Home Rule: A Fresh Start

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HOME RULE: A FRESH START

In November of 1963, the people of New York State adopted an amendment to article IX of the state constitution. Through this amendment and additional implementing legislation, a new home rule package was provided to redistribute some of the state governmental functions. Past provisions were adapted to changed conditions to provide a framework for the future development of more effective, local government. With these purposes in mind, this comment will attempt to analyze and discuss the new provisions, some of the grants of power and probable limitations.

THE DEVELOPMENT OF LOCAL SELF-GOVERNMENT

Home rule may be described as the desire for local autonomy in local matters. The object of home rule is to prevent legislative interference in local government, to permit local self-government and to provide adequate powers for the successful achievement of self-government. It is possible to trace its origins to the Magna Carta, and certainly to find its advocates in early American history.

The development of home rule in New York State may be studied in terms of the opposition it has met and, to some extent, overcome. Its two primary opponents have been the legislative and judicial branches of the state government. In its early development, home rule conflicted with the legislative predilection to check or control local units. This attitude stemmed from doubts concerning the ability of local units to solve their problems adequately. Furthermore, local governments were regarded as overly susceptible to political pressures

1. The new amendment requires the passage of a Statute of Local Governments, "... granting to local governments powers including but not limited to those of local legislation and administration in addition to the powers vested in them by this article." N.Y. Const. art. IX, § 2(b)(1) as amended (Supp. 1964). The Statute of Local Governments was enacted, N.Y. Sess. Laws 1964, ch. 205, and will take effect on July 1, 1965. In addition, the legislature has passed the Municipal Home Rule Law to implement the provisions of the new amendment. See New York State Office for Local Government, Analysis of the Municipal Home Rule Law, 35C N.Y. Consol. Laws XI (McKinney (Pamph.) 1964).


3. See, e.g., Blair, op. cit. supra note 2, at 21-26; Maddox, Fuquay, State And Local Government 1-11, 40-42 (1962); 1 McQuillin, op. cit. supra note 2, at 281-333; Richland, Constitutional City Home Rule In New York, 54 Colum. L. Rev. 311, 315-50 (1954); Weiner, op. cit. supra note 2, at 557-61. "[M]unicipal institutions constitute the strength of free nations. Town meetings are to liberty what primary schools are to science, they bring it within the people's reach. . . . A nation may establish a free government, but without municipal institutions it cannot have the spirit of liberty." 1 de Tocqueville, Democracy In America 61 (Bradley ed. 1953).

4. Richland, supra note 3, at 315-16.

5. Ibid. At various times, the executive branch has aided the cause of home rule by vetoing various special laws. "In many such instances the Governors even vetoed legislation relating to matters which have since become recognized as . . . 'matters of state concern.'" Id. at 319.
which were not always consonant with the best interests of the people of the area. Another less publicized reason was the legislature's desire for political control. By concentrating control of local governmental units in the state legislature, the dominant political party could affect or even control local politics. Related to the political purpose was and is the conflict which one commentator has called *New York City versus the rest of the state.* The dichotomy of interests is expressed by rural opposition to granting New York City, or any other large municipality, the powers felt to be so essential to its government. During most of this evolutionary period of home rule, the rural areas supported the dominant political party, while New York City was primarily affiliated with the minority party.

Although earlier measures had been adopted to check legislative action adversely affecting local units, the first weapon in the home rule "arsenal" did not appear until 1894. At the state constitutional convention that year, cities were provided with protection against special legislation by means of the *suspensive veto.* The amendment provided that laws relating to the property, affairs or government of cities be divided into general and special laws. Special city laws were those which applied to only one city or to less than all in a class. The amendment further required that such a special law be submitted, prior to its passage, to the mayor of the affected city for his approval or veto. Though limited, a mayor's veto of proposed legislation did provide some protection against adverse legislative encroachments. At this time, the judiciary came forward to protect the legislature's powers from any local limitation.

