powers as are specifically delegated to them by state law. The theory of state preeminence over local governments was first expressed by Justice John F. Dillon in an 1868 Iowa Supreme Court case, wherein the opinion states:

Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. As it creates, so it may destroy. It may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, sweep from existence all of the municipal corporations in the state, and the corporation could not prevent it. The corporations are the mere tenants at will of the legislature. This plenary power on the part of the legislature over public corporations, saving vested rights of property and of creditors, is a doctrine well settled. City of Clinton v. Cedar Rapids & M.R.R.Co., 24 Iowa 455, (Iowa 1868).

Nearly a month after the Clinton decision, Justice Dillon achieved everlasting fame by penning the opinion that has become commonly known as Dillon’s Rule. In Merriam v. Moody’s Executor, 25 Iowa 163, 170 (Iowa 1868), a plaintiff brought an action to recover his real property that was sold at a tax sale for the non-payment of special taxes levied under the city’s charter. In affirming the lower court’s decision that the city had no power to sell the property for the delinquent assessment, Justice Dillon wrote:

[A] municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation and which are not simply convenient, but indispensable; fourth, any fair doubt, as to the existence of a power is resolved by the courts against the corporation -- against the existence of the power. Merriam v. Moody’s Executor, 25 Iowa 163, 170 (Iowa 1868)

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Justice Dillon then later went on to author a famous legal treatise on the subject entitled, *A Treatise on the Law of Municipal Corporations* (2d ed., 1872). Thus, Dillon's Rule is not traditional black letter law, but instead a common law doctrine that has come to define the legal relationship between municipal and state governments. The Supreme Court of the United States has cited *Municipal Corporations* and fully adopted Dillon's emphasis on state power over municipalities in Merrill v. Monticello, 138 U.S. 673 (1891), reaff'd, Hunter v. Pittsburgh, 207 U.S. 161 (1907), which upheld the power of Pennsylvania to consolidate two cities against the wishes of the majority of the residents in one.

### Home Rule

As opposed to Dillon's Rule, the concept of "Home Rule" refers to the idea of local self-government and the necessary powers granted to the citizens of a local area to structure, organize, and empower their local government. Judge Thomas Cooley of the Michigan Supreme Court first defined Home Rule as "a doctrine that localities have the inherent right for self-governance." Strict supporters of Home Rule have suggested that a locality has an important role in managing its own affairs and avoiding interference by the state.

Throughout the United States, the powers and limits of Home Rule authority for local governments are largely defined on a state-by-state basis. Generally, there is no universal national standard that defines the powers in Home Rule states. Thus, Home Rule, or portions thereof, may be provided for and defined in a state constitution or may be statutorily enacted by a legislature.

Most commonly, there are four primary areas in which Home Rule powers are exercised by local governments:

1. Structural – power to choose the form of government, charter and enact charter revisions;
2. Functional – power to exercise powers of local self government (sometimes qualified as "broad functional" or "limited functional" Home Rule with varying degrees of autonomy);
3. Fiscal – authority to determine revenue sources, set tax rates, borrow funds, and other related activities; and
4. Personnel – authority to set employment rules and conditions ranging from remuneration to collective bargaining.

### Dillon's Rule in Nevada

Often debated is the effect of Dillon's Rule on Nevada's counties and other local governments. According to most scholars, Nevada is historically, and continues to be, a classic Dillon's Rule state.

The Legislature is required by the Nevada Constitution to establish a system of uniform county and township governments, and the Constitution specifically prohibits local or special laws that single out a specific county. Additionally, the Nevada Constitution requires the Legislature to provide for the organization of cities and towns through general laws, and restricts cities' and towns' ability to tax, assess, borrow money, contract debts and loan credit. Section 8 of Article 8 of the Nevada Constitution, states:

The legislature shall provide for the organization of cities and towns by general laws and shall restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, except for procuring supplies of water; provided, however, that the

legislature may, by general laws, in the manner and to the extent therein provided, permit and authorize the electors of any city or town to frame, adopt and amend a charter for its own government, or to amend any existing charter of such city or town.

