

# "A Discussion of Home Rule in Nevada"



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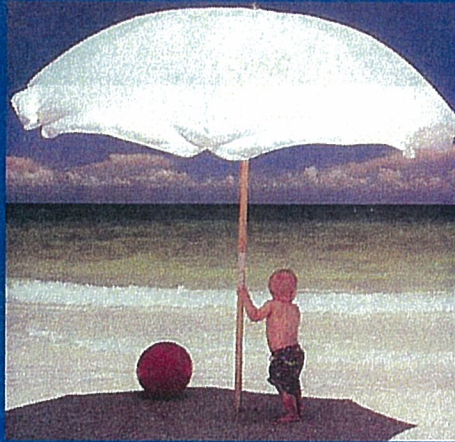
## HOME RULE DISCUSSION

- I. Levels of Government
- II. The Great Debate  
Home Rule vs. Dillon's Rule
- III. Types of Home Rule Powers
- IV. Arguments for/against Home Rule
- V. History of Home Rule in Nevada
- VI. Possible Approaches to Home Rule
- VII. Questions



## I. LEVELS OF GOVERNMENT

- Federal
- State
- Local -  
County &  
City



## II. THE GREAT DEBATE

HOME RULE vs. DILLON'S RULE





## Introduction to Home Rule Discussion

- The United States Constitution remains silent and does not spell out the obligations, duties or rights of local governments.
- The *10th Amendment of the United States Constitution* does, in fact, reserve all rights not specifically granted to the federal government to the states for administration:

***"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 issue of local government autonomy or control is largely left to each individual state.

## DILLON'S RULE

- The theory of state preeminence over local governments was first expressed by Justice John Dillon in an 1868 Iowa Supreme Court case:

"Municipal corporations owe their origin to, and derive their powers and rights wholly from the legislature." *City of Clinton v. Cedar Rapids & M.R.R. Co.*, 24 Iowa 455 (Iowa 1868).

- In *Merriam v. Moody's Executor*, 25 Iowa 163 (Iowa 1868), Justice Dillon achieved everlasting fame by penning what is now known as Dillon's Rule. *Merriam* involved the sale of real property for delinquent taxes under a city charter.
- Dillon's Rule outlines the types of powers legislatures give to municipalities and what happens if there is some doubt about a municipality's power:

"It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: (1) Those granted in **express** words; (2) Those necessarily or fairly **implied** in or incident to the powers expressly granted; (3) Those **essential** to the accomplishment of the declared objects and purposes of the corporation — not simply convenient, but indispensable."

- Finally, Dillon's Rule holds that "Any fair doubt concerning the existence of power is resolved by the courts against the corporation (local government), and the power is denied."



# HOME RULE

- Four years after Dillon stated his rule, Judge Thomas Cooley of the Michigan Supreme Court first defined Home Rule as "a doctrine that localities have the inherent right for self-governance."
- The authority to deal with matters of local concern without obtaining state legislative approval is often referred to as "Home Rule."
- While the ultimate ability to govern within a state lies with the state itself and is inherently granted by the United States Constitution, most states grant a portion of their governing power, with some associated ability to establish laws, levy taxes and administer government on a local level, to counties and municipalities.
- Home Rule may be established by Constitution or State Statute
- Early 1970's Constitutional Amendment movement (MT, NM)

## III. TYPES OF HOME RULE POWERS

There are four primary areas in which "home rule" powers may be exercised by local governments:

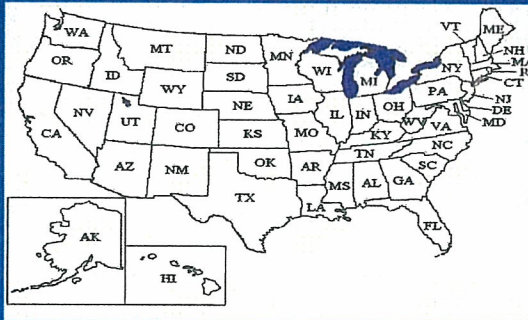
- 1. Structural – power to choose the form of government, charter and enact charter revisions;
- 2. Functional – power to exercise powers of local self government; day to day functions of government; sometimes qualified as "broad functional" or "limited functional" home rule with varying degrees of autonomy;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



## Do I Live in a Home Rule State?

- 40 States are considered "Dillon's Rule"  
(31 States true Dillon's Rule – 9 States Blended)
- 10 States are considered true "Home Rule"

Alaska  
Iowa  
Massachusetts  
Montana  
New Jersey  
New Mexico  
Ohio  
Oregon  
South Carolina  
Utah



## Nevada = Dillon's Rule

- The *Constitution of the State of Nevada*, in Section 8 of Article 8, 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 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).
- However, there are no express constitutional or statutory provisions in Nevada relating to home rule authority for county or local governments and so Nevada is considered a 'Non-Home Rule' or 'Dillon's Rule' state.
- Nevada courts have also adhered to the Dillon's Rule approach. See Ronnow v. City of Las Vegas, 57 Nev. 332, 342-43 (1937) (case centered on whether the City could build a power plant)



## IV. Arguments for Home Rule

- Critics of Dillon's Rule have argued that it imposes unreasonable constraints on the ability of communities to govern themselves and so undermines democracy, and even that local self-government is a matter of natural right that does not need to be conferred by higher political structures.
- Under 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.

## Arguments for Home Rule Cont..

- 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.
- Finally, many have argued that the legislative process amounts to a 2-year delay, a local government could consider pressing issues in a more timely fashion. The Nevada Legislature meets every other year, whereas local governments confer and debate the issues of importance to the community on a semi-weekly basis.



## Arguments for Dillon's Rule

- 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.
- 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. It has been argued that some state legislatures feel that Dillon's Rule results in a more efficient and fair governance.
- Dillon's Rule also allows a legislature 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.

## Arguments for Dillon's Rule Cont..

- Some believe Dillon's Rule benefits local government officials by allowing them to use the rule as a political shield. For instance, the citizens may not want increased taxes, but the taxes are necessary for the continued provision of critical services (schools, roads, services, etc.). Under Dillon's Rule, it would be up to the State Legislature to impose such tax policy.
- Some suggest that state governments 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.



## V. HISTORY OF HOME RULE DEBATE IN NEVADA

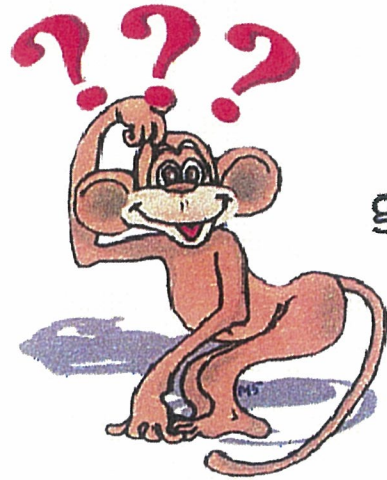
- 1951/1963 -- Interim Legislative Studies
- 2003/2005/2007 -- Legislation to abolish Dillon's Rule introduced
- 2009 -- SB 264 Interim Study

## VI. POSSIBLE APPROACHES TO ESTABLISHING HOME RULE

- I. Legislation (amending NRS) abolishing Dillon's Rule
- II. Partial legislation establishing pieces of home rule or local government authority
- III. Amendment to the Nevada Constitution
  - a. Statewide Ballot Initiative (Must pass twice)
  - b. Legislation Passed Twice (Then vote of the People)



## VII. QUESTIONS



Questions  
are  
guaranteed in  
life;  
Answers  
aren't.