Cases arose in which various state laws were challenged as special laws which would have been subject to the *suspensive veto* and to re-passage by a
majority vote of the legislature if vetoed. The courts evaded these requirements by finding that such laws were of general application and not subject to restriction as special laws.\textsuperscript{12} Another method used to avoid the special law restriction was to find that the laws dealt with matters, such as health, which were within the scope of the state’s police power. In that case, “. . . the legislature is not hampered or restrained by the classification of cities in the constitution. It may adjust details to meet varying conditions.”\textsuperscript{13} While the courts continued in their restrictive interpretations of the meaning of special law, the legislature began to change its attitude toward local governments. Many special laws which would have certainly been upheld as general laws by the court, were submitted to the local units for approval.\textsuperscript{14}

When the home rule amendment of 1923 was adopted, it seemed to provide very generous home rule protection. This amendment defined special laws as those which were special in \textit{terms or effect},\textsuperscript{16} thus eliminating the judicial fiction that a law is a general law merely because it is not aimed at a specific city. Special laws could be enacted upon request of the governor, with a two-thirds vote of the legislature required for passage.\textsuperscript{16} The amendment also granted positive powers to cities, “. . . to adopt and amend local laws not inconsistent with the constitution and laws of the state, relating to . . .” nine specific subjects.\textsuperscript{17}

Secure in its new powers, New York City passed a local law to acquire a bus system for the city.\textsuperscript{18} The city’s power to enact such a local law was attacked and the Court of Appeals upheld the challenge.\textsuperscript{19} In its decision, the Court noted that cities were given legislative power in nine specified categories


\textsuperscript{13} People \textit{ex rel.} Einsfield v. Murray, 149 N.Y. 367, 44 N.E. 146 (1896).


\textsuperscript{15} N.Y. Const. art. XII, § 2 (1894) (amended 1923).

\textsuperscript{16} N.Y. Const. art. XII, § 3.

\textsuperscript{17} N.Y. Const. art. XII, § 3. The enumerated subjects are: matters relating to the officers and employees of a city, the transaction of its business, incurring obligations, matters relating to claims against a city, the hours of work and safety of employees of its contractors and subcontractors, matters relating to city streets and property, regulating the conduct of its inhabitants, and the protection of the property, safety and health of its inhabitants.

\textsuperscript{18} N.Y. City Local Laws 1925, Nos. 3, 4, 5 and 6.

\textsuperscript{19} Browne v. City of New York, 241 N.Y. 95, 149 N.E. 211 (1925).
COMMENTS

and not general powers over their property, affairs or government. The acquisition of a bus system was not one of the enumerated subjects and therefore was not considered a part of the general, police power grant. This decision pointed out a serious omission in the amendment which created a legislative no-man's land. The state could not legislate in the area of a particular city's property, affairs or government except on a governor's request with a two-thirds vote; otherwise it would have been an unconstitutional special law. A city could not enact laws upon a subject unless it was within one of the specified categories. This omission was cured in 1928 with the amendment of the City Home Rule Law. That statute granted cities the power to legislate in relation to their property, affairs or government as well as on the nine subjects specified in the constitution.

The following year, a divided Court of Appeals handed down the landmark home rule decision, Adler v. Deegan. A state multiple dwelling law was attacked as being unconstitutional as a special law in effect, since it applied only to cities with over 800,000 population. The law was intended to eliminate insanitary housing conditions in New York City tenements and was sorely needed. In upholding the law by finding that it was not within the restricted class of special laws, the majority opinion relied on pre-amendment (1923) cases construing the phrase "property, affairs or government." Apparently contravening the intent of the drafters of the amendment, the Court said that the old case law defining property, affairs or government should be carried forward and used in construing the amendment. Implicitly rejecting a rule of constitutional interpretation, the Court said, "When the people put these words in . . . the Constitution, they put them there with a Court of Appeals' definition, not that of Webster's dictionary." The decision was also based on the doctrine of state concern. According to this theory, the state's power was not to be restricted if the subject was of substantial state concern. No attempt was made to clarify that phrase but it was generally applied to cover subjects

