

What makes New England Town Government Unique?

Cathy Salisbury, Hingham League of Women Voters

With this first column, the Hingham League of Women Voters begins an introduction to local government. The League is a non-partisan political organization that encourages men and women of voting age to be informed and active citizens in government. Members share a commitment to making our democratic government responsible and responsive. We hope that our columns will inform you about how our local government works, encourage you to serve on town boards and interest you in joining the League. In future columns, we will cover subjects including: how towns are organized and run; how decisions are made; and the restraints applied to decision makers. We will use the Town of Hingham as an example. Our discussion in these columns is directed at newcomers to Hingham and is intended to provide a general overview. (But Townies are encouraged to read on.)

There is a long tradition of autonomous self-government in cities and towns in Massachusetts. Hingham was established in 1635 and had been governing itself for almost 150 years when the Massachusetts Constitution was adopted. The Massachusetts Constitution gives the Legislature (the General Court) broad powers to make reasonable laws as long as they are not inconsistent with the Mass. Constitution. Because of this broad grant of power, the General Court in 1785 formally confirmed the boundaries of each city and town in the Commonwealth as then established, and declared that the inhabitants of every city and town would continue to be a corporate body, retaining their powers and duties.

In 1966 the General Court passed Article 89, the Home Rule Amendment, which amended the Massachusetts Constitution that “It is the intention of this article to reaffirm the customary and traditional liberties of the people with respect to the conduct of their local government and to grant and confirm to the people of every city and town the right of self-government in local matters...” Thus, the tradition of strong, local self-government was confirmed in Massachusetts.

The state Legislature retains the right to pass general laws applicable to all or similar groups of municipalities but, unless formally requested to do so by a city or town, it may not constitutionally make laws concerning the internal governance or other matters of a city or town. If a town wants relief or state action then it requests that the General Court pass a Special Act.

Although Massachusetts cities and towns have broad authority to run their affairs and adopt their by-laws, they cannot exert *more* authority than the state has granted them. Some towns are more aggressive than others are reaching their authority. For example, two Massachusetts cities passed strict street opening ordinances hoping to force their gas company to comply with the statute that requires a gas company and other utilities to restore roadway pavement to as good a condition as existed prior to the utility’s excavation of it. However, the state Supreme Judicial Court declared both ordinances unconstitutional because the cities were trying to regulate a public utility. The Court

ruled that the legislature previously had set up an exclusive state regulatory scheme for utility regulation by the Department of Telecommunications and Energy. Arguments by the cities that they were exercising their lawful authority to protect public health and safety by regulating the use of their public ways therefore failed.

This friction between state and local governments in Massachusetts is a continuing source of newsworthy articles and litigation. Nowhere outside New England do cities and towns exercise as much police power as they do here. People who move to this region from other parts of the country are amazed by the extent of government de-centralization that exists in the New England states. Many observers, both professional students of government and the amateur, consider this system charmingly inefficient and antiquated, to be admired wistfully as a remnant of a simpler time and consigned to a glass case like some old and rare quilt. Others, however, suggest that this antiquated system points to the future, not the past, and contains within this model the promise to restore faith in our government institutions.

Next we will look at how cities and towns organize themselves to conduct their municipal business.

For information on membership in the Hingham League of Women Voters, please contact our membership chairman, Christine Dietterich, at 781-741-8121.