

Dillon's Rule: Should it Stay or Should it Go?

Target Audience: 12th grade government students

Length: 2 days (90—minute classes)

Objectives

The students will:

1. Define Dillon's Rule.
2. Describe how Dillon's Rule governs the relationship between the state government and local governments.
3. Identify expressed powers of counties or town and cities in Virginia.
4. Evaluate if Dillon's Rule is an effective division of power between state governments and local governments.

1. Overview

After reading background information about Dillon's Rule, this lesson requires students to examine how Dillon's Rule dictates the relationship between the state government and local governments. Students will review Virginia Codes for either counties or cities and towns and identify the expressed powers of local governments. In addition, they will be given letters written by the state attorney general and identify positive and negative consequences of the attorney general's decision. The last activity for the lesson is a written activity, which requires students to write a letter to their legislator advocating support or opposition to Dillon's Rule.

2. Activities

Day 1

Activity 1

- To begin the lesson, have students complete Handout #1: *Unusual Virginia Laws*. This handout is designed to encourage students to think about the statutes and ordinances that exist throughout Virginia today and what gives local and state governments the power to make and enforce laws.
- To provide students with background knowledge, have students read Handout #2: *Dillon's Rule by Clay Writ* and answer the questions on Handout #3: *Dillon's Rule by Clay Writ, Student Response Questions*.

Activity 2

- To help students explore and understand the expressed powers counties, cities, and towns have under Dillon's Rule, have student complete Handout #4: *Virginia Codes*. To complete Handout #4, students will use the information provided in Handout #5: *Virginia Codes Powers of Counties* or Handout #6: *Virginia Codes Powers of Cities and Towns* (choose the one that applies to your jurisdiction).
- Although Handouts #5 and #6 provide an overview of powers of local governments, the Virginia General Assembly Legislative Information System website, <http://leg1.state.va.us/lis.htm>, could also be used to provide a more in—depth description of the powers granted local governments.

- After groups have completed the handout, have them report the results to the class. During group presentations, students should focus on explaining the rationale for the choices they made.

Day 2

Activity 3

- Once students have a working knowledge of the powers granted local governments, have them again work in groups to complete Handouts #7A–7D: *From the Desk of the Attorney General*.
- Each group will be assigned one of four letters to read, discuss, and complete the group and individual response questions.
- Each group will present information concerning the proposed ordinance, the response of the attorney general, and group response to the decision of the attorney general to the class.
- While groups are giving their presentations, students will take notes about the ordinances and the attorney general’s response. This information will be used to write a letter to a state legislator.

Activity 4

- The concluding activity is Handout #8: *Letter to Your Legislator*. Students will write a letter to their state legislator in which they explain their support or opposition to a reversal of Dillon’s Rule. The letter requires students to use information they have learned and gathered from the previous activities to support their opinions.

3. Background Information

What is Dillon’s Rule? This is often a complicated concept for students to understand and is one of the central principles that guides policy—making decision of local jurisdictions. Unlike home rule states such as Missouri, Virginia is a Dillon’s Rule state. In comparison, home rule states allow local governments to use inherent power to govern according to the will of the electorate, while a Dillon’s Rule state restricts the inherent power of local governments. In a Dillon’s Rule state, local governments only have the expressed powers given to them by the state constitution and statutes.

Judge John F. Dillon, Chief Justice of the Iowa Supreme Court, distrusted local governments and believed officials were corrupt and ill equipped to govern. Judge Dillon espoused his beliefs in a decision in 1868. This case went on to be upheld by the U.S Supreme Court in *City of Clinton v. Cedar Rapids and Missouri River Railroad Company, 24 Iowa 455 (1868)*. Following the Supreme Court decision, Judge Dillon’s assertions were adopted by many states, including Virginia.

Further background information is available:

- Dillon’s Rule: Good or Bad for Local Governments–League of Women Voters, <http://www.celdf.org/portals/o/pdf/Home%20Rule%20in%20Virginia.pdf>
- http://www.brookings.edu/reports/2003/01metropolitanpolicy_richardson.aspx
- Handout #9: *Background Information for Students*, provides students definitions of key terms and explanation of key facts.

4. Conclusion

To conclude the lesson and allow students to evaluate the effectiveness of Dillon's Rule, each student will write a letter to their state legislator in which he/she supports or opposes rescinding Dillon's Rule.

