

## **Handout: *Dillon's Rule* by Clay Wirt**

### **The Development of Local Governments in Virginia**

Government in Virginia has not been static, but has evolved to meet the changing needs of changing times. It is no surprise that units of local government as we think of today were not present in the early years of the Virginia Colony. The colony was settled primarily as a business and economic adventure, and in the early years, England administered everything out of London through its own appointed governor and council.

Further looks into Virginia's local government in the past reveal some approaches that would seem out of step with today's modern Virginia, but made considerable sense in their time. In the early days, most local government officials were appointed by the state, and in later years many governing bodies appointed their own members, as vacancies became open. Again, the point is that local governments in Virginia have not been static but have evolved to meet current needs.

### **Development of the Dillon Rule**

John Forest Dillon, for whom the Dillon Rule is named, was the chief justice of the Iowa Supreme Court approximately 110 years ago. He was also one of the greatest authorities of his time on municipal law and a prolific writer on local governments.

Judge Dillon was a man who greatly distrusted local governments and local government officials. He is quoted as saying that "those best fitted by their intelligence, business experience, capacity and moral character" usually did not hold local office, and that the conduct of municipal affairs was generally "unwise and extravagant."

Perhaps largely because of such strong beliefs, Judge Dillon expounded his famous rule which was quickly adopted by state supreme courts around the nation and was adopted by the Virginia Supreme Court before the turn of the 19th century. The rule is still in effect here in Virginia.

### **What is the Dillon Rule?**

The Dillon Rule is used in interpreting state law when there is a question of whether or not a local government has a certain power. Lawyers call it the rule of statutory construction. Dillon's Rule construes grants of power to localities very narrowly. The bottom line is - if there is a question about a local government's power or authority, then the local government does not receive the benefit of the doubt. Under Dillon's Rule, one must assume the local government does NOT have the power in question.

In legal language, the first part of Dillon's Rule reads like this: Local Governments have only three types of powers: 1) those granted in express words, 2) those necessarily or fairly implied in or incident to the powers expressly granted, and 3) those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable.

It is the second part of the Dillon Rule that puts the vise on local government's powers. This part states that if there is any reasonable doubt whether a power has been conferred on a local government, then the power has NOT been conferred. This is known as the rule of strict construction of local government powers.

### **Judge Dillon's Era**

Judge Dillon had a basis for being harsh on local officials. He lived during what was probably the lowest point in the history of America's cities. Many of our cities' governments were sodden with corruption and inefficiency, and political machines and bosses controlled the day, particularly in big cities. Graft was shamelessly accepted in the many new public works projects and public utility franchises brought about by changing technology and rapidly expanding growth.

Lord Bryce of England, perhaps the most noted foreign scholar of American politics at the time, most succinctly summed up the era in his writings in 1888. He wrote, "There is no denying that the government of cities is one conspicuous failure of the United States." (Fortunately, local government corruption was not a major problem in Virginia during this time.)

Judge Dillon undoubtedly was reacting also to a second factor. During this time period, a small but vocal group was proclaiming that local governments had certain inherent constitutional powers, even though such powers were not spelled out in the various state constitutions. They argued that state general assemblies had no authority to interfere with these local powers.

Naturally, with his lack of respect for local government officials, this argument was anathema to Judge Dillon. He held emphatically that local governments had NO inherent constitutional powers and that since local governments were creatures of state government, they had only those powers the state delegated by state law or state constitution.

With the Dillon Rules firmly intact and corruption in local government still a major problem, state governments in the latter part of the 1800s rolled into action and passed hundreds of special laws controlling even the smallest of details in the lives of local governments. Unfortunately, a number of state legislators themselves got caught up in the corruption, because of the extraordinary power they wielded over local governments.