

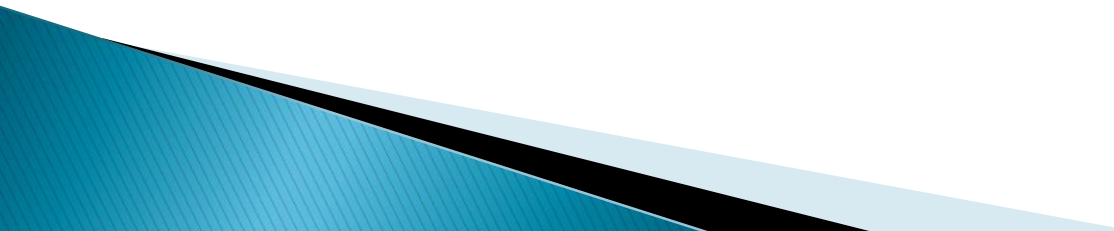
Local Government of the Future Subcommittee ACIR

Presentation

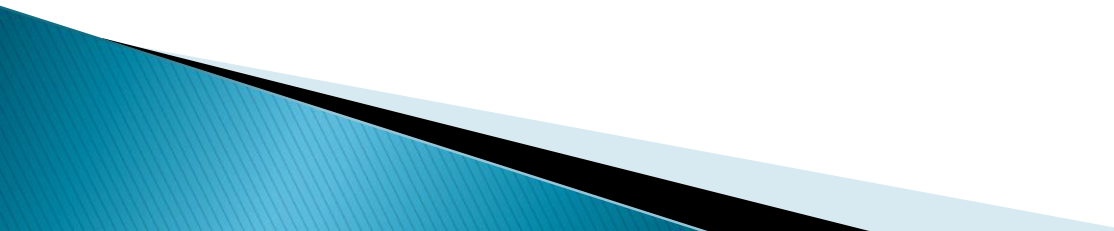
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31 August 2021

“Home Rule” is a Misnomer

- ▶ “Home Rule” is a term that seems self-evident on its face.
 - ▶ It frequently means different things to different people.
 - ▶ Some believe the words invoke a degree of “local authority,” “local control” or, even, sovereignty.
 - ▶ The words are not what they appear: a misnomer rife with ambiguity and misunderstanding.
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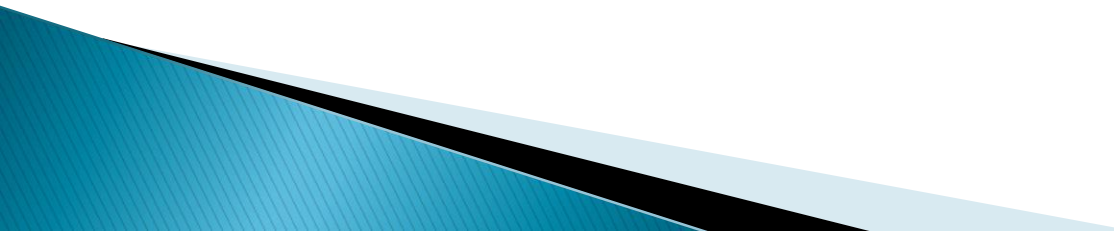
Why is this the case?

- ▶ It is the objective of this brief analysis to come up with a simple, direct, readable, and understandable definition of “home rule.”
 - ▶ Not an easy task; yet, if we want to build a foundation for thriving municipalities in the 21st century it makes great sense to understand how two simple words have been misconstrued.
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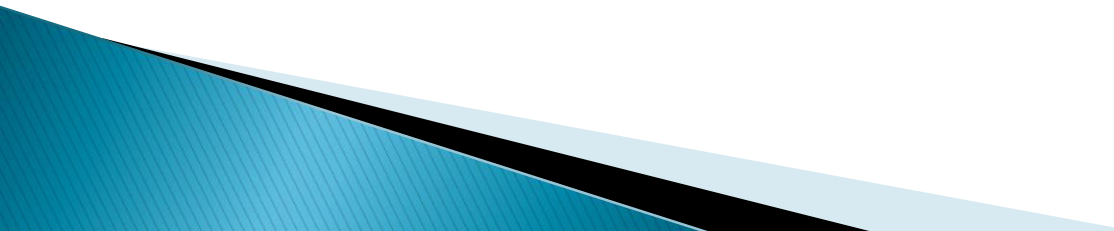
Dillon's Rule