5. Differentiation

This lesson is designed for students of varying academic levels. To help students who struggle with comprehension, they are able to work in small groups. The teacher can either allow students to form their own groups or create groups for the students that consist of students of varying academic levels.

6. SOL Skills

The student will demonstrate mastery of the social studies skills citizenship requires, including the ability to

- analyze primary and secondary source documents (GOVT.1a);
- select and defend positions in writing, discussion, and debate (GOVT.1g).

7. SOL Content

The student will demonstrate knowledge of the organization and powers of the state and local governments described in the Constitution Virginia by

- examining the legislative, executive, and judicial branches (GOVT.8a);
- examining the structure and powers of local government: county, city, and town (GOVT.8b);
- analyzing the relationship among state and local governments and the role of regional authorities, governing boards, and commissions (GOVT.8c).

8. Materials

- Handout #1: *Unusual Virginia Laws*
- Handout #2: *Dillon's Rule by Clay Writ*
- Handout #3: *Dillon's Rule by Clay Writ, Student Response Questions*
- Handout #3A: *Dillon's Rule by Clay Writ, Student Response Questions Answers*
- Handout #4: *Virginia Codes*
- Handout #5: *Virginia Codes Powers of Counties*
- Handout #6: *Virginia Codes Powers of Cities and Towns*
- Handout #7A: *From the Desk of the Attorney General*
- Handout #7B: *From the Desk of the Attorney General*
- Handout #7C: *From the Desk of the Attorney General*
- Handout #7D: *From the Desk of the Attorney General*
- Handout #8: *Letter to Your Legislator*
- Handout #9: *Background Information for Students*
- Internet Access (optional)

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Unusual Virginia Laws

Below are state statutes and county ordinances that may seem useless or even strange. As you read the statutes and ordinances, ask yourself the following questions:

- ✓ Who is responsible for passing these laws—county, city, town, or state?
- ✓ What is the intent of the law?
- ✓ Who determines if these laws address the needs of the community?
- ✓ What gives local governments and the state government the power to make and enforce laws?

Virginia State Government Statutes

- 46.2-1079—using a radar detector in Virginia is illegal.
- 29.1-521—it is illegal to hunt a wild animal on Sunday with the exception of raccoons which may be hunted until 3:00 AM on Sunday.

City of Virginia Beach Ordinances

- You are not allowed to drive past the same location more than once in thirty minutes on Atlantic Avenue in Virginia Beach.
- You are not allowed to use profanity on Atlantic Avenue or on the Boardwalk.

City of Richmond Ordinance

- It is illegal to flip a coin in a restaurant to see who pays for the bill.

Prince William County Ordinances

- 4.69 and 4.71—it is illegal to own a skunk as a pet.
- 16.10—it is illegal to curse or use abusive language toward another person.

City of Norfolk Ordinance

- 29.4—it is illegal to “trick or treat” if you are over the age of 12 and it is illegal to “trick or treat” after 8:00 PM.

Now that you have reviewed and thought about the laws, in groups of 3 or 4, answer the following questions.

1. How do these laws meet the needs of the community?

2. What is the reason local governments and the state government have the authority to create and enforce laws?

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3. Identify three issues or problems that exist in your community that you would like to pass a statute or ordinance to address and solve.
 - a.
 - b.
 - c.

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Dillon's Rule by Clay Writ

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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 them 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.

But it is also not surprising that grumbling among the colonists about this centralized approach of government started fairly soon, and within 13 years the first General Assembly that included representation by the colonists had met. By 1634, the colony's population and the state's needs had grown beyond the management capabilities of a centralized government and the General Assembly created eight "shires" or counties to help keep the peace and take care of administrative details. The county court became the local governing body and the justice of the peace, and then the sheriff, became the dominant local figures. In addition to the collection of taxes, administration of justice and law enforcement were major functions of the government.

Eighty-eight years after the formation of the first counties, the first cities in Virginia emerged. The British Crown granted a city charter to Williams-burg in 1722 and just a few years later Norfolk received its royal charter. The charter would serve as a mini-constitution establishing the organization of "independent" cities and authorizing their various powers. In time, the cities of Williams-burg and Norfolk were carved out of their counties, each having separate and distinct boundaries, starting a tradition that holds today.

