

## Regionalist Paper No. 14

### Regionalism and the Dillon Rule Does the Dillon Rule Help or Hinder Metropolitan Progress?

In broad terms, regionalism seeks efficient management of economic and population growth and the attendant increased demands for cost-effective public services.

*“Dillon’s Rule, in a word, probably has almost no effect on growth management activity. However, if Dillon’s Rule does have an impact, it appears to be positive. By providing some certainty that local governments may engage only in the actions clearly allowed to them by the state legislature, Dillon’s Rule may promote consistency, which advances sound regional and statewide growth management. On the other hand, increased local autonomy, which does not necessarily flow from abolishing or relaxing Dillon’s Rule, promotes fragmented and uncoordinated growth management.”<sup>1</sup>*

This viewpoint will surprise many readers. Most often, the conventional, and sometimes emotional, wisdom in Hampton Roads is that in Virginia, we are hampered by the Dillon Rule. For them, Home Rule is essential, and the Dillon Rule should be reversed. Let’s examine this debate.

In brief, the Dillon Rule vests government general powers of authority with the state government which, in turn, delegates specific authorities to its city and county units of government. City and county governments must request authority from the General Assembly for any new authority, not previously and expressly granted. Conversely, the concept of Home Rule vests general powers of authority with local governments except for certain government functions for which state government has previously deemed to be under the purview of state government, or has previously restricted from local government authority.

Thus, in one case, the state possesses the general government powers of authority, and as it deems proper, delegates new authorities to city and county governments. In the other case, the state, as it deems appropriate, restricts the otherwise broad city and county powers of authority. At the state level, to relax, or to restrict powers of authority – that is

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<sup>1</sup> Jesse J. Richardson, Jr. and Robert Puentes, *Is Home Rule the Answer? Clarifying the Influence of the Dillon Rule on Growth Management*, (Virginia Polytechnic Institute and The Brookings Institution Center on Urban and Metropolitan Policy, 2003), p. 34.

the dichotomy and the question, but does it make any difference? After wallowing in reports and articles about Home Rule and the Dillon Rule, one learns that the real issue at hand is the structure and substance of state-local inter-governmental working relationships and, not at all, which Rule is in play. These rules, as it turns out, are not at all mirror-images of each other. It is possible, and it is the case that the municipal governments in some Home Rule states are burdened, and threatened with wide restrictions, resulting in less jurisdictional autonomy than municipalities in other Dillon Rule states. Both rules merely set out the starting position for these relationships, but the same objectives should exist in either case, and those objectives are good government for all citizens with the best possible, most effective, and most efficient mechanisms for carrying out the functions of government.

In 1865, Judge Dillon first established the Dillon Rule in Iowa in order to arrest corruption and fiscal irresponsibility at the local government level. Over subsequent decades, most states followed suit, often to gain control over extravagant or unsavory local governments, or just to regain some cohesion and commonality among their subordinate cities. Some fifty years later, and in a reversing trend, local governments began to realize they had insufficient authority to deal with emergent issues in a timely way or, for larger cities, unable to effectively manage their now, complex interrelated government functions. Thus, the concept of Home Rule was established in some states, and this grew as a working policy for much of the 20<sup>th</sup> century. Today, there are 31 Dillon Rule states, 10 Home Rule states, and 8 states with both rules, meaning that some municipalities in these states possess Home Rule authority while the others are managed by the Dillon Rule.<sup>2</sup> Controversy continues. Nationwide trends today are mixed. The Dillon Rule is still heavily questioned, yet there are also growing reports of complaints about Home Rule.

The real issue, again, is that of state-local inter-governmental working relations. We need good leaders to provide good government. Nonetheless, let's review just a few of the complexities and the pros and cons of these rules in the following two paragraphs.

There are many variations of the Dillon Rule. The source or basis of Dillon procedures varies by state. In Virginia, the Dillon Rule is not prescribed in the state Constitution or statutorily, in the general laws of the Code of Virginia as in many other

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<sup>2</sup> Richardson and Puentes, p. 17-21 and the Executive Summary. Earlier studies had suggested a much larger number of Home Rule states; some of these studies have rescinded or stepped back on those conclusions. Sometimes, however, those earlier studies continue to be cited in journal articles and elsewhere.

states; rather it is applied by the state courts. Whatever the basis of Dillon, how a state acts on Dillon is crucial, and this also varies by state.