- ▶ Connecticut's form of home rule traces its roots to several judicial decisions in the post-Civil War era that molded the controlling legal maxim known as "Dillon's Rule."
- ▶ The rule holds that a municipal corporation can exercise only the powers:
 - Explicitly granted to them;
 - Necessarily or fairly implied in or incident to the powers expressly granted; and,
 - Essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable

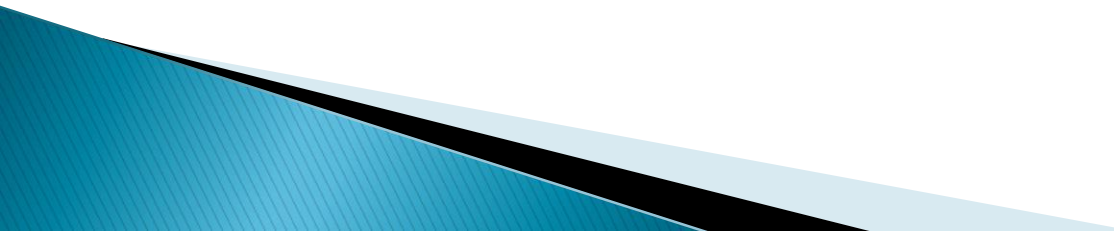
Local governments have no inherent legal or sovereign authority.

- ▶ Dillon's Rule was validated and nationalized by the U.S. Supreme Court in the first quarter of the 20th century.
 - ▶ The Supreme Court recently commented on the rule and the issue of local government legal authority by asserting that “all sovereign authority” in the United States resides with either the federal or state governments: “There exist within the broad domain of sovereignty but these two.”
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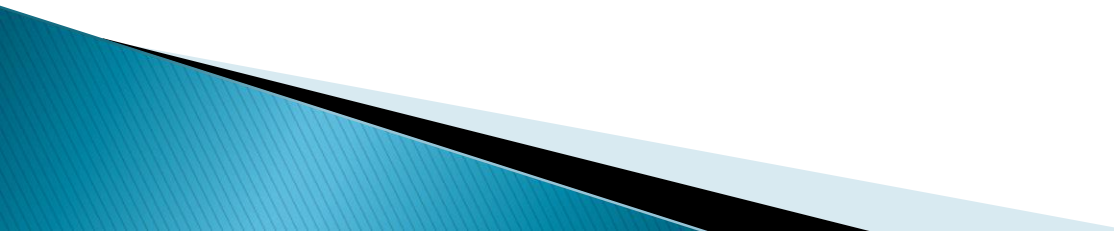
Constitution of 1818

- ▶ The Constitution of 1818 was silent on “home rule” and there was barely any mention of local government in that document.
 - ▶ The notion of limited municipal authority was repeatedly addressed by our courts in the 19th century.
 - ▶ Up to and including 1957 the General Assembly made the rules for local governance by enacting Special Acts.
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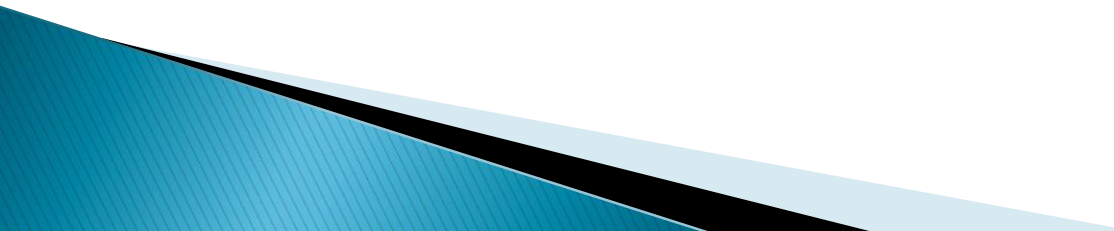
The Home Rule Act of 1957