In the 1930's a new form of government came into vogue to ease the handling of special needs such as the development of water and sewer systems. This was the special district. These districts generally have significant powers but cannot raise taxes, and their operations frequently cross local government boundaries.

As a way of helping localities address growth needs, the Virginia State Constitution as revised in 1971 allowed the formation of regional governments. Although regional government has not caught on, intergovernmental agreements between localities to jointly perform various government services have served a similar purpose.

Further peeks into Virginia's local government past reveal some approaches that would seem most out of step in today's modern Virginia but which made considerable sense in their time. In the early days, most local officials were appointed by the state, and in later years many governing bodies appointed their own members as vacancies became open. Also, in the 1800's bicameral councils governed Virginia's cities with two houses just like today's General Assembly.

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This likely was required by their state constitution before 1902 as a way of providing checks and balances for local government's powers.

Again, the point to be made is that local governments in Virginia have not been static but have evolved to meet current needs.

Development of the Dillon Rule and Municipal Home Rule

John Forest Dillon, for whom Dillon Rule is named, was the chief justice of the Iowa Supreme Court approximately 100 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."

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 a rule of statutory construction.

Dillon's Rule construes grants of power to localities very narrowly. The bottom line is that 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 that 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; those granted in express words, those necessarily or fairly implied in or incident to the powers expressly granted, and 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, however, that puts the vice 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 a rule of strict construction of local government powers.

Judge Dillon's Era

Judge Dillon had a basis for being so 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 the big cities. Graft was shamelessly accepted in the many new public work projects and public utility franchises brought about by changing technology and rapidly expanding growth.

Judge Dillon undoubtedly was reacting also to a second factor. During this time period a small but vocal group was proclaiming that local governments inherit certain constitutional powers

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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. Dillon 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.

What is Municipal Home Rule?

One modern-day reformer described home rule as follows: “We want some freedom of choice as to the major emphases to be given to our local governmental programs, the right to decide whether we will stress health, schools, traffic, crime control or other interests. We want some leeway for experimentation and enough financial freedom. We want the state to be restrained so that it will not exercise its privileged position to dabble in local decisions, finance and appointments for partisan political purposes.

Municipal home rule is harder to describe than Dillon’s Rule since there was only one Judge Dillon but there are approximately 43 states that have granted some measure of home rule and the scope and style of home rule varies considerably from state to state.

Virginia’s Constitution and a Missed Opportunity

The Virginia Constitution expressly gives the General Assembly power to pass general and special laws to set forth the organization and powers of local governments. Dillon’s Rule remains in place in Virginia. But in 1969, a proposal surfaced to reverse the Dillon Rule and to give local governments power to have home rule charters.

This proposal, as well as all the other changes originally proposed to the state constitution, were recommended by the Commission on the Constitutional Revision chaired by former Gov. Albertis Harrison. The proposal stated, “A charter county or a city may exercise any power or perform any function which is not denied to it by this constitution, by its charter or by laws enacted by the General Assembly.

The intention was to reverse the Dillon Rule and give all cities and those counties with populations of more than 25,000 a large measure of home rule. Although no language was proposed that said local powers should be liberally construed such as in the Kansas Constitution, the commission’s report and the Senate debate indicate that the intention was also to abolish the rule of strict construction of local government powers.

You may be surprised to learn that the Virginia Municipal League and the Virginia Association of Counties opposed these changes. Once VML and VACO said they did not favor reversal of the Dillon’s Rule and the granting of home rule charters, it didn’t take the General Assembly long to unanimously strike these provisions from the proposed revisions to the constitution.

Reading and talking with those involved in the decision to oppose the proposed constitutional revisions reveals that the league’s local officials felt at the time that the General Assembly had been fairly responsive to the needs of local governments both through general laws and through charters, and this was VML’s testimony during the 1969 debates.

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Local governments, for example, had what some thought was near home rule powers through the provisions of the Uniform Charters Act which authorizes any city or town to obtain from the General Assembly a charter provision that permits the locality to have all powers not denied to it by the constitution or by state statute.

Also, there was considerable fear of the unknown in moving from Dillon's Rule to home rule. A widely distributed statement put out by the governor's office just prior to the 1969 special session that dealt with revision of the constitution used this language to describe the changes involving local governments and particularly the reversal of the Dillon Rule:

"Times have changed' and continue to change rapidly, and