



Dillon's Rule or Not?

The United States' system of governance has many different levels. These levels—federal, state and local—all have a specific role to play in providing public services for the citizenry. At times, these levels of governance can overlap, or create gaps in the provision of services, leaving uncertainty about who has what type of authority. In the modern era, while the problems of jurisdiction are at times still evident, a defining ruling was made in two Iowa Supreme Court decisions. The relationship between local autonomy and state supremacy was more clearly defined by these rulings, which have become known as “Dillon’s Rule.”

Judge John F. Dillon’s 1886 ruling limited county governmental powers. Judge Dillon, a prolific writer on the subject of local governmental operations, severely distrusted local government due to the power and corruption of political “machines,” who often controlled municipal and regional decision makers. At the same time others called for the increased constitutional rights of local government even though many states’ constitutions gave no such rights. As a response to both arguments, Judge Dillon rendered his opinion in which he wrote:

“It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: first, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.”

This ruling silenced those who championed far reaching local autonomy. His ruling gave local government only those powers that were specifically given to them by the state constitution or legislative statute. If there were any uncertainty of who had power or jurisdiction, it would be given to the state government and resolved in the judiciary. Within Dillon’s era, states would use his ruling to limit the actions of local government, attempting to keep corrupted officials from wielding excessive power.

Today Dillon’s Rule is in effect in many states, according to one survey, 40 states are currently considered “Dillon’s Rule” states. Not all of these states enforce the rule in the same manner. For example, Alabama’s enforcement of the rule only applies to county government; California’s version does not include charter cities; and Louisiana’s interpretation of the rule only affects pre-1974 municipalities. The spectrum of enforcement ranges from aggressive to somewhat lax, with a diminishing presence of the rule over time.

Judge Dillon's distrust for local politics in the Midwest would not be shared in California around the turn of the twentieth century. The state government was seen as being controlled by special interests (specifically the railroad industry) and the political "machine," and thus, was seen as not being responsive to the needs of municipalities or small business. In this atmosphere the Populist and Progressive movements began to gain a hold on state and regional politics. Ideas such as the recall, referendum and initiative came from these movements. More importantly for local government, the idea of home rule, or local self-government was also created during this era. Citizens believed they had a "moral" right to self-government, using the argument that they had the best understanding of local needs, not the state legislature.

From 1913, with California's enactment of home rule, to today, 37 states have approved some form of home rule, either a home rule charter or the "optional" form of home rule. Most states with home rule offer their counties and municipalities one of the two, but a few states—Idaho, Iowa and Minnesota—offer both.

The home rule charter serves as a local "constitution" that is created and ratified locally. Of the two forms available, a charter provides the greater degree of home rule, with it local governments exercise greater power over fiscal, functional and structural aspects of its system.

The optional form of home rule allows a county to select—from presubscribed structures—which type of governmental structure it will utilize. These types often include the council-manager, council-executive, or county administrator forms of county government. Although these are fundamentally structural differences, not financial ones, each can provide increased control to county and municipal government.

Regardless of type, home rule gives local government the capability to shape the way it serves the needs of its constituency. Different counties have different needs. The service delivery demands of a rural county and an urban county may differ. Therefore, in states that do not provide the flexibility of home rule, counties may provide services that do not suit the needs of their residents. Home rule gives local government the ability to shape its services to fit its need, providing timely, fiscally-responsible services.

Home rule is not all encompassing, or absolute since it too has its limitations. Counties are a unit of the state government, deriving their powers from the state constitution and legislative statutes—they will always be subject to, and affected by, state law.

Home rule and Dillon's Rule are not always dichotomous. A state can be considered a Dillon's Rule state and also have home rule. These hybrid states, such as Virginia, have eased their constructionist view on local government, giving local government more autonomy with which to govern.

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Sources:

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HOME RULE STATES

State	Charter	Home Rule/ Optional Forms
Alabama		
Alaska	X	
Arizona	X	
Arkansas		X
California	X	
Colorado	X	
Delaware		
Florida	X	
Georgia		X
Hawaii	X	
Idaho	X	X
Illinois		X
Indiana		X
Iowa	X	X
Kansas		X
Kentucky		X
Louisiana	X	
Maine	X	
Maryland	X	
Massachusetts	X	
Michigan	X	
Minnesota	X	X
Mississippi		
Missouri	X	
Montana	X	
Nebraska		
Nevada		
New Hampshire	X	
New Jersey	X	
New Mexico		
New York	X	
North Carolina		X
North Dakota	X	
Ohio	X	
Oklahoma		
Oregon	X	
Pennsylvania	X	
South Carolina		X
South Dakota	X	
Tennessee	X	
Texas		
Utah		X
Vermont		
Virginia	X	
Washington	X	
West Virginia		
Wisconsin		X
Wyoming		

DILLON'S RULE STATES

State	Dillon's Rule State	Comments
Alabama	YES	Counties Only
Alaska	NO	
Arizona	YES	
Arkansas	YES	
California	YES	Except Charter Cities
Colorado	YES	
Connecticut	YES	
Delaware	YES	
Florida	UNCLEAR	Conflicting statutes
Georgia	YES	
Hawaii	YES	
Idaho	YES	
Illinois	YES	Non-home rule municipalities only
Indiana	YES	Townships only
Iowa	NO	
Kansas	YES	Not for cities and counties
Kentucky	YES	
Louisiana	YES	For pre-1974 charter municipalities
Maine	YES	
Maryland	YES	
Massachusetts	NO	
Michigan	YES	
Minnesota	YES	
Mississippi	YES	
Missouri	YES	
Montana	NO	
Nebraska	YES	
Nevada	YES	
New Hampshire	YES	
New Jersey	NO	
New Mexico	NO	
New York	YES	
North Carolina	YES	
North Dakota	YES	
Ohio	NO	
Oklahoma	YES	
Oregon	NO	
Pennsylvania	YES	
Rhode Island	YES	
South Carolina	NO	
South Dakota	YES	Strict construction, but no specific reference to the language of Dillon's Rule.
Tennessee	YES	Only non-home rule municipalities
Texas	YES	
Utah	NO	
Vermont	YES	
Virginia	YES	
Washington	YES	
West Virginia	YES	
Wisconsin	YES	
Wyoming	YES	