

DILLON'S RULE

Who has the authority to impose such mandates as those which require private well owners within a city or town to hook up to a public water system? Is it the town council? Is it the county government? Does the state hold that authority? Where does the federal government fit in? On issues such as mandatory hookup, and others both within and outside the water industry, these questions are not easily answered. This information sheet provides an introduction to Dillon's Rule, and its role in answering the all-too-common question: Can they do that?

The *United States Constitution* and State/Local Authority

The Tenth Amendment to the *United States Constitution* grants the states any powers not delegated to the federal government by the Constitution or prohibited by it. The Constitution makes no reference to local governments, which are, in fact, created and defined by the states. Their powers are granted through state charters, enabling legislation, and/or state constitutions.

States may delegate their "police powers" – those that regulate health, safety, morals and welfare – to the local government. The types of governmental regulations that fall under this umbrella are virtually endless.

What is Dillon's Rule?

In response to debate over local government authority in the 19th century – which followed widespread corruption within city governments – Iowa Supreme Court Justice John F. Dillon issued a legal doctrine that is still used in many state courts today for interpreting local government authority. "Dillon's Rule" states that local governments (below, referred to as "the corporation"):

[possess] and can exercise the following powers and no others: First, those granted in express words; Second, those necessarily or fairly implied or in incident to the powers expressly granted; Third, those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of the power is resolved by the courts against the corporation, and the power is denied.

In situations where the state legislature is unclear, the court's role is to interpret and determine legislative intent. To that end, courts adopt some guiding principles known as "rules of statutory construction." Dillon's Rule is one such principle, used by some state courts in interpreting the authority granted to city governments, when such authority is called into question. It is important to note that the state legislature may legislatively override Dillon's Rule, unless prohibited by the state constitution.

What is Home Rule?

Some state courts are more apt to rule in favor of local governments, granting them the right to self-governance in many cases. This more liberal school of thought is known as "home rule." Government officials and others generally classify states as either Dillon's Rule states (those having stronger state government oversight of local governments) or Home Rule states (those states which grant greater freedom to local governments).

Which states follow Dillon's Rule?

A report for the Brookings Institution Center on Urban and Metropolitan Policy, *Is Home Rule the Answer? Clarifying the Influence of Dillon's Rule on Growth Management*, attempts to classify the 50 states as either Dillon's Rule states or home rule states. While the report acknowledges there is some difficulty in such classification, as many state courts issue conflicting decisions and/or tend to rule by a blend of the two doctrines, it classified 39 states as Dillon's Rule states, found 10 states rejected Dillon's Rule completely, and classified Florida's status as uncertain. Of the 39 Dillon's Rule states, 31 applied the rule to all types of local governments, while 8 followed Dillon's Rule only for certain municipalities. The chart on the next page summarizes the report's findings.

Conclusion

How does Dillon's Rule apply to the water industry? In situations such as the one described in the introduction, where a local government imposes mandatory hookup requirements, the authority of the local government to create such a mandate can and should be questioned. Well owners, the water well industry and other interested parties should monitor such actions at all levels of government, ask questions, and remain politically active at the local and state levels.

Fifty-State Summary of Local Authority

From The Brookings Institution Center on Urban and Metropolitan Policy's "Is Home Rule the Answer? Clarifying the Influence of Dillon's Rule on Growth Management"

State	Dillon's Rule?
Alabama	Yes; Counties only
Alaska	No
Arizona	Yes
Arkansas	Yes
California	Yes; Except charter cities
Colorado	Yes; For statutory cities and towns, all counties.
Connecticut	Yes
Delaware	Yes
Florida	Unclear
Georgia	Yes
Hawaii	Yes
Idaho	Yes
Illinois	Yes; Non-home rule municipalities only
Indiana	Yes; Townships only
Iowa	No
Kansas	Yes; Not for cities and counties
Kentucky	Yes
Louisiana	Yes; For pre-1974 charter municipalities
Maine	Yes
Maryland	Yes
Massachusetts	No
Michigan	Yes
Minnesota	Yes
Mississippi	Yes
Missouri	Yes

State	Dillon's Rule?
Montana	No
Nebraska	Yes
Nevada	Yes
New Hampshire	Yes
New Jersey	No
New Mexico	No
New York	Yes
North Carolina	Yes
North Dakota	Yes
Ohio	No
Oklahoma	Yes
Oregon	No
Pennsylvania	Yes
Rhode Island	Yes
South Carolina	No
South Dakota	Yes; Strict construction, but no specific reference to the language of Dillon's Rule
Tennessee	Yes; Only non-home rule municipalities
Texas	Yes
Utah	No
Vermont	Yes
Virginia	Yes
Washington	Yes
West Virginia	Yes
Wisconsin	Yes
Wyoming	Yes

For More Information on Dillon's Rule

Richardson, Jr., J.J., Gough, M.Z., & Puentes, R. (January 2003). *Is Home Rule the Answer? Clarifying the Influence of Dillon's Rule on Growth Management*. A Discussion Paper Prepared for The Brookings Institution Center on Urban and Metropolitan Policy. Retrieved November 9, 2023 from <https://www.brookings.edu/articles/is-home-rule-the-answer-clarifying-the-influence-of-dillons-rule-on-growth-management/>.

Water Systems Council Special Report - An Analysis of Mandatory Hookup Law: Cases and Statutes (Updated October 2019). Available for download on our website at <https://www.watersystemscouncil.org/free-water-well-resources/>.

Water Systems Council Special Report - Who Owns the Water: A Summary of Existing Water Rights Laws (Updated August 2016). Available for download on our website at <https://www.watersystemscouncil.org/free-water-well-resources/>.



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