

Program, or Senate Bill 2, now codified under N.C.G.S. 115C-238.

³ Charles D. Liner, ed., *State and Local Government Relations in North Carolina: Their Evolution and Current Status*, 2nd edition, Institute of Government, University of North Carolina at Chapel Hill, 1995, pp. 90 and 115. According to Liner, North Carolina has the largest state-maintained road system in the nation, totaling more than 78,000 miles in 1993. North Carolina also had more state prison units (91) than any other state in 1992.

⁴ The School Facilities Finance Act, Chapter 622 (House Bill 1155) as amended by Chapter 813 (House Bill 1142) of the 1987 Session Laws, generated funds for school construction by raising the corporate income tax from 6 percent to 7 percent, among other changes.

⁵ A bill (H.B. 389) that would schedule a statewide school bond referendum in 1996 passed the N.C. House and Senate in different versions during the 1995 session. The bond issue would total \$500 million under the House bill and \$1.8 billion under the Senate version. Leaders of the two chambers did not appoint conferees to resolve their differences regarding the size of the bond issue and the distribution formula for its revenues before adjourning, but they are expected to do so during the 1996 budget session. Meanwhile, the legislature's School Capital Construction Study Commission is examining the issue as a way of reaching a compromise.

⁶ R.W. Apple Jr., "States of Mind: You Say You Want a

Devolution," *The New York Times*, Jan. 29, 1995, Section 4, p.1.

⁷ For a reprint of the N.C. Republican Party's state-level "Contract," see Mebane Rash Whitman, "The Evolution of Party Politics: The March of the GOP Continues in North Carolina," *North Carolina Insight*, Vol. 16, No. 2 (September 1995), p. 90.

⁸ The Taxpayer Protection Act (House Bill 3) passed both the state House and Senate in 1995, but budget conferees did not develop a compromise bill during the session. The bill, which could be reconsidered in 1996, would: tie the growth of the state budget to inflation and population growth; impose a limit on the state income tax rate; require referendums for the issuance of all state and local bonds; and require legislative approval for the governor to spend money from the state's Rainy Day Fund.

⁹ Chapter 415 (House Bill 895) of the 1995 Session Laws. The act also directs the legislature's Fiscal Research Division to prepare an annual report on the fiscal effects of federal mandates upon the state and local governments.

¹⁰ Liner, note 3 above, p. xv.

¹¹ Kevin Kelly, et al., "Power To The States," *Business Week*, Aug. 7, 1995, p. 50. Also see "Are State Institutions Up To The Job?" *State Policy Reports*, Vol. 13 No. 19 (October 1995), pp. 7-8.

¹² Apple, note 6 above; also see Art Eisenstadt, "Is state government necessarily wiser than federal?" *Winston-Salem Jour-*

Dillon's Rule and Home Rule: Two Models for State-Local Government Relations

by Mebane Rash Whitman

In the United States, the two primary ways of allocating power between the state and local governments are Dillon's Rule and Home Rule. Dillon's Rule provides that local governments have only those powers and duties granted to them by the state legislature. Home Rule, on the other hand, provides that local governments have the authority to act on matters of local concern without seeking permission from the state.

The North Carolina Constitution defines the relationship that exists between the state and local governments in Article VII: "The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions and . . . may give such powers and duties to [them] as it may deem advisable."¹ Thus, the N.C. General Assembly—whose power is limited only by the state Constitution, the U.S. Constitution, and federal laws

and regulations—has almost complete control over local governments in the Tar Heel state.

The N.C. Supreme Court has supported this allocation of authority, ruling that the powers of local governments must be interpreted according to Dillon's Rule.² A common law doctrine, Dillon's Rule limits localities to exercising only those powers granted expressly, necessarily or fairly implied, or indispensable to the declared purpose of such governments. The Court has held further that any fair, reasonable doubt regarding whether a local government has a particular power must be resolved against the local government, thus denying it the power. "Under Dillon's rule, [municipalities] are 'mere creatures of the state, powerless in their own right and dependent on enabling legislation for every

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nal, Feb. 12, 1995, p. A15.

¹³For more on issues facing local governments in North Carolina, see the special issue of *North Carolina Insight* on local government, Vol. 7, No. 1 (June 1984), pp. 2-76.

¹⁴Rob Christensen, "A self-worth test for counties: What's playing at the movies?" *The News & Observer*, Raleigh, N.C., Feb. 27, 1995, p. 3A. Also see Charles Peters, "Tilting at Windmills," *The Washington Monthly*, April 1995, p. 6.

¹⁵Poll conducted by Peter D. Hart and Robert M. Teeter for the Council for Excellence in Government, March 16-18, 1995, in a random telephone survey of 1,003 registered voters nationwide; margin of error, +/-3 percent. Also see "The Dimming American Dream," *State Legislatures* magazine, National Conference of State Legislatures, Denver, Colo., Vol. 21, No. 7 (July/August 1995), p. 7.

