HOME RULE in MASSACHUSETTS

Whose Really in Charge ??

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Overview of Presentation

- Home Rule, and the Home Rule Amendment
- How is Home Rule relevant to your world as a municipal official??
- A Look at the Home Rule Amendment, Article 89 of the Massachusetts Constitution;
  and, the Home Rule Procedures Act – G.L. c. 43B
- Home Rule War Stories
We all understand working in municipal government has its challenges
“There is someone out front with a question...”
ONE POSSIBLE APPROACH …

“Your question/suggestion may implicate prohibitions under the Home Rule Amendment … I will need time to review this carefully…”
In the beginning …

- The Dillon Rule made clear that State Government was the supreme ruler ….

- 1907 Supreme Court case - *Hunter v. City of Pittsburgh* - 207 U.S. 161, 178-79

- “Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them . . . The state, therefore, at its pleasure, may modify or withdraw all such powers, … unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation . . . *In all these respects the state is supreme.*”
Let's take a look at 1963 …

- States Rule … Right?
- In Massachusetts, this meant the legislature was addressing innumerable special acts in response to local concerns
Ch 190 of the Acts of 1963

Chap. 190.

AN ACT AUTHORIZING CITIES AND TOWNS TO PURCHASE STORMY WEATHER WORK CLOTHES AND RUBBER BOOTS FOR CERTAIN EMPLOYEES.

Be it enacted, etc., as follows:

Chapter 40 of the General Laws is hereby amended by inserting after section 61 the following section:

Section 6J. A city or town which accepts this section may appropriate money for the purchase of stormy weather work clothes, including rubber boots, for laborers and other members of its public works department or other department performing like services.

Approved April 1, 1963.
What else was the Legislature addressing in 1963??
Beginning in 1963, in direct response to the volume of bills “related to the affairs of cities and towns,” the legislature begins work on Home Rule legislation.

Once passed, submitted to the electorate and passed on November 8, 1966, effective in 1967.

Governor Volpe voiced concern that absent law “setting forth in greater detail the procedures to be followed, there will be much confusion” implementing the legislation.

This concern resulted in the implementation of G.L. c 43B, known as the Home Rule Procedures Act – setting out the specific processes to follow at the municipal level.
"[i]t is the intention of this article 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 provisions of this article and to such standards and requirements as the general court may establish by law in accordance with the provisions of this article."
What did the Home Rule Amendment change??

Home Rule took state sovereign power, and essentially shared it in three key areas:

2. Granted a general legislative power.
3. Established a doctrine of “Fair Play” between municipalities on the one hand, and the legislature/governor on the other, relative to the state’s retained powers.
Change is not always an easy thing
(Recall Governor Volpe’s prescient concern)

Brings with it complications both anticipated and unanticipated …
G.L. c. 43B

- So-called Home Rule Procedures Act
- Sets forth the “rules of the road” when a city or town seeks to exercise its Home Rule powers
- Important to be aware of its existence, and be sure to review before undertaking things like charter change, going from 2 to 4 year terms for elected officials, etc.
- When it doubt, check it out …
Charter-Making Authority

Section 2 of the Home Rule Amendment, provides:

"[a]ny city or town . . . [has] the power to adopt or revise a charter or to amend its existing charter . . . [the provisions of which] shall not be inconsistent with the constitution or any laws enacted by the general court in conformity with the powers reserved to the general court by section eight."

The only other limitations imposed by Section 2 are that no town of fewer than 12,000 inhabitants shall adopt a city form of government, and no town of fewer than 6,000 inhabitants shall adopt a representative town meeting form of government.

-- Any city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court in conformity with powers reserved to the general court by section eight, and which is not denied, either expressly or by clear implication, to the city or town by its charter. This section shall apply to every city and town, whether or not it has adopted a charter pursuant to section three.
Section 8. Powers of the General Court. -- The general court shall have the power to act in relation to cities and towns, but only by general laws which apply alike to all cities, or to all towns, or to all cities and towns, or to a class of not fewer than two, and by special laws enacted (1) on petition filed or approved by the voters of a city or town, or the mayor and city council, or other legislative body, of a city, or the town meeting of a town, with respect to a law relating to that city or town; (2) by a two-thirds vote of each branch of the general court following a recommendation by the governor; (3) to erect and constitute metropolitan or regional entities …,
Article 89, Section 6 enables cities and towns to exercise their home rule power only to the extent their actions are “not inconsistent with the [state] constitution or [the] laws”
What did the Home Rule Amendment Retain??

- One of the few sections of Article 89 that is easy for everyone to follow, not-so-coincidentally, is the list of things that municipalities still could not do – six specific limitations on local powers set out in Section 7 of the Article
Section 7 Limitations

Section 7. Limitations on Local Powers  Nothing in this article shall be deemed to grant to any city or town the power to:

- regulate elections other than those prescribed by sections three and four;
- to levy, assess and collect taxes;
- to borrow money or pledge the credit of the city or town;
- to dispose of park land;
- to enact private or civil law governing civil relationship except as an incident to an exercise of an independent municipal power; or
- to define and provide for the punishment of a felony or to impose imprisonment as a punishment for any violation of law.
Never an acceptable response ...
“Your question/suggestion may implicate prohibitions under the Home Rule Amendment ... I will need time to review this carefully...”