Virginia is said to be a “strict” Dillon Rule State while other States are said to be more lenient on the matter, but what does this mean? Perhaps it means that in Virginia, all questions of jurisdiction and all local government requests for additional authority are actually reviewed, whereas elsewhere, states tolerate local exercises of authority without actionable review – a sort of control by negation process - rather than a “strict” procedural review process by the General Assembly. If this describes the case in Virginia, then Virginia has a strict policy on the input side of the jurisdictional decision process. The output side – what actually happens in Virginia – may be far more important. The Hampton Roads Chamber of Commerce commissioned a Task Force to study and report on the Dillon Rule.<sup>3</sup> The report found that, depending on the topic, an average of 60% or more of the jurisdictional authority bills passed favored the municipalities. The study reported that these patterns have continued and that the Dillon Rule is a misnomer for Virginia. Richarson and Puentes report that an average of 75% of the bills passed support local endeavors. A comprehensive study conducted by the U.S Advisory Council on Intergovernmental Relations (ACIR)<sup>4</sup> ranked states on their overall degree of local discretionary authority. Virginia in this study ranked 8<sup>th</sup> in the nation, well ahead of most of the Home Rule states, a result confounding to local conventional wisdom.

There are also many variations of Home Rule by way of source - constitutional, statutory or court managed, and also by way of implementation - with few or many restrictions levied on the municipal governments. In general, statutes enabling Home Rule are less clear than those enabling the Dillon Rule. At least there is more controversy, and certainly more jurisdiction-based court cases with Home Rule procedures. Comparing two similar size states over a one year period, Virginia (Dillon Rule) and Ohio (Home Rule), Ohio dealt with some 600 court cases compared to approximately 20 in Virginia.<sup>5</sup> In a later study, research indicated “a remarkably low number of [court] cases considering the application of Dillon’s rule, and a far larger number addressing home rule. The implication: The multitude and difficulty of issues raised by home rule lead to many more cases in state courts interpreting home rule than

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<sup>3</sup> The Hampton Roads Chamber of Commerce, *Task Force on the Dillon Rule*, 1999, p. 12-13

<sup>4</sup> U.S. Advisory Commission on Intergovernmental Relations, 1981, *Measuring Local Discretionary Authority*, USACIR, M-131, Washington. This conclusion was reaffirmed in their report of 1993. Note: After 36 years of service, USACIR was abolished in 1995.

<sup>5</sup> Hampton Roads Chamber of Commerce, 1999, p. 11

Dillon's Rule.”<sup>6</sup> This study also noted the opinions of other authors – Sebree (1989) deemed home rule in Washington “illusionary”, Smith (1996) contended the courts have “emasculated” home rule in Wyoming, Kirshnitz (2000) feared home rule has been reduced to “a form of words and little else”.<sup>7</sup> This is not a pretty picture and needs to be thoroughly examined should efforts to overturn Dillon arise.

History has already pointed out the advantages and disadvantages of each of these rules. Through its earliest years, the Dillon Rule provided control over disparate, corrupt, extravagant or incompetent local governments. Today, the Dillon Rule leads to state-wide uniformity on a broad spectrum of subjects, something that is comforting to business planning and growth and to citizens alike. Consistency and predictability do promote better macro-level planning. Home Rule, on the other hand and through its earliest years, moved authority away from distant and insensitive state governments to local, on scene government structures. It empowered local governments to deal in a timely way with the growingly complicated needs of their constituents. Today, where applied and in most cases, these virtues continue.

In our American federal government, state authority is provided for and flows directly from the U.S Constitution. On more than one occasion, the U.S. Supreme Court has upheld the concept that municipalities have no inherent right to self government and that per the U.S. Constitution; it is the states that possess such powers. This is settled law. Therefore, for state-local inter-governmental relationships, this source of original constitutional power is an important – one should say, a bedrock - factor to recognize whether or not the Dillon Rule or Home Rule is in place. Given this original constitutional power, it is the state that will either grant or relax authority in one case, or restrict or not restrict authority in the other case. Thus, our local governments, or our regionalist advocates, should be working on and developing the best working relationships with state legislators that are possible; rather than fretting about rules of procedure.

