



## LOCAL GOVERNMENT HANDOUT: DILLON'S RULE

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410 NEFF AVENUE · HARRISONBURG, VIRGINIA 22801  
PHONE: (540) 434-5353 · FAX: (540) 434-6069 · REAL ESTATE FAX: (540) 434-5854  
EMAIL: [ddl@littensipe.com](mailto:ddl@littensipe.com) · INTERNET: [www.littensipe.com](http://www.littensipe.com)

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Many members of local government today—county, city or town—have had the experience of being told by counsel that something he or she wants to do cannot be done because of something called the “Dillon Rule.” Let’s examine that rule so that we can try to understand it.

### AUTHOR OF THE RULE.

John Forrest Dillon was an Iowa doctor who gave up his medical practice to become a lawyer. He served as Chief Justice of the Iowa Supreme Court, then went to the Eighth United States Circuit Court of Appeals where he served for ten years. He was a recognized authority on local government. He left the court, became a professor at Columbia Law School and was elected president of the American Bar Association. In 1868 he wrote the opinion which established the rule that would later be named for him.

### WHAT, EXACTLY, IS THE “DILLON RULE”?

The Rule establishes that a local government has the following powers and **no others**:

- First, those expressed or given to the local government by the state legislature in **express words**. EXAMPLE: State law expressly authorizes counties to pass ordinances requiring property owners to remove garbage and litter.
- Second, those powers necessarily or fairly implied or incident to those powers expressly granted. EXAMPLE: Using the express power over garbage and litter, Fairfax County passed an ordinance requiring a deposit on soft drink containers, stating that this was fairly implied or incident. The ordinance was held, however, to be invalid.
- Third, those essential to the declared objects and purposes of the local government. EXAMPLE: Winchester had general authority in its charter “to do all things deemed proper for prosperity, quiet and good order of the city.” This, claimed Winchester, allowed it to pass a law offering a reward for the arrest and conviction of persons setting fires. The Virginia Supreme Court, however, disagreed and held that there was no such authority.

Lets go over these powers again—first, those that are specifically spelled out; second, those that are not spelled out but that are necessarily or fairly implied incident to those that are spelled out and, third, those that are **essential** to the declared objects and purposes of the local government.

Add two other matters. Those powers under the “third” category above—that is essential to the declared objects and purposes of the county or town must be **indispensable and not simply convenient**. This is the provision that vetoed the Winchester reward ordinance.

Lastly, if there is a reasonable doubt concerning the existence of the power—that is, does the local government have the power to do whatever is in question—the existence of the power is resolved against the local government and the power is denied.

One more time. Under Dillon, localities have the power to do those things that the legislature specifically describes they can do and those that are implied in or incident to the expressly granted powers and those that are absolutely essential to the objects and purposes of local government. The powers that are essential to the objects and purposes of the corporation cannot be ones that are simply convenient but they must be absolutely indispensable and if there is any question about any of the powers the question is resolved against the local government and the power is denied.

#### REASONS FOR CREATION OF THE RULE.

Dillon's career occurred during Reconstruction. This time was probably the lowest point in the history of America's local government, particularly the cities. Many of the governments of cities were corrupt and almost all were inefficient. Political bosses were in control particularly in the larger cities. Because of changing technology, public works projects and public utility franchises were coming into being for the first time. Graft was present in many of these projects. One commentator of that day wrote that “...without the slightest exaggeration the city governments of the United States are the worst in Christendom and the most corrupt.” Dillon himself thought (and wrote) that qualified people rarely held local office and that most city governments were corrupt and inefficient.

#### EXAMPLE OF DILLON RULE REJECTION.

The portion of the Dillon Rule that restricts local government's powers the most is that part that holds that if there is any reasonable doubt whether a power has been conferred then it is presumed that the power has **NOT** been conferred. This has become known as the rule of “strict construction” of local government powers. Now, some examples of strict construction:

1. A local government adopted an ordinance for land development. Held invalid. (216 Va. 113)
2. An ordinance requiring developers to construct “necessary improvements” to the streets or highways abutting the new subdivision was held invalid. (220 Va. 435)
3. A city had a rule that if a policeman was injured in an automobile accident and recovered damages he would be required to reimburse the city for amounts advanced to the policeman while he was out of work. Held invalid. (203 Va. 102)
4. A city ordinance imposing a fee on land developers to examine and approve their subdivision plats held invalid. (209 Va. 172)
5. A city (Harrisonburg) assumed it had authority to operate a rock quarry because it was required to maintain streets. Held that Harrisonburg had no such power. (113 Va. 199)
6. A zoning ordinance required developers to build a certain percentage of housing units for low or moderate income was held invalid. (214 Va. 235)

Further, the Virginia Supreme Court has generally invoked Dillon's Rule to deny municipal powers that are not expressly granted even if the end in question is authorized and the way the locality proceeds to the end is reasonable. By application of the rule the State of Virginia is able to control to a large extent business, tax, and environmental regulations statewide with little or no input from local government. Dillon's Rule forecloses the possibility of raising some taxes or creating new taxes. The General Assembly alone determines which taxes local governments may impose, how they may impose them, and in some cases even the amount of the tax rate.

#### HOME RULE.

If not Dillon, what rule would probably govern? The opposite of Dillon's Rule is something called "Home Rule." The Home Rule movement which began in Missouri basically allows a local government to exercise any function so long as-

- a. The function is not prohibited by state law and
- b. Is not in conflict with the state constitution or any state statute.

An oversimplification, therefore, is that Dillon allows only those powers that the legislature **permits** but Home Rule allows all powers except those that the legislature **prohibits**.

#### OBJECTIONS TO DILLON'S RULE.

1. Local governments feel the rule prevents them from adopting creative solutions to local problems. The local governments are more aware of these problems and if they were free to act they could fashion solutions to fit the particular circumstance.

2. The present system requires the local officials to trek to Richmond each January to beg for legislation. Local governments complain bitterly because of "unfunded mandates." The General Assembly often requires local governments to carry out certain functions. If the legislators do not give local governments the abilities to raise revenues to cover the cost of this new requirement then local government must do more with the same resources. Local government is left free to raise the local real estate tax but it does not have the option of any new or more appealing tax.

3. Local governments claim that the Dillon Rule hinders the effort to address the problems of growth and sprawl.

#### SUPPORT FOR THE DILLON RULE.

1. Control at the state level ensures uniformity throughout the state. This encourages economic growth by assuring companies that requirements for such things as business licenses and methods of taxation will be consistent statewide.

2. Some feel that since the present system is understood and works satisfactorily any change would be disruptive. Supporters of Dillon say if courts interpret too strictly the legislature has the power to reverse the court by passing legislation allowing the localities the power to do whatever was requested.

3. Legislators prefer to give any new powers to only a few municipalities at first to "test." If the grant of power is successful then the legislature can give the power to all municipalities.

4. In some states that have Home Rule legislators have passed a large number of laws prohibiting local government from engaging in a wide variety of practices. That approach hampers local government even more than Dillon's Rule.

5. Some view Dillon's Rule as a benefit to local government officials because it can be used as an excuse not to do things that the public wants which might require a raise in taxes which the public does not want.

**CONCLUSION.**

In 1969 the Commission on Constitutional Revision in Virginia urged the General Assembly to reverse Dillon but the request was rejected and all subsequent suggestions for changes in Dillon's Rule have likewise been rejected. As recently as July, 1998, the Virginia Court of Appeals reaffirmed it. Dillon's Rule appears likely to stay in force in Virginia.