Further, the Nevada Supreme Court has held that under the provisions of Section 1 of Article 8 of the Nevada Constitution, which prohibit the Legislature from passing a special act relating to corporate powers, except for municipal purposes, that the Legislature may provide for the organization of towns and cities by special act. Mayor v. Chollar-Potosi Gold & Silver Mining Co., 2 Nev. 86 (1866).

The Nevada Constitution also requires the Legislature to establish a uniform system of county government (Nev. Const. art. 4, §25); requires the Legislature to provide for the election of boards of county commissioners and to prescribe by law their duties and compensation (Nev. Const. art. 4, §26); and gives the Legislature power to prescribe, among other things, the duties and compensation of certain county officers, including county clerks, recorders, auditors, sheriffs, district attorneys and public administrators (Nev. Const. art. §32). However, there are no constitutional or statutory provisions in Nevada relating to Home Rule authority for local governments, and so Nevada is considered a state without Home Rule. In other words, the county and city governments generally have only those powers that are granted to them by the Legislature.

Finally, when interpreting statutes involving powers of local governments, courts in Nevada have historically applied Dillon's Rule. See Ronnow v. City of Las Vegas, 57 Nev. 332, 342-43 (1937). Dillon's Rule provides that a local government is a government of limited powers and that it may exercise only: (1) those powers that are expressly granted to the local government by state constitution or statute; (2) those powers that are necessarily or fairly implied in or incident to its expressly granted powers; and (3) those powers that are essential and indispensable to the purpose or existence of the local government and not merely convenient or desirable. Id.; see also Sadler v. Board of County Comm'rs, 15 Nev. 39, 42 (1880); Black's Law Dictionary 469 (7th ed. 1999). Dillon's Rule also provides that "[a]ny fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the [local government], and the power is denied." Ronnow, 57 Nev. at 343. Thus, in most instances, any claim of power by a local government must be strictly and narrowly construed. Id. at 342-43.

### **General Law and Special Charter Cities in Nevada**

City governments in Nevada are created by either general law or special charter. Chapter 266 of Nevada Revised Statutes (NRS) governs general law cities (Ely, Fallon, Fernley, Lovelock, Mesquite, West Wendover and Winnemucca). Although NRS 266.010 appears to specifically grant Home Rule to general law cities, it has been interpreted that these cities have Home Rule in name only. The Legislature is specifically granted the authority to create or alter the form of city organization, and the Legislature may pass legislation that affects all general law cities.

Chapter 268 of NRS applies to special charter cities (Boulder City, Caliente, Carlin, Carson City, Elko, Henderson, Las Vegas, North Las Vegas, Reno, Sparks, Wells and Yerington). All special charter cities in Nevada are governed by the council-manager form of government. Any proposed amendments to a city's special charter, must be through petition and approval of the voters, or by amendment through the Legislature.

The functional responsibilities of local government in Nevada are specifically set forth and controlled through the charter process. These functional responsibilities include: governmental administration, public safety, public works, judicial administration, public health, libraries, recreation, land-use, utilities, franchises, licensing and regulation of businesses, and the authority to adopt ordinances. In most instances, a city's charter may be amended either through a vote of the people or by the Legislature.

### **Political History of Home Rule Discussion in Nevada**

In researching the political history of Home Rule discussions in Nevada, it appears that there were significant Home Rule discussions at the Legislature all the way back to the early 1950's. In 1951, the Legislature appointed an interim study to examine the issue, which completed its study in December of 1952. In reviewing the final report of this study, it appears that most discussion centered on the provisions of the Nevada Constitution that prescribe local governmental authority. Additionally, in 1963, the Legislature again appointed an interim study committee to review the question of Home Rule in Nevada; although, that study appeared to only propose a unified general law charter.

Since 1963, the call for a discussion of Home Rule has surfaced periodically throughout legislative sessions; however, each time the discussion has not resulted in total Home Rule. It is important to note, that sometime "so-called" pieces of Home Rule may be granted to local governments (for instance, a bill authorizing a local government to operate a special improvement district could be considered a piece of Home Rule, although not formal Home Rule in total).