If as suggested, the impacts of the Dillon or Home Rules themselves are overstated, what then generates the emotions in modern day Virginia that so strongly condemn or question the Dillon Rule? Over the last few decades, municipalities have complained about unfunded state mandates without the authority to develop additional sources of revenue. They complained that state sources of taxation, primarily income, were steadily growing along with general population and economic growth, but that municipal sources of taxation, primarily, property, were stagnant, resulting in conditions

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<sup>6</sup>Richardson and Puentes, p. 16.

<sup>7</sup>Ibid, p. 13.

of extreme fiscal stress at the municipal level. Other complaints about Dillon in their opinion included the need to hire teams of lobbyists to represent them in Richmond; continued insensitivity to real-world, fast-breaking issues that would be better served by on-the-ground local officials, well aware of the needs and solutions for their respective public problems. The mismatch between state-distributed responsibilities and state-constrained capabilities to fund these responsibilities has been the primary issue in recent decades<sup>8</sup>.

When examining the list of state-local jurisdiction issues, they seem to fall into two categories – issues that are too large for narrow, local judgments; and issues that are too unique, requiring strictly local, tailored solutions. Even the courts have a hard time figuring out what is purely a local matter and what is a state matter. This almost sounds like an opening for regionalism, or for some structural ability to bridge the gap. Regional governance and regionalism could become a more capable venue able to address issues that are metropolitan in nature, larger than municipalities, but not of a state-wide scope.

State-local inter-governmental relationships and the Dillon and Home Rules have been studied for over a hundred years. A brief summary of recent year studies shows that former Governor Baliles in the late 1990s pressed for an updating of the local government charter network to better define, and possibly increase local government authority, rather than to tinker directly with the Dillon Rule. In their 1999 White Paper study, the Hampton Roads Chamber of Commerce concluded, “Maintain the Dillon Rule ... attempts to eliminate should be fought”.<sup>9</sup> The Annual State of the [Hampton Roads] Region-2001 Report on Regionalism and the Dillon Rule concluded without addressing the Dillon Rule itself, that reforms in state-local relations and the tax structure ... are needed”.<sup>10</sup> At the end of this Paper, Annex A gives a fuller, chronological listing of these kinds of studies and their findings and of government actions taken that concern the Dillon Rule. As recently as July 1998, the Virginia Court of Appeals reaffirmed Dillon’s Rule in Virginia.<sup>11</sup>

Predictably, debate on the Dillon Rule has gone beyond just studies. Various state commissions and the General Assembly itself have examined Dillon. The Virginia

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<sup>8</sup> See Regionalist Paper No.12, *Revenue Sharing as a Component of Regionalism: What are the Issues?*, for a discussion of modern day metropolitan revenue-sharing and tax base-sharing formulas being used elsewhere and of their related positive impacts on regional planning and wealth, as well as cautions thereto.

<sup>9</sup> Hampton Roads Chamber of Commerce, 1999, p. 5.

<sup>10</sup> James V. Koch, *The Annual State of the [Hampton Roads] Region – 2001 Report*, Chapter 6: *Regionalism and the Dillon Rule: An Interpretive Essay*, (Old Dominion University, 2002), p. 110.

<sup>11</sup> League of Women Voters of Fairfax, *Dillon’s Rule: Good or Bad for Local Governments?*, (Research Paper, 2004), p. S-4.

Commission on Constitutional Reform initially proposed reversing the Dillon Rule in 1969. This was defeated. The 1992 Wilder Advisory Commission on the Dillon Rule and Local Government recommended relaxing the Dillon Rule. This died in Committee. At least some of the other fourteen major Virginia state government commissions since 1968 have had the opportunity to examine government operations including the Dillon Rule; none have called for transitioning to Home Rule.

The subject of this set of Regionalist Papers is regional governance. Studying or contemplating changes to the Dillon Rule is probably not a useful step toward regional governance. It is a sand trap that will divert time and energy away from the needs of regionalism. To move forward on promoting the merits of regional efficiency, we need to avoid or to get out of the sand traps and to move down the fairway. Studying Dillon and Home Rule questions for other purposes, however, is not at all a wasted effort. One will learn much about American federalism and about what the essential ingredients are for successful and representative government bodies, and how to achieve them.