- ▶ After 1957, the General Assembly curtailed the Special Act regimen for local governance by adopting the Home Rule Act which allowed any municipality to write, adopt, and, as desired, amend, its own charter and to conduct municipal business within the scope of powers granted by the legislature.
 - ▶ Municipal authority is primarily found in Title 7 of the General Statutes, although additional “explicit” or “express” grants of authority can be found throughout our codified state laws.
 - ▶ Once again, this legislative framework confirmed the notion that municipalities are “creations of the state” or “creatures of the state” by affirming that municipalities had no inherent power to modify legislative acts; or any “inherent legislative authority” whatsoever.
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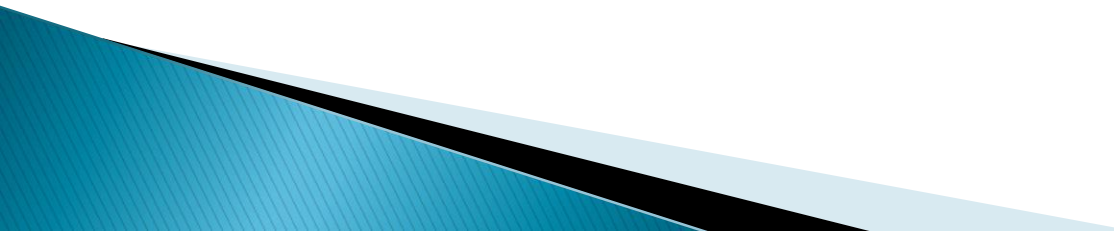
Purpose of the Home Rule Act

- ▶ To relieve the General Assembly of the burdensome task of handling and enacting special legislation of local municipal concern; and
 - ▶ To enable a municipality to draft and adopt a home rule charter “which shall constitute the organic law of the city, superseding its existing charter and any inconsistent special acts.”
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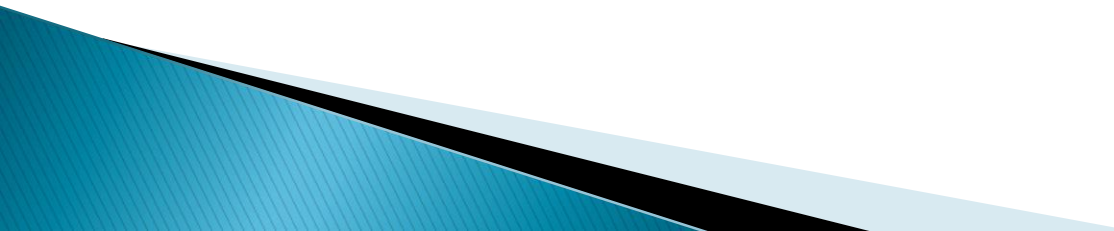
Constitution of 1965

- ▶ Our conception of “home rule” was fully constitutionalized in 1965 with the adoption of Article Tenth of the 1965 Constitution, entitled “Of Home Rule.”
 - ▶ The Constitution now permits the General Assembly “by general law” to delegate to municipalities “such legislative authority as from time to time it deems appropriate...relative to the powers, organization, and form of government of such political subdivisions.”
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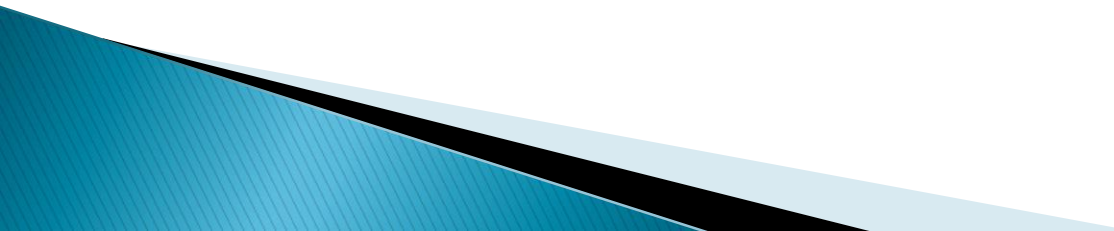
However...

- ▶ Under Article Tenth, the legislature retained a more limited use of “special legislation” with respect to “...the powers, organization, terms of elective offices or form of government of any single” municipality as well as the ability of the General Assembly to address (a) borrowing power, (b) validating acts, and (c) formation, consolidation or dissolution of any town, city or borough.”
 - ▶ The 1965 Constitution also reserved the right of the General Assembly to adopt Special Acts if “in the delegation of legislative authority by general law the general assembly shall have failed to prescribe the powers necessary to effect the purpose of such special legislation.”
 - ▶ Thus, under the 1965 Constitution municipalities conduct their business within a limited and circumscribed delegation of authority.
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An Artifice or Construct