20. Id. at 119-20, 149 N.E. at 218.
21. It has been suggested that this legislative void was the cause of the courts allowing many special laws to pass as general laws. They desired to have some legislative body fill the void. Richland, Constitutional City Home Rule In New York, 54 Colum. L. Rev. 311, 328 (1954).
usually included within the state's police power. Judge Cardozo’s concurring opinion in the Adler case indicated that local legislative action may be permitted in areas of mutual concern not dealt with by the state. However, once the state had legislated, local action was limited to some supplemental legislation. Though unable to define with precision the scope of local property, affairs or government, or to provide an adequate test for state concern, the Court was certain the multiple dwelling law was constitutional. As has been suggested, it seems that the great necessity for such a law coupled with the absence of support to achieve a two-thirds vote in the state legislature influenced the decision. The decision in Adler v. Deegan has, nevertheless, proved to be the source of home rule principles and of confusion in their interpretation.

A thorough study was made in anticipation of major changes in the home rule provisions at the Constitutional Convention in 1938. Although most of the proposed changes in the committee report were not drastic, the proposed restriction of the state’s power to act in matters of state concern, caused prolonged debate. Confusion arose as to the exact effect of the limitation. Some believed that the state’s police powers were limited by the prohibition of special laws. Others believed that the prohibition applied to special laws affecting the city in its identity as a governing body. “Not a member of the committee, nor, indeed, the convention came to the defense of the expanded home rule which the Committee bill provided.” After the bill was amended to allow state legislation for local units in matters not related to their property, affairs or government, the convention adopted it. The convention did provide a change in the emergency request procedure for special laws which required that the request come from the local unit and not from the governor. Another significant change was the fact that the general, legislative powers of cities over matters relating to their property, affairs or government was granted in the constitution for the first time. These general powers were previously granted in the City Home Rule Law and were subject to legislative restriction or elimination. The drafters assumed that the previously restrictive judicial interpretations would not continue, and that this would be an extensive grant of local power.

31. Id. at 600-02.
32. Id. at 602.
33. N.Y. Const. art. IX. § 11 (1938) (subsequently amended).
34. N.Y. Const. art. IX, § 12. This section also provided that cities, “...may repeal, supersede or modify any law which was enacted upon and which required... a message from the governor... insofar as such law relates to the property, affairs or government of such city. ...”
power. Although these changes were effected, it was clear that no one at the convention desired to change the state concern doctrine so as to limit the state's police powers. Since then, home rule has continued to gain support in the legislature but it has also continued to suffer at the hands of the judiciary.

Two major problems remain to plague home rule advocates in New York State. First, there is confusion in determining the scope of the phrase "local property, affairs and government." Secondly, state concern has remained a tenuous, constantly changing doctrine causing uncertainty on the part of local governments. The lack of local action in coping with most local problems; the restrictive judicial interpretations of local powers; the distrust and stifling paternalism of the state legislature, are each a result of our inability to apportion clearly the governmental function between state and local governments. Though subsequent cases have indicated some of the subjects to be included in local legislative power, and those retained by the state, this has not been an adequate solution. The new home rule amendment has provided a solution. Its effectiveness will depend on the efforts and understanding of local governments, the courts and the legislature.


MANDATE FOR A LIBERAL CONSTRUCTION

Some of the provisions in the new amendment are redeclarations of past provisions which have been well established.\(^{38}\) Given traditional canons of interpretation,\(^{39}\) these provisions will convey the same grants of power to and limitations upon local units and will probably receive similar judicial interpretation. However, imbedded in these same canons of interpretation is the principle that the use of different language or language of qualification, indicates an intention to change the former provisions.\(^{40}\) Under this principle, past interpretations must be abandoned and the courts should treat the redeclaration as a wholly new provision. With this in mind I would like to deal with a major change and qualification and discuss its effects.