¹⁶For more on privatization, see Bill Finger and George Frink, "Public or Private? Getting Down to Business in North Carolina," and related articles in *North Carolina Insight*, Vol. 8, No. 2 (November 1985), pp. 2-21.

¹⁷Luntz Research Companies, poll conducted for KPMG Peat Marwick, May 2-7, 1995. Survey of 1,000 adults nationwide; margin of error +/- 3 percent. As reported in "State Government," *The Polling Report*, Aug. 14, 1995, p. 2.

¹⁸Liner, note 3 above, pp. 3-12.

¹⁹*Ibid.*

²⁰The last substantial revision of the N.C. Constitution took effect on July 1, 1971. It was approved in a voter referendum

on Nov. 3, 1970.

²¹Jack D. Fleer, *North Carolina Government and Politics*, University of Nebraska Press, Lincoln, Neb., 1994, pp. 200-201.

²²U.S. Advisory Commission on Intergovernmental Relations, *Measuring Local Discretionary Authority*, Report M-131, ACIR, Washington, D.C., November 1981, Table 20, p. 59.

²³Liner, note 3 above, pp. 10-12.

²⁴*Ibid.*

²⁵*Ibid.*

²⁶*Ibid.*, p. 11.

²⁷Executive Order 21 (Aug. 12, 1993), as amended by Executive Order 65 (Oct. 20, 1994).

²⁸Chapter 534 (House Bill 834) of the 1995 Session Laws.

²⁹Chapter 455 (House Bill 65) of the 1995 Session Laws.

³⁰Chapter 497 (Senate Bill 140) of the 1995 Session Laws.

³¹Chapter 289 (House Bill 767) of the 1995 Session Laws.

³²Public School Forum of North Carolina, *North Carolina Local School Finance Study*, Raleigh, 1995, p. 2. The N.C. Center for Public Policy Research has examined public school financing in several studies. See Lanier Fonvielle, "Disparity in Public School Financing," *North Carolina Insight*, Vol. 7, No. 1 (June 1984), p. 30; Bill Finger, "Disparity in Public School Financing—An Update," *North Carolina Insight*, Vol. 7, No. 4 (April 1985), p. 44; and Ran Coble, "School Spending Disparities Persist," *North Carolina Insight*, Vol. 12, No. 1 (December 1989), p. 70.

move they make," writes one legal commentator in the *Washburn Law Journal*.³

By contrast, many states grant cities and counties more independence through Home Rule. "The principal characteristic of municipal home rule is the establishment of some degree of municipal autonomy through the vertical allocation of power between state and [municipalities]," writes George Vaubel, a law professor at Ohio Northern University.⁴ This decentralization of governmental powers is advantageous because local governments are more directly accountable to citizens, more responsive to needs and criticisms of constituents, more efficient, and better able to experiment with new approaches to local problems.

The disadvantage of Home Rule, as with any allocation of power, is the danger of abuse. For example, in North Carolina, many local school systems once made overly excessive assignments of teachers to instruct courses outside their field of certification due to a lack of oversight by the state.⁵ One possible solution to such threats in a state with Home Rule is to let the court system scrutinize questionable local

acts under the equal protection clause of the state constitution.⁶ Assuming there are some checks on the power of local governments, the key role they play in the democratic process makes it important to grant them broad authority to carry out their responsibilities.⁷

FOOTNOTES

¹N.C. Constitution, Article VII, Section 1.

²*State v. Gullede*, 208 N.C. 204, 179 S.E. 883 (1935). Also see Eugene McQuillin, 2 *The Law of Municipal Corporations*, Section 10.09 (Callaghan, 3rd Ed. 1988); and David M. Lawrence and Warren J. Wicker, *Municipal Government in North Carolina*, Institute of Government, University of North Carolina at Chapel Hill, 1982, p. 21.

³Tonya O'Hern, "Municipal Corporations: Home Rule—The Power of Local Self-Government and the Effect of State Enabling Legislation," *Washburn Law Journal*, Vol. 30, No. 3 (1991), p. 554, note 2.

⁴George D. Vaubel, "Democratic Government and Municipal Home Rule," *Stetson Law Review*, Vol. XIX (1990), p. 813.

⁵James Woolford, et al., *Teacher Certification: Out-of-Field Teaching in Grades 7-12 in N.C.*, report by the North Carolina Center for Public Policy Research, Raleigh, N.C., November 1982, pp. v-ix.

⁶Vaubel, note 4 above, p. 829. Also see N.C. Constitution, Article I, Section 19.

⁷*Ibid.*, p. 831.