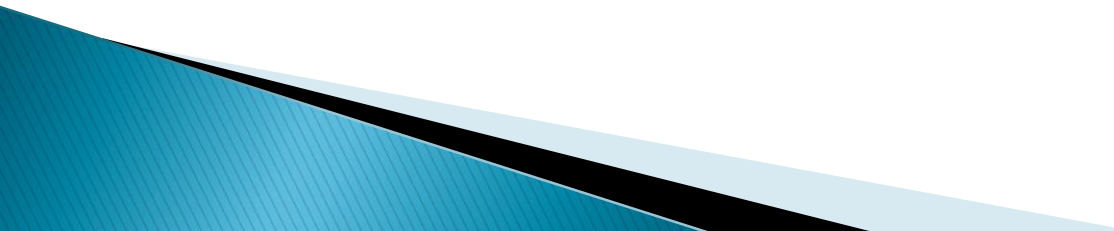
- ▶ Connecticut “home rule” is an artifice or construct for the orderly operation of local government under the superior constitutional and legislative authority of the state.
 - ▶ Connecticut local governments have no inherent authority for self-government because the capacity for governance is derived entirely from the authority of the state.
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Silence Is Not Authority


- ▶ In the last analysis the question for municipal decision-makers is not whether there is “a statutory prohibition against (an) enactment” but whether there is “statutory authority for the enactment”.
 - ▶ In other words, when it comes to the governance of municipalities, silence is not authority.
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Creatures of the State

- ▶ As if sprung full from a gothic novel by Mary Shelley.
 - ▶ This idea is reinforced when you read the words of her 19th century contemporary, Judge Dillon, when he opined that state legislatures:

“breathe into them (municipalities) the breath of life, without which they cannot exist. As it so creates, so it may destroy.”
 - ▶ That just about sums it up.
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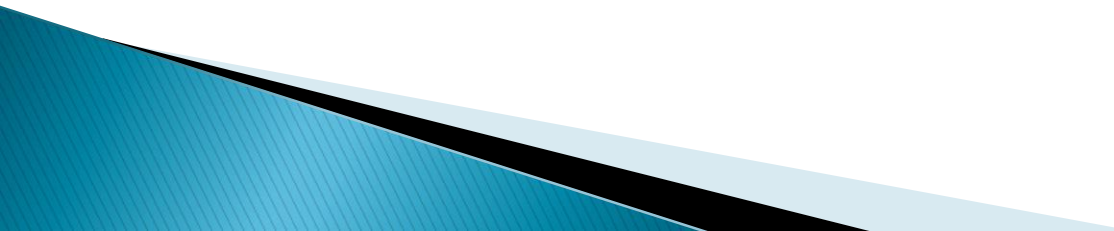
Express Grants of Authority: Structure

- ▶ Connecticut municipal governments are authorized only to conduct their affairs when “expressly granted” the right to do so by the General Assembly.
 - ▶ This covers the range of government activities starting with the ability to address the “structure” of government; that is, the power to choose the form of government, a municipal charter and to enact charter revisions.
 - ▶ Paradoxically, this power is one most clearly conferred yet infrequently exercised.
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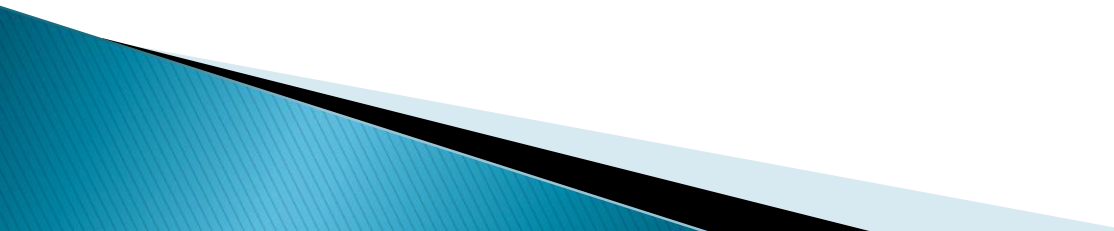
Express Grants of Authority: Functions

- ▶ The reach of Title 7 and other statutes also impacts the government and how local officials exercise the authority granted to them on the “functional” issues of management operations of government.
- ▶ Often there is an ambiguity as to whether a Mayor or own Manager act in a certain way.
- ▶ If the grant of authority is not directly on point, the question usually comes down to whether a local official or their legal advisor can construe a function or power “necessarily or fairly implied in or incident to” the express grant of authority.