**Dillon's Rule**

One of the most significant changes in article IX is the articulated change in policy or legislative intent as so ratified by the people. This change is evidenced by the abrogation of an old restrictive rule for construing home rule powers, Dillon's rule.\(^{41}\) That rule provided that local governments are creatures or agencies of the state,\(^{42}\) that they derive all of their powers from the state and that those powers should be narrowly construed against the local units. The amendment explicitly repudiates the Dillon rule by requiring that, "Rights, powers, privileges and immunities granted to local governments by this article should be liberally construed."\(^{43}\) In addition, there is an implicit repudiation of the restrictive rule in the statement of purpose,\(^{44}\) and in the choice of the

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38. It has been suggested that most of the provisions of the new amendment are merely redeclarations of past statutory, constitutional and case law provisions on home rule. For a table showing the derivation of many of the new provisions, see Grad, *The New York Home Rule Amendment—A Bill of Rights for Local Government?,* 14 A.B.A. Local Government Service Letter No. 6, p. 6 (June 1964).

39. It has generally been held that if a new amendment re-enacts a former provision of a constitution in the same words, it is presumed that the purpose was to continue the former provisions in uninterrupted operation. See, e.g., Allison v. Welde, 172 N.Y. 421, 431, 65 N.E. 263, 266 (1902); 2 N.Y. Consol. Laws, *Rules of Interpretation* 15 & n.63 (McKinney 1954).

40. "Where in a new constitution, an article relating to the same subject matter embraced in . . . the former constitution which has received judicial construction, is phrased in different language or qualified, it is presumed that the effect of the construction placed upon the former provision is intended to be avoided." Franklin Nat'l Bank of Long Island v. Clark, 26 Misc. 2d 724, 753, 212 N.Y.S. 2d 942, 954 (Sup. Ct. 1961) (emphasis added). See Matter of Smith, 90 Hun 568, 36 N.Y. Supp. 40 (1895); 2 McKinney, *op. cit. supra* note 39, at 16 & n.64.


43. N.Y. Const. art. IX, § 3(c) (1938) as amended (Supp. 1964).

44. N.Y. Const. art. IX, § 1.
title Bill of Rights for Local Governments. In keeping with the intent of the drafters, it is submitted that the title Bill of Rights for Local Governments indicates a desire to adopt all of the protection and legal reverence surrounding the Bill of Rights of our federal constitution. Little else remained to be done by the drafters to indicate their intent to all who would interpret the article. Continued restrictive interpretations of powers and immunities granted by the amendment would clearly contravene its purpose.

State Concern

The doctrine of state concern was articulated by courts anxious to protect the state legislature from limitation. As noted above, there was no clear intent to eliminate this doctrine if it meant restricting the state’s police power. In its application, state concern was the product of judicial recognition and confusion of three aspects of the governmental function. The primary function of state government is to guarantee the orderly development and conduct of society on both the state and local levels. Included within this primary function are two subsidiary functions which should be distinguished. First, the state must provide the state-wide necessities, i.e., those laws and services needed by the state as a whole. Secondly, the state must provide local necessities, i.e., the laws and services needed by each individual local unit. Thus the three aspects of the state’s function may be listed as:

I. Guarantor of an ordered society
   A. Provider of state-wide necessities.
   B. Provider of local necessities.

As state government developed, most of the responsibility for local necessities was shifted to the local units as state agencies. Gradually, efficiency, local pride and traditional desires for local self-government developed. That desire grew into the belief that the state’s powers in local matters should be limited to that of a guarantor. In this system, the state guarantees the inhabitants of each local unit that their local government will do its job, while the state provides the state-wide necessities. However, that desire was never fully articulated


or enacted in a constitution. Courts approached problems involving the allocation of functions with uncertainty and often confused each aspect of the governmental function. Anxious to prevent the development of city-states and the encroachments on state power, and, finding no clear mandate for greater local autonomy, the courts retained the older restrictive approach.