More recently, several attempts have been made in recent legislative sessions to abolish Dillon's Rule. In 2003, Senator Joe Neal introduced Senate Bill 295, which sought to abolish Dillon's Rule for the purposes of interpreting a statute relating to the powers of a local government. The measure was heard in the Senate Committee on Government Affairs, but the measure failed to pass prior to the deadline. Similarly, in 2005 the Senate Committee on Government Affairs introduced Senate Bill 427 on behalf of the Nevada Association of Counties. Senate Bill 427 was not heard and likewise failed to pass. In 2007, the Nevada Association of Counties again sought legislation to abolish Dillon's Rule; however, the bill draft request was never formally introduced.

In 2009, the Legislature passed Senate Bill 264 sponsored by Senator Terry Care. Senate Bill 264 directs the Legislative Commission to conduct an interim study concerning the powers delegated to local governments, including the feasibility of increasing the powers of local governments related to taxation. Senator John Lee has been appointed Chairman of the interim study with Assemblywoman Marilyn Kirkpatrick appointed as Vice-Chair.

The study conducted pursuant to Senate Bill 264 must include, without limitation:

- (a) An examination of:
  - (1) The structure, formation, function and powers of local governments in this State;
  - (2) The potential fiscal impact in this State resulting from abolishing Dillon's Rule;
  - (3) The feasibility of increasing the powers of local governments in this State; and
  - (4) The experiences of states that have rejected Dillon's Rule; and
- (b) The consideration of any recommendations submitted to the interim committee by a technical advisory committee (which shall be appointed by the interim study and be comprised of six representatives of local government and three representatives of state agencies).

On or before February 1, 2011, the Legislative Commission is required to submit a report of the results of the study and any recommendations for legislation to the Director of the Legislative Counsel Bureau for transmission to the 76th Session of the Nevada Legislature.

### **Approaches to Dillon's Rule/Home Rule in Western States**

According to 2003 research, 31 states are Dillon's Rule states, 10 states operate under Home Rule, and 9 states have Dillon's Rule only for certain types of municipalities. According to a survey by the National Association of Counties, at least 40 states are currently considered "Dillon's Rule" states, yet not all of those states enforce the Rule in the same manner. In researching the western states, it appears that Montana, New Mexico and Oregon are so-called classic Home Rule states, whereas California employs a mixed system. The remainder of western states (with the exception of Utah, which has one Home Rule municipality) are similar to Nevada, and are strictly Dillon's Rule states.

#### **Montana**

From 1889 until 1972, Montana was governed by Dillon's Rule; however, in 1972, a constitutional convention was held and the resulting revision to the Montana Constitution made it possible for both counties and municipalities to acquire broad self-governing powers. Although the Montana Constitution, as amended, does not specifically reference the words "Home Rule" it does grant the authority to each local government to adopt, by a vote of the people, their own form of structural government.

Beyond the structural powers to choose their form of government, Montana's municipalities and counties have broad functional powers. These powers include the right to create special taxing or assessment districts, which have been relied upon heavily since the imposition of a freeze on Montana property taxes in 1986. In addition, local governments in Montana are granted broad powers in the area of economic development, and have the power to impose local development fees without state interference.

Although Montana enjoys significant Home Rule advantages in terms of structural and functional powers, the local governments do not have much autonomy in terms of fiscal responsibility over local revenues and expenditures. Those powers are mostly controlled by state law, which determines the revenue sources, budgetary provisions, and amount of public debt that local governments may incur.

#### **New Mexico**

Local governments in New Mexico enjoy broad functional Home Rule. The New Mexico Constitution was amended in 1970 and states, "The purpose of this section is to provide for maximum local self-government. A liberal construction shall be given to the powers of municipalities" (N.M. Const. art. IX, §6). Consequently, any incorporated city in New Mexico can adopt a new charter and choose or change its form of government as it sees fit. Similar to Montana, the local governments of New Mexico do not have much fiscal authority, as the power of levying taxes still resides within the state legislature.

#### **Oregon**

Local governments in Oregon have historically enjoyed a large degree of discretionary authority. All of Oregon's 240 incorporated municipalities have adopted Home Rule charters, which provide the freedom to choose their structure and organization of government. Presently, nine counties in Oregon operate under a Home Rule charter, which essentially allows the counties the complete discretion to create, abolish or consolidate offices and departments as they see fit.