Given that we have the Dillon Rule and that it is extremely unlikely that this will ever change, how can we best address both the underlying issues that make Dillon a hot topic, and regionalism itself? The Dillon Rule is a procedure for handling state-local inter-governmental working relations. This relationship needs more structure and more substance than exists today. Chasing Home Rule as a political motto is not enough; an updated legal process or doctrine is needed. Real ideas<sup>12</sup> that might improve the effectiveness and productivity of these relations include (1) Create a forum for state and local officials to review and to generate solutions in a timely way for unfunded mandates, and (2) Create a forum that will review municipal charters<sup>13</sup> and to update and streamline them to fit 21<sup>st</sup> Century needs, probably broadening local authorities and reducing their need for teams of lobbyists.

Another form of state-local relationships is that of “state-regional” inter-governmental working relationships. Here much work, indeed a paradigm shift, is needed. To establish regional governance, meaning authority and capacity to shoulder that authority, requires that some powers are granted to the regional level, meaning in turn, that such powers are removed from either the state or the municipal levels of

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<sup>12</sup> The Annex at the end of this paper lists several studies and state commission reports that have repeatedly urged the modernization of state-local and state-regional government working relations as opposed to addressing the Dillon Rule.

<sup>13</sup> Efficiencies can be gained if items that are always legislatively approved are authorized and included in all municipal charters, no longer requiring state review and no longer delaying the actions of local governments. Though real, the gains here will be limited; this is not a panacea. Numerous studies strongly caution against the “one size fits all” municipal charter; there simply are too many variables.

government. But this is not entirely new; we already have scores of state-established regional public service authorities, a regional planning district commission, regional business development organizations, and more. To stay abreast of the needs of population and economic growth, to sustain wage scales, provide roads, and to remain competitive in the new global economy, we need to move yet further forward to achieve efficient and effective regionalism. Ideas for these next steps include the need for state, regional and municipal leaders (1) to not just promote, but to establish an incentives plan for regional collaboration projects,<sup>14</sup> (2) to invigorate the Hampton Roads regional legislative caucus toward actions that advance and carry out a credible and balanced regional agenda, (3) to build upon the array of regional bodies that already exist in the region of Hampton Roads, especially those that go beyond strictly functional responsibilities, such as the Hampton Roads Planning District Commission (PDC), the Hampton Roads Partnership (HRP) and the Hampton Roads Metropolitan Planning Organization (MPO),<sup>15</sup> and (4) to recognize that no regional progress can be made without state level participation and support, and consequently to collaborate with the regional legislative caucus and other members of the General Assembly on the development of joint plans and programs that will lead to effective structures of regional governance in Virginia and for Hampton Roads.

“Regional approaches lie at the heart of successful growth management. ... Both theory and practice strongly underscore that effective growth management depends on regional or statewide approaches. ... [and] occurs at the regional level and involves state oversight and initiative. ... In the end, neither local leaders nor state legislators should be deluded. Dillon’s Rule in no way lets them off the hook. The creation of thoughtful, effective strategies for managing growth depends largely on local and state will to do that – not on the presence or absence of Dillon’s Rule.”<sup>16</sup>

Ray Taylor, Board member, Forward Hampton Roads, January 2006

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<sup>14</sup> Former Governor G.E. Baliles recommended a significant increase in appropriations, a 25 to 35 percent increase, to adjoining jurisdictions, counties or cities, that combined or consolidated major government functions in 1999, (League of Women Voters of Fairfax, Research Paper, 2004), p. S-3.

<sup>15</sup> See Regionalist Paper No. 3, *Understanding the Regional Organizations in Hampton Roads Today: Contemporary Regionalism and Where We Stand in the Process*, for a detailed discussion of these three organizations.

<sup>16</sup> Richardson and Puentes, p. 22, 31 and the Executive Summary.