It is suggested that the new amendment now provides a clear mandate for the new and more liberal delegation approach. Courts are no longer to be overprotective of the state's powers in local matters, in fact the courts' concern should shift to the local units. Provisions in the amendment indicate that some of the state's power to provide state-wide necessities can be clearly delegated. Again, this is not to say that the state is limited in state-wide matters or even that it has lost all control of local matters. It seems clear that where a crisis or emergency condition has arisen affecting the welfare of a community, the state may step in to correct local ineptitude or inaction. Short of such compelling circumstances, the state might intervene to correct a manifest or potentially dangerous disregard of local public interests. But where local government operates responsibly and competently, the doctrine of state concern should not be raised as a bar to the local exercise of delegated functions.

Pre-emption

Pre-emption is a related doctrine by which the legislature prohibits local legislation on a subject by completely occupying the field with general laws

47. As used by the Court, the doctrine of state concern has usually been an extension of the state's police powers. A common tactic of courts has been to generalize the subject matter to such an extent that it involved some aspect of the police power. Once generalized, there was no possible limitation. "The police power of the State has never been questioned when it dealt directly with hygienic conditions of a community." Ainslee v. Lounsberry, 275 App. Div. 729, 729-30, 86 N.Y.S.2d 857, 858 (3d Dep't 1949). See Adler v. Deegan, 251 N.Y. 467, 478, 484, 167 N.E. 705, 709, 711 (1929). The courts have confused the state's responsibility for assuring that something is done with the duty to do it itself. Using precedents, traditional respect for the police power and the confusion in allocating various functions between state and local governments, the courts have succeeded in expanding the doctrine of state concern. "If any one thing, however, has been settled . . . it is the state-wide extension of the interest in the maintenance of life and health. The advancement of that interest . . . is a function of the state at large." Adler v. Deegan, supra at 485, 167 N.E. at 711 (concurring-opinion). See generally Lazarus, op. cit. supra note 11, Oct. 14, 1964, p. 1, cols. 4-5; Mendelson, Paths to Constitutional Home Rule For Municipalities, 6 Vand. L. Rev. 66, 77 (1953).

48. The test usually provided is one of the depth of interest. "The test is . . . that if the subject be in a substantial degree a matter of state concern, the legislature may act, though intermingled with it are concerns of the locality." Adler v. Deegan, supra note 47, at 491, 167 N.E. at 714 (Cardozo, J., concurring). But see the dissenting opinion of Judge O'Brien supra at 501, 167 N.E. at 717. See cases cited note 37 supra.

49. Furthermore, the new Home Rule Amendment provides for a liberal interpretation of the rights, powers, privileges and immunities granted to local governments. . . . Here there now is a constitutional injunction directed to the courts to construe in favor of local government. . . ." Address by Milton Alpert, Conference of Mayors in New York City, June 15, 1964. See, e.g., Richland, Property, Affairs and Government 44 (1963 Municipal Law Seminar); Fleischman, Expanded Powers For Municipal Self-Government 15-16 (1964 Municipal Law Seminar).

50. N.Y. Const. art. IX, § 1(c), (h) (1938) as amended (Supp. 1964); N.Y. Municipal Home Rule Law § 33(3)(c). This provides for authorized transfer of functions between counties and cities. But see N.Y. Statute of Local Governments § 11(5).
or by indicating an intent to do so. Limitations on the power of pre-emption are inherent in the various subjects or self-imposed by the legislature. Under former constitutional provisions, the state could enact general laws affecting the property, affairs or government of local units. Although the new amendment still permits general laws relating to local property, affairs and government, the new construction clause indicates an intent to limit that power. The effect of the construction clause is to grant local units control over local necessities as long as they fulfill their obligation to provide them. State power should be introduced in this area only when the local units fail to act. Pre-emption is still available, but it is relegated to state-wide necessities and to curing local failures. Furthermore, the courts are again asked to shift their protective concern to the local units, to insure that attempts at pre-emption are clearly necessary and not instituted to usurp local power. No specific rule or formula for apportioning judicial protection is possible, but some shift toward safeguarding local powers is indicated.

