

My View: The myth of home rule

My View | Jack Clarke | Feb 28, 2024

I was in my 20s when first elected to public office. It was to my town charter commission where I was selected chairperson. A charter is like a local constitution with organizing principles of self-governance. We had none. and so, our community had to rely on the General Laws of the Commonwealth and special legislation to govern ourselves. Thus, my education on home rule began — the learning curve was steep.

I had at the time, as many do today, a misunderstanding of the term.

I thought that because we were settled years before incorporation of the Commonwealth of Massachusetts, and as strong, sturdy, and independent-minded New Englanders with a long history of free and open democratic town meetings, that we could basically do whatever we wanted without any state interference. Boy, was I wrong.

Little did I realize that we were beholden to the authority of the Commonwealth from which limited powers had been granted to each of its 351 underlings, known as subdivisions.

How could that be? Weren't there any laws on self-governance, self-determination, and local independence? As chairman, it was incumbent on me to do some research.

I soon came across a U.S. Supreme Court case from 1907 that seemed to clarify the concept of home rule.

In its determination, SCOTUS ruled that: “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.”

Oh, great. So that was it? What about Massachusetts?

Beacon Hill was late to respond as usual. It was almost six decades later that state lawmakers finally addressed the idea of giving a little home rule authority to the locals.

It was accomplished by amending the state Constitution, in 1966, to “grant and confirm to the people of every city and town the right of self-governance in local matters.”

The amendment, No. 89, and clarified that same year with a statute known as the Home Rule Procedures Act, basically did three things:

First, it provided cities and towns with the authority to organize themselves under a local charter.

Second, it authorized municipalities the right to petition the state legislature for special acts relevant only to themselves. and

Third, it granted limited home rule authority to municipalities.

The term home rule, as used in Massachusetts, refers to all three of these above features.

Even though these elements of home rule invoke the same term, they play dramatically differing roles in shaping the organization, and practice of municipal governance, and in the perceptions of the degree of local power.

The third authority is most relevant to our discussion today.

Absent approval from Beacon Hill, municipalities cannot: (1) regulate elections; (2) levy, assess and collect taxes; (3) borrow money or pledge their credit; (4) dispose of park land; (5) enact private or civil law governing civil relationships except as incidental to an exercise of municipal power; or (6) define and provide for the punishment of a felony.

I also came across a 1979 Massachusetts Supreme Judicial Court case that focused on the zoning powers granted to municipalities by the Home Rule Amendment. The justices said that the Legislature has retained “supreme power in zoning matters,” as long as it acts in accordance with the Home Rule Amendment.

So, what can cities and towns do? Anything they want, including adopting local ordinances, by laws, and regulations so long as their actions are not inconsistent with the state Constitution and General Laws of the Commonwealth.

Cities and towns can organize and govern themselves, but they have no real authority to act other than in ways provided for by the Constitution and state Legislature.

Municipalities are creatures of the state. They are on a leash, a very short and strong state tether — and Beacon Hill has always aimed to keep it so.

For many, the term home rule often refers to the general concept of local autonomy. However, the Home Rule Amendment to the Massachusetts Constitution allows the state to overrule any local decision on any matter, at any time if it so determines that it is improper.

There is, then, no real home rule if by home rule we mean the ability to determine local policy without state control.

And if we don't like how the home rule game is played here in the Bay State, there is always the option to further amend the state Constitution and grant cities and towns more authority to manage their own affairs.

Jack Clarke is a Gloucester resident and frequent contributor to the Gloucester Daily Times.

https://www.gloucestertimes.com/opinion/editorials/my-view-the-myth-of-home-rule/article_081f2094-d65d-11ee-a870-ffd917a6856f.html