## **Annex to Regionalist Paper No. 14: The Dillon Rule and Regionalism**

**Dillon Rule:** Summary of studies on the Dillon Rule and of actions taken *vis-à-vis* the Dillon Rule in Virginia and Hampton Roads

- 1969 – Virginia Commission on the Constitutional Reform initially proposed reversal of the Dillon Rule. The Virginia Municipal League (VML), the Virginia Association of Counties, and others opposed this proposal, and then the proposal was deleted from the Commission’s list of recommendations.
- 1992 – Governor’s (Wilder) Advisory Commission on the Dillon Rule and Local Government recommended (1) Relax the Dillon Rule, and (2) Establish uniform local government powers. No follow-on actions resulted.
- Late 90s – Former Governor G. E. Baliles recommended reviewing and updating the local government charter framework [not to replace the Dillon Rule, but to use it to give better defined, and perhaps increased, authority to local governments], as described in Virginia League of Women’s Voters (LWV) study, *Dillon’s Rule: Good or Bad for Local Governments?* (2004).
- 1999 – Hampton Roads Task Force White Paper Study on *The Dillon Rule in Virginia* produced by the Hampton Roads Chamber of Commerce concluded “Maintain the Dillon Rule. The position supporting the Dillon Rule should be maintained, and attempts to eliminate the Dillon Rule should be fought”.
- 1999 – *Virginians need to Take a Bold Look at Their Governance*, an article in The Virginia News Letter, Volume 75, No. 8 by Jim Oliver urges structural reform at the state, regional and local levels of government and increased efforts to promote public involvement. The article disparages the Dillon Rule but makes no recommendations in this regard.
- 1999 – The Virginia Municipal League (VML) endorsed the idea of reversing the Dillon Rule. In previous years, the VML opposed proposals to grant constitutional Home Rule to municipalities.
- 2001 – Annual State of the [Hampton Roads] Region - 2001 Report Chapter 6: *Regionalism and the Dillon Rule: An Interpretive Essay*, describes the pros (few) and cons (many) of the Dillon Rule, then concludes without addressing the Dillon Rule itself: “Many observers without vested interests believe reforms in state-local relations and in the tax structure, supplemented by a new ‘program of progress’, are needed”.
- 2003 – *Is Home Rule The Answer? Clarifying The Influence of Dillon's Rule on Growth Management*, by Jesse J. Richardson, Jr., Meghan Zimmerman Gough, and Robert Puentes, a comprehensive discussion paper by Virginia Polytechnic Institute and The Brookings Institution concluded with “Dillon’s Rule, in a word, probably has

no effect on growth management activity. However, if Dillon's Rule does have an impact, it (theoretically) appears to be positive. By providing some certainty that local governments may engage only in the actions clearly allowed to them by state legislature". In effect, the report recommends improved and/or modernized state-local government working relationships rather than reversing the Dillon Rule. Find this report at <http://www.brookings.edu/metro/publications/dillonsrule.htm>

- 2003 – *The Dillon debate: Unlike home-rule states, Virginia limits localities' taxing power*, Cover Story, Inside Business-Hampton Roads, September, 2003, an article exhibiting frustration, providing informative anecdotes about the pros and cons of Dillon, concluding that the Dillon Rule will remain in place and suggesting some reforms in state-local government working relationships.
- 2004 – *Dillon's Rule: Good or Bad for Local Governments?*, a Virginia League of Women's Voters (LWV) study that provided an historical and current-day review of Dillon Rule and Home Rule features. The report was analytical and provided no clear recommendation concerning the Dillon Rule. The report did conclude with a suggestion: "It may be time for the Virginia legislature to reconsider its role *vis-à-vis* local governments".
- 2004 – Virginia Chamber of Commerce supports retention of the Dillon Rule as cited in the Virginia League of Women's Voters (LWV) study, a policy reaffirmed in statements on their current website, [www.vachamber.com/general](http://www.vachamber.com/general) .
- 2005 – *Future of Hampton Roads, Inc. Regional Structure Project's Law Committee Report* on the Dillon Rule concluded: "Commissions and scholars who have studied the Rule typically do not indicate that its eradication would necessarily solve the most significant regional issues, though it would reduce the hundreds of fairly trivial charter amendments that clog the annual legislative process and it would, more importantly, minimize the General Assembly's influence over the general character of Virginia local government. Home Rule would place decisions on regional issues primarily in the hands of local elected officials. While that might facilitate local government administration, whether it would promote or hinder regional initiatives is uncertain".