Property, Affairs and Government

Unless ambiguously interpreted, the phrase “local property, affairs and government” conveys a sufficient guide to most men in determining its contents. The majority of subjects it encompasses can be enumerated. Difficulties arise in categories that include both state-wide necessities and local necessities. This area of overlap has given the courts a great deal of difficulty and extensive control in allocating these concurrent powers to the proper government. Except by the development of new, heretofore unknown, local needs, it is impossible to expand the number of subjects comprising local property, affairs and government. However, the liberal construction clause would seem to have this effect. Under Dillon’s rule, local rights and powers were narrowly construed against the local unit. Doubtful areas were decided in favor of state power. Under the liberal construction clause, rights and powers will be con-


52. 2 McQuillin, op. cit. supra note 41, at 131.


strued in favor of the local units. The doubtful powers should be allocated to the local governments. The effect will be to extend those powers to the full measure of their content. Furthermore, the limitation on local autonomy will now be more fully understood since the phrase "local property, affairs or government" should be given its ordinary meaning. Understanding and certainty in the meaning of the law is essential if it is to be effective. New understanding of local limitations is now possible and should lead to more effective local action.57

A BILL OF RIGHTS FOR LOCAL GOVERNMENTS

A State Purpose

A second unique feature of article IX is the Bill of Rights for Local Governments.58 It contains a statement of the purpose of the amendment, including both effective, local self-government and cooperation between local, governmental units. Though limited elsewhere,59 this policy of fostering intergovernmental cooperation further indicates an intent to increase local power to coordinate several local units by agreement.

Adoption of Local Laws

In addition to other provisions in the Bill of Rights,60 there is a basic limitation on local law power. Section one (a) provides, "Every local government shall have the power to adopt and amend local laws as provided by this article." (Emphasis added.) This is the basic guarantee of the essential local legislative power. The guarantee is not effective as to any legislative power granted elsewhere.61 However, since the amendment provided for a statute of local governments and other implementing legislation, any rights or powers given in such statutes should also be included in the guarantee of the Bill of Rights. This indicates that the first place to look for limitations on local power, is in the statutes granting those powers. There are inherent limitations in the very grants of power.62

59. N.Y. Municipal Home Rule Law § 33(3)(c); N.Y. Statute of Local Government § 11(3).
60. Section one of the new amendment (the Bill of Rights) generally provides for: election of the legislative body of local units, election of local officers, joint operation of facilities or services, annexation of one local unit by another, the local power of eminent domain, local units may profit from the operation of public utilities, apportionment of the cost of services, and the provision of county alternative governments. See Fleischman, Grants of Local Powers 24-25 (1963 Municipal Law Seminar).
62. Id. at 58-61.
Another innovation provided by the amendment is the Statute of Local Governments. In addition to granting those powers already mentioned in the amendment, some provision had to be made for the grant of additional powers by the legislature. The drafters sought a new form that would provide both ease in granting powers and stability in protecting those grants from any ill-considered repeal. The new Statute of Local Governments provides both for facility in the grant of powers by statute passed at regular session and also for protection of those powers by placing them in the constitution. Added powers may now be given by statute passed at a regular session, but they can be repealed only by passage of the repealer with the governor's approval in one year and re-passage and approval of the statute in the succeeding year. This provides local units with the opportunity to gather support and influence in opposing any suggested repealer.

