

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

ACTS, 1963. — CHAPS. 189, 190, 191, 192. 113

SECTION 24. Section 1 — 201 of said chapter 106 is hereby amended by striking out subsection (4), as so appearing, and inserting in place thereof the following subsection: —

(4) "Bank" means any person engaged in the business of banking.
Approved April 1, 1963.

Chap. 189. AN ACT AUTHORIZING THE TOWN OF NAHANT TO ESTABLISH A SCHEDULE OF FINES FOR CERTAIN PARKING VIOLATIONS COMMITTED DURING CERTAIN MONTHS IN THE YEAR NINETEEN HUNDRED AND SIXTY-THREE.

Be it enacted, etc., as follows:

Notwithstanding any contrary provision of law, the selectmen of the town of Nahant may establish by regulation a schedule of fines for offenses subject to section twenty A of chapter ninety of the General Laws and committed in said town during July, August and September in the year nineteen hundred and sixty-three; provided, however, that said town shall not establish any fine for any such offense which shall exceed five dollars.
Approved April 1, 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 6 I 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.

Chap. 191. AN ACT TO CLARIFY DESIGNATION OF APPOINTEES TO THE STATE BOARD OF EXAMINERS OF PLUMBERS.

Be it enacted, etc., as follows:

The first paragraph of section 36 of chapter 13 of the General Laws is hereby amended by adding at the end the following sentence: — When making an appointment to the board, the governor shall designate the appointee as the master plumber, sanitary engineer, or journeyman plumber member of the board.
Approved April 1, 1963.

Chap. 192. AN ACT INCREASING THE SUM OF MONEY WHICH THE TOWN OF MAYNARD IS AUTHORIZED TO PAY TO THE TRUSTEE OF CONSOLIDATED HOMES CORPORATION.

Be it enacted, etc., as follows:

SECTION 1. Chapter 713 of the acts of 1962 is hereby amended by striking out, in line 3, the word "twenty-two" and inserting in place thereof the word: — twenty-five.

Ch 190 of the Acts of 1963

ACTS, 1963. — CHAPS. 189, 190, 191, 192. 113

SECTION 24. Section 1 — 201 of said chapter 106 is hereby amended by striking out subsection (4), as so appearing, and inserting in place thereof the following subsection: —

(4) "Bank" means any person engaged in the business of banking.
Approved April 1, 1963.

Chap. 189. AN ACT AUTHORIZING THE TOWN OF NAHANT TO ESTABLISH A SCHEDULE OF FINES FOR CERTAIN PARKING VIOLATIONS COMMITTED DURING CERTAIN MONTHS IN THE YEAR NINETEEN HUNDRED AND SIXTY-THREE.

Be it enacted, etc., as follows:

Notwithstanding any contrary provision of law, the selectmen of the town of Nahant may establish by regulation a schedule of fines for offenses subject to section twenty A of chapter ninety of the General Laws and committed in said town during July, August and September in the year nineteen hundred and sixty-three; provided, however, that said town shall not establish any fine for any such offense which shall exceed five dollars.
Approved April 1, 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 6 I 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.

Chap. 191. AN ACT TO CLARIFY DESIGNATION OF APPOINTEES TO THE STATE BOARD OF EXAMINERS OF PLUMBERS.

Be it enacted, etc., as follows:

The first paragraph of section 36 of chapter 13 of the General Laws is hereby amended by adding at the end the following sentence: —
When making an appointment to the board, the governor shall designate the appointee as the master plumber, sanitary engineer, or journeyman plumber member of the board.
Approved April 1, 1963.

Chap. 192. AN ACT INCREASING THE SUM OF MONEY WHICH THE TOWN OF MAYNARD IS AUTHORIZED TO PAY TO THE TRUSTEE OF CONSOLIDATED HOMES CORPORATION.

Be it enacted, etc., as follows:

SECTION 1. Chapter 713 of the acts of 1962 is hereby amended by striking out, in line 3, the word "twenty-two" and inserting in place thereof the word: — twenty-five.

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 ??????

ACTS, 1963. — CHAP. 839.

819

section seventeen; provided, however, that if there is an addition to the quota of such licenses in said city, under said section seventeen because of an increase in population in said city, then said license shall be included in such new quota. *Approved November 16, 1963.*

THE COMMONWEALTH OF MASSACHUSETTS,
EXECUTIVE DEPARTMENT, STATE HOUSE,
BOSTON, November 16, 1963.

The Honorable KEVIN H. WHITE, *Secretary of the Commonwealth, State House, Boston, Massachusetts.*

DEAR MR. SECRETARY: — I, Endicott Peabody, pursuant to the provisions of Article XLVIII of the Amendments to the Constitution, the Referendum II, Emergency Measures, hereby declare in my opinion the immediate preservation of the public convenience requires that the law being Chapter 838 of the Acts of 1963 entitled "An Act Authorizing the Issuance of An Alcoholic Beverages License to the Valladolid Building Association of Lynn, Mass." and the enactment of which received my approval on November 16, 1963, should take effect forthwith.

I further declare that in my opinion said law is an emergency law and the facts constituting the emergency are as follows:

Postponement of the operation of this act for ninety days would defeat its purpose inasmuch as in order that the license may be applied for prior to and may be issued January 1, 1964, this act should become effective at once.

Sincerely,

ENDICOTT PEABODY,
Governor of the Commonwealth.

OFFICE OF THE SECRETARY, BOSTON, November 16, 1963.

I, Kevin H. White, Secretary of the Commonwealth, hereby certify that the accompanying statement was filed in this office by His Excellency the Governor of the Commonwealth of Massachusetts at five o'clock and five minutes, P.M., on the above date, and in accordance with Article Forty-eight of the Amendments to the Constitution said chapter takes effect forthwith, being chapter eight hundred and thirty-eight of the acts of nineteen hundred and sixty-three.

KEVIN H. WHITE,
Secretary of the Commonwealth.

Chap. 839. AN ACT AUTHORIZING THE TOWN OF WEYMOUTH TO PAY A SUM OF MONEY TO FRANCIS A. GUNN.

Be it enacted, etc., as follows:

SECTION 1. For the purpose of discharging a moral obligation the town of Weymouth is hereby authorized to appropriate and pay to Francis A. Gunn, a retired assessor of said town, the sum of two thousand one hundred and thirty-eight dollars and sixty-four cents which is the additional sum he would have received if he had retired at age sixty-five instead of at age seventy, as he did in reliance upon the erroneous advice of an official of said town and in the mistaken belief that the amount of his retirement allowance would be increased thereby.

SECTION 2. This act shall take effect upon its passage.

Approved November 16, 1963.

Chap. 839. AN ACT AUTHORIZING THE TOWN OF WEYMOUTH TO PAY A SUM OF MONEY TO FRANCIS A. GUNN.

Be it enacted, etc., as follows:

SECTION 1. For the purpose of discharging a moral obligation the town of Weymouth is hereby authorized to appropriate and pay to ...

Approved November 16, 1963.

Something's got to give ...

- 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

Section 1 of the Home Rule Amendment...

"[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:

1. Granted Charter-Making authority.
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 in 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.

General Legislative Power

Section 6. Governmental Powers of Cities and Towns.

-- 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.

Fair Play Doctrine

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 ...,

Section 6 Limitation

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...”