Home Rule charters in Oregon empower local governments to enact legislation on matters of local concern and afford them the discretion to provide services and improvements that benefit local areas. Additionally, the Oregon Constitution and state law give municipalities, counties and over 950 special districts the power to create and oversee local improvement districts (such as streets, sidewalks, storm drains and sewers, streetlights and off-street parking).

As to fiscal matters, local government revenue sources typically are derived from sewer charges, interest earnings, franchise fees, land development permits, licenses, and service charges and other fees. State law does proscribe some limits on indebtedness, and all local governments are authorized to issue revenue bonds for facilities that will later generate revenue.

### California

Since the adoption of the 1879 Constitution, cities and counties in California have enjoyed Home Rule. Although the term Home Rule does not appear in the California Constitution or state law, the courts have consistently interpreted all ambiguities in favor of the local governments. According to Section 7 of Article XI of the California Constitution, “A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” Additionally, Section 9 of that Article states, “A municipal corporation may establish, purchase and operate public works.” These powers have been broadly interpreted as the police and corporate powers. The California Constitution does allow individual cities and counties to adopt charters, but because of the broad police and corporate powers, there is little distinction between general and charter governments. Prior to Proposition 13 in 1978, local governments could set their own property tax rates, however, since that time, the power over many fiscal issues has shifted to the State.

As scholars have examined California’s system of Home Rule, many have described it as a “hollow sphere.” On the surface, it appears that California’s local governments have Home Rule, including constitutional standing, charter authority and judicial interpretation; however, local officials lack the power to set their own property tax rates, and are often faced with state unfunded mandates, which further erode the perceived power of local control.

### **Pros and Cons of Home Rule**

According to a white paper entitled “Is Home Rule the Answer? Clarifying the Influence of Dillon’s Rule on Growth Management,” a January 2003 Brookings Institution publication, the following arguments in support and opposition to Home Rule have been identified:

#### Arguments for Home Rule

- Local citizens can select the form of government they prefer. If citizens want to consolidate or reorganize their public institutions, they can do so without obtaining permission from state officials.
- Local communities are diverse, and Home Rule allows local citizens to solve their problems in their own fashion. In this fashion, decentralization fosters local experimentation, flexibility, innovation and responsiveness.
- Home Rule reduces the amount of time that a state legislature devotes to “local affairs.” Scholars have estimated that in some states, local bills constitute as much as 20 to 25 percent of the legislature’s workload.

- Home Rule units with control of their finances place the responsibility for public expenditures and taxation where it belongs - on the elected officials of the local jurisdiction, and not on distant state officials.
- Under Home Rule, local officials exercise greater autonomy on a daily basis in running the locality. This frees decisions from the need for pre-approval by the state legislature before implementation. State officials do not “second guess” local officials.
- “Liberal construction” of Home Rule provisions reduces court interference in local policymaking and administration.
- Home Rule may avoid duplication of services provided by multiple layers of government.
- Additionally, many here in Nevada have argued that the legislative process amounts to a 2-year delay. The Nevada Legislature meets every other year, whereas local governments often meet on a semi-weekly basis.

### Arguments for Dillon's Rule

The following arguments supporting Dillon’s Rule were also excerpted from the Brookings Institution research:

- Many have suggested that Dillon’s Rule was borne out of the necessity to remove political corruption from municipalities. Some scholars have suggested that an added layer of governmental review provides greater protection from inherently corrupt political organizations.
- Legislators often prefer to award new powers to only a few local governments at first, so as to "test" the new powers. If the grant of power proves successful, then the legislature may grant the power to all local governments.
- State-level control ensures greater uniformity, which facilitates economic growth by assuring companies that requirements such as business licenses and methods of taxation will be consistent throughout the state.
- State legislators throughout the country sometimes feel that Dillon’s Rule results in more efficient and fair governance.
- Some believe Dillon’s Rule benefits local government officials by allowing them to use the Rule as an excuse to not do things that the public wants.
- States possess more technical expertise and often operate at a more appropriate level for policymaking than local governments.
- Local actions often result in regional or statewide impacts. State oversight may prevent exclusionary and provincial actions by local governments.
- Dillon’s Rule provides certainty to local governments. If power is denied whenever doubtful, litigation will be kept at a minimum in legislative affairs.