At present, the Statute contains only redeclarations of most of the powers and rights granted in the constitution. However, there are some limitations provided by the Statute which conflict with provisions of the constitution. One of the most significant of these conflicts is caused by the reservation of power by the legislature which, "... excludes from the scope of grants of power to local governments in this statute ... the right and power to enact ... (4) any law relating to a matter other than the property, affairs or government of a local government." (Emphasis added.) This has the effect of cancelling the grant of local power to enact local laws given in the amendment. However, the Municipal Home Rule Law grants local units the power to enact local laws in certain enumerated categories whether or not they relate to their property, affairs or government. This grant is not subject to the protection of the Statute of Local Governments and could easily be changed. The

63. This statute will take effect July 1, 1965 and is subject to amendment prior to that time. It was enacted in 1964, N.Y. Sess. Laws 1964, ch. 205.


66. N.Y. Const. art. IX, § 2(c) (1938) as amended (Supp. 1964). The amendment provides that local units have the power to legislate in the following ten enumerated areas whether or not they relate to their property, affairs or government: matters relating to their officers and employees, the composition of their legislative bodies, the transaction of their business, incurring obligations, claims against local units, the care and management of their streets and property, the acquisition of transit facilities, local authorized taxes, wages and salaries of employees of their contractors and subcontractors and the general police power grant. These should be compared with the grants enumerated supra at note 17, which were provided in the amendment of 1923. Restrictions on the adoption of such local laws are provided in the Municipal Home Rule Law § 11. See Grad, op. cit. supra note 38, at 8.

67. N.Y. Municipal Home Rule Law § 10(1)(a). The enumerations in this statute match those of the new amendment supra note 66.

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constitution's grant of local legislative power in ten enumerated areas, is the
most secure and the best indication of the extent of local power beyond the area
of property, affairs or government.68

Another exclusion from the grants of power to local units in the Statute of
Local Governments is the power to repeal or change special laws passed at the
request of a local unit or on certificate of necessity of the governor.69 This
is an important limitation which should cause local units to be very cautious
in requesting special legislation. If local units request special laws on subjects
as to which they themselves could legislate, they would forfeit some of that
power. They could not amend or repeal such a special law themselves and would
have to depend on another special law to repeal or amend the first.70

Municipal Home Rule Law

Another provision of article IX states that, in addition to the Statute of
Local Governments, the legislature shall have the power, "... to confer on local
governments powers not relating to their property, affairs or government in-
cluding but not limited to those of local legislation and administration. ..."71
These added powers were collected in the Municipal Home Rule Law mentioned
above. This statute bears none of the protective quality of the Statute of Local
Governments or the constitutional amendment and will probably be used more
frequently. At present, it contains significant grants and limitations.72

The constitution defines a local government as, "A county, city, town or
village."73 It also provides that, "... a local government shall not have the
power to adopt local laws which impair the powers of any other local govern-
ment."74 Although the Municipal Home Rule Law defines a local government
in the exact terms of the constitution, this statute provides that, "... a local
government shall not have power to adopt local laws which impair the powers
of any other public corporation."75 (Emphasis added.) Thus a local govern-
ment cannot pass a law impairing the powers of another local government,
a district corporation, or a public benefit corporation.76 School districts, sewer

69. N.Y. Statute of Local Governments § 11(2). Under former provisions of the con-
stitution, local units could adopt or amend such special laws. N.Y. Const. art. IX, § 12
(1938) (subsequently amended). This is especially important, since the new amendment
again permits special laws on request of the governor. Compare N.Y. Const. art. IX, § 11
(1938) (subsequently amended); N.Y. Const. art. IX, § 2(b)(2) (1938) as amended (Supp.
1964).
72. See New York State Office For Local Government Analysis of the Municipal Home
73. N.Y. Const. art. IX, § 3(d)(2) (1938) as amended (Supp. 1964). See N.Y. Municipal
Home Rule Law § 2(8).
74. Id. § 2(d).
75. N.Y. Municipal Home Rule Law § 10(5). A public corporation is defined to include,
"A municipal corporation, a district corporation or a public benefit corporation as defined
in section three of the general corporation law." Id. § 2(11).
76. Ibid.
districts and other public improvement corporations would seem to be immune from local governmental interference. The proliferation of such special corporations can provide economical and efficient services to many local units in combination. However, they result in a decrease of local power and control over those services. It is possible to achieve the same economy and efficiency in providing needed services to many local units through the use of intergovernmental agreements, which provide some additional local control.