Express Grants of Authority: Fiscal

- ▶ The issue of constricted authority is also present on matters of “fiscal” authority; that is, the ability to set its budget and tax rates.
 - ▶ Questions of municipal authority can arise with respect to compliance with laws that govern the borrowing of funds or state mandates (funded or unfunded).
 - ▶ The simple fact that the state sets the rules on what can be taxed or collected is likewise a major factor.
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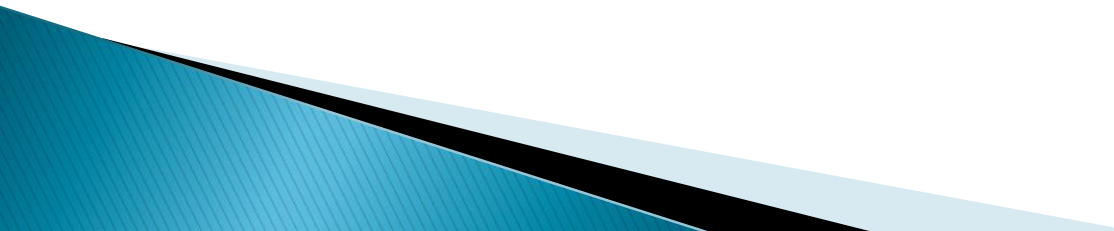
Express Grants of Authority: Personnel

- ▶ Issues of constricted authority involving “personnel” whose job is to administer the affairs of local government.
 - ▶ Title 7 comes into play. The Municipal Employee Relations Act (“MERA”) occupies the field by narrowing the ability of municipalities to set employment rules, remuneration rates, employment conditions and collective bargaining.
 - ▶ MERA also impacts on the processes of collective bargaining as well as the mediation and arbitration of disputes.
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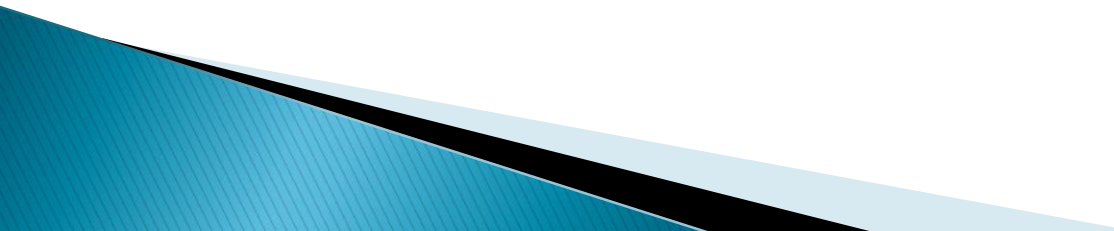
Control and Authority: A Conundrum

- ▶ It is evident that one can have local control with limited authority.
 - For example, a municipal police department is responsible for the prevention and suppression of crime; yet a municipality has no legal authority to control firearms within its geographic limits.
- ▶ Conversely, a municipality can have authority yet limited control.
 - A Mayor is legally authorized to represent the municipality and the legislative body is responsible for approving agreements in the collective bargaining process.
 - Yet, if the agreement is not reached or there is a dispute about the interpretation of a provision, local control is ceded to an arbitration system that controls the final decisions on behalf of the parties involved with virtually no public input, involvement or control.

Moving Forward

- ▶ The question for municipalities is how to reform Connecticut law, policy and/or practice to permit more flexibility or latitude in the operation of local government.
 - ▶ How do we give our municipalities, alone or in a compact with others, the ability to reach out and come up with more flexible governing structures that break away from the conventions of the current legal construct?
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What Path Do We Take?

- ▶ **Constitutional Reform?** Should policy-makers study other forms of “home rule” and seek constitutional reform? Just think of the panoply of unintended consequences of a constitutional convention.
 - ▶ **Statutory Reform?** Should state and local officials take a long hard look at Title 7 in order to create a balance and a blueprint for a digital, mobile and global century?
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Areas for Review

- ▶ Authority to Adopt Ordinances
 - ▶ The Role of Boards of Education: Local and Regional: Interactions, constraints and impact on local authority;
 - ▶ The Municipal Employee Relations Act. A system of legal constraints on local authority control from the negotiation and interpretation of collective bargaining agreements to management/employee interactions including grievances and discipline. Perhaps we should look at a model for reform: (a) creation of a Department of Public Health and Safety [consolidation of health, police, fire and safety inspection]; or, (b) inter-local service agreements; or, (c) uniform disciplinary systems.
 - ▶ Budget and Finance: Federal, state and other regulatory impacts.
 - ▶ Planning and Land Use: Federal and state relationships and impacts
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