

Issue: Dillon Rule in Virginia

The Dillon Rule in Virginia

What is the Dillon Rule?

Every state has two options for how to distribute powers between the state legislature and local governments in towns, cities, and counties: Home Rule, which in principle allows local jurisdictions freedom from state interference, and the Dillon Rule, which does not. In practice, however, state legislatures in Home Rule states can choose to squelch local jurisdictions' independent law-making authority without any help from the Dillon Rule.

The Dillon Rule, which takes its name from John Forrest Dillon, a chief justice of the Iowa Supreme Court in the 1860's, establishes — through case law and not the state constitution or the state legislature — that all law-making power resides in state government and that local jurisdictions have no such inherent power or authority. Virginia is a Dillon Rule state.

Under the Dillon Rule, authority flows from the state in allowing a local jurisdiction to make laws or regulations.¹ Specifically, a local jurisdiction can exercise only those powers (i) expressly granted by the state; (ii) fairly implied in or incident to the powers expressly granted; or (iii) essential to the declared object or purpose of the document that formally organized the local jurisdiction. Any doubt as to the application of these principles is resolved *against* the authority of the local jurisdiction.² Under home rule, local jurisdictions have the authority to make policy decisions unless the state has specifically limited the local jurisdiction's authority in connection with a specific policy matter. States can also choose to use a combination of the two rules.

The Virginia Supreme Court set a precedent for the Dillon Rule in Virginia in the case of *City of Winchester v. Redmond* in 1896, in which the court ruled that the city had no power to pay a reward for information leading to identification of an arsonist. Since that decision, Virginia courts have consistently applied the Dillon Rule in determining the authority of local jurisdictions.³

Notwithstanding Virginia's embrace of the Dillon Rule, a 1981 ranking done by the U.S. Advisory Commission on Intergovernmental Relations placed Virginia 8th among the 50 states in the amount of autonomy possessed by local governments.⁴

Dillon Rule and home-rule states mirror each other in the process by which a local government determines whether it can act with authority on a given matter. In a Dillon Rule state, the question turns on whether the state legislature already permits that exercise of authority and on the language by which that permission was adopted and on whether it is interpreted broadly or narrowly. In a home-rule state, the authority to act is a matter of whether the state legislature prohibits that exercise of authority.

As an example, under the Dillon Rule, in 2015, officials from the Virginia town of Herndon asked the General Assembly for permission to move its town council elections from May to November to increase voter turnout. Such a change had been done in Manassas in 2014 with the approval of the General Assembly and led to the unusual result of a Democrat being elected to the city council. The Assembly refused Herndon, which then enacted its own ordinance to move the election. The change to the city's charter required the approval of the General Assembly and the state Senate, both of which approved the change by large majorities in 2017.⁵

What Effect Has the Dillon Rule Had in Virginia?

Notwithstanding the powers granted to local jurisdictions by the Virginia legislature, application of the Dillon Rule in Virginia has often frustrated local policy-making efforts. Proper implementation of a local policy consistent with the Dillon Rule requires a two-step analysis. First, the power sought by the local jurisdiction must fall within one of the three tests mentioned above (in the third paragraph), and second, even after having satisfied one of those tests, the local jurisdiction must choose a method of exercising the authority that is consistent with statutory authorization. That is to say, even when statutory authority from the state is available to a local jurisdiction, it must choose a manner of implementing that authority (for example, a tax or user fee; a zoning change or plan amendment) consistent with the statutory provision.⁶

There is no shortage of examples of the application of the Dillon Rule in Virginia that frustrate local jurisdictions:

- Following the US Supreme Court decision in *Brown v. Board of Education* in 1954, the governor and General Assembly created a process to control local efforts to desegregate schools by requiring the closure of any school at risk of being integrated. Any effort by any local school board to comply with the Supreme Court's decision was fruitless.
- Local governments have been found not to have the power to restrict rezoning of land, to expand the definition of "family" to include same-sex couples for health insurance purposes, or to require operators proposing a uranium mine to compensate adjacent property owners for impact on property values.
- Arlington County needed a special law passed by the General Assembly to hire an independent auditor as a county employee.
- The Dillon Rule played a significant role in the battle between the General Assembly and various localities over the removal of Confederate monuments and statues.
- In a long-running disagreement beginning in 1986, the General Assembly has prevented school districts from starting school before Labor Day without a special waiver, with the dispute finally ending in 2019 when the restriction was lifted.⁷

While non-partisan in nature, the Dillon Rule can become, and has been used as, a partisan tool when one political party controls the General Assembly and is able to frustrate the local efforts of the other political party.

Can the Dillon Rule be Changed or Eliminated?

In Virginia, the Dillon Rule is a creature of state court decisions, being neither a part of the state constitution nor a state law. It is a matter of judicial philosophy adopted by the courts in Virginia and consistently applied for nearly 125 years. It is certainly subject to interpretation in specific cases but has been applied more or less strictly by the courts over the years. Without some compelling, even overwhelming, reason, it is unrealistic to expect the courts in Virginia to rethink the Dillon Rule and reject 125 years of jurisprudence in favor of a new judicial philosophy involving home rule.

The Dillon Rule can be changed by amending the Virginia constitution to specifically provide for home rule, and in 1969 a commission addressing possible revisions to the Virginia constitution recommended that approach. The General Assembly rejected that recommendation.⁸

Expecting the General Assembly to relinquish its power under the Dillon Rule and switch entirely to home rule is unlikely. The General Assembly can address specific frustrations by explicitly delegating to local jurisdictions the power to make policy in specific areas, such as zoning and land use issues, public school decisions and the like that are the subject of current controversies. The recognition by the General Assembly that certain local issues are best addressed locally and that localities will vary in their approaches to those issues (in effect, adopting home rule in agreed-upon policy areas) can reduce the number and magnitude of arguments involving the Dillon Rule.

¹ <http://www.virginiaplaces.org/government/dillon.html>

² <http://www.patobannon.com/frequently-asked-questions/what-is-the-dillon-rule>

³ Ibid, www.virginiaplaces.org/government/dillon.html

⁴ “The Dillon Rule in Virginia: What’s Broken? What Needs to be Fixed?”; University of Virginia Newsletter; Vol.68, No.7, July/August 1992;

https://vig.coopercenter.org/sites/vig/files/Virginia_News_Letter_1992_Vol._68_No._7.pdf

⁵ <https://lis.virginia.gov/cgi-bin/legp604.exe?l71+sum+SB1084>

⁶ “The Dillon Rule and Sea Level Rise: An Analysis of the Impact of the Dillon Rule on Potential Adaption Measures the City of Poquoson May Implement”; Virginia Coastal Policy Clinic at William & Mary Law School; White Paper No. 9; Spring 2013;

<https://law.wm.edu/academics/programs/jd/electives/clinics/vacoastal/documents/march2014reports/dillonrulesealevel.pdf>

⁷ Examples taken from document in endnote 1

⁸ Ibid, www.virginiaplaces.org/government/dillon.html