The definition of a local government includes counties as the recipients of local power. This would seem to include the power to adopt and amend zoning ordinances under the police power grant. However, the Statute of Local Governments limits zoning power to cities, towns and villages. Furthermore, the provision prohibiting local laws which impair the powers of other local governments would also limit any county zoning power. A county zoning law would certainly impair the powers of other units to zone their property. The power to perform comprehensive planning is not limited by the Statute of Local Governments. A county is impliedly given this power over planning work, “... relating to its jurisdiction.” Though often sorely needed, such comprehensive planning on a county basis would probably be prohibited or severely limited by the impairment clause. There are possible alternatives through the use of authorized intergovernmental agreements for county-wide zoning, or county charter revision.

Summary

The primary sources of limitations are to be found in the grants of local power. Where specific enumerations are made, they must be complied with unless otherwise indicated by other provisions. All of the home rule provisions must be read together to determine the full extent of local powers. The line of demarcation between matters of state-wide concern and local property, affairs or government has not been explicitly drawn but the division will now be made in generally understood terms. Judicial hostility should be transformed into a serious interest in effectuating the policy enunciated in article IX. There are specific prohibitions or reservations of power to the legislature, mandatory referenda requirements, legislative authorization requirements as well as other traditional limits on local legislation.

78. N.Y. Const. art. IX, § 2(c) (10) (1938) as amended (Supp. 1964); N.Y. Municipal Home Rule Law § 10(1)(a)(11).
79. N.Y. Statute of Local Governments § 10(6).
80. N.Y. Const. art. IX, § 2(d); N.Y. Municipal Home Rule Law § 10(5).
81. N.Y. Statute of Local Governments § 10(7).
82. See generally Alpert, Powers of Local Legislation 32 (1964 Municipal Law Seminar); Marshlow, Drafting Local Legislation 18 (1964 Municipal Law Seminar); Fleischman, Grants of Local Powers 23 (1963 Municipal Law Seminar); Shapiro, Powers of the Legisla-
CONCLUSION: LOCAL RESPONSIBILITY

With the development of larger metropolitan areas and major changes in employment, housing and recreation, the governmental function will develop and change. To meet these expanding county-wide and area-wide necessities, there are two basic alternatives. We may thrust the new burdens upon the state or distribute them to both state and local governments. With the increase in problems that the state alone can manage, it would seem unwise to add to that burden the full responsibility for problems concerning less than the whole state.

Local government has functioned adequately considering the difficulties it has had to overcome and the limited responsibility it has been given. To meet the responsibility of the future, local units must be entrusted with sufficient power. They must also be given the guidance and instruction needed to meet previously unknown problems. Both of these requisites presuppose a favorable atmosphere in which to develop. Through the complete "home rule package," local units now have sufficient power to meet the present challenge. There is also the prospect of greater power to meet future requirements. With the establishment of the state Office for Local Government, local units have a source of guidance and instruction in meeting new problems. The favorable atmosphere will be provided by the legislature’s wise use of its restrictive and delegative powers, by the judiciary’s interest and adherence to the enunciated policy and by the local units’ willingness to accept and achieve effective local self-government. Developing in this way, local governments will be ready to shoulder most of the burdens which will arise with future change.

Thus, we appear to be on the threshold, in this State, of new developments and movements in the home rule field. If local officials will exercise their home rule powers responsibly and effectively in the interest of their citizens and the welfare of their communities, a good future for home rule must inevitably develop; if, on the other hand municipal officials . . . hesitate to meet the challenges of their problems through effective and full utilization of local powers, action by the legislature will of necessity occur . . . and the home rule movement will suffer as a consequence.

CARMIN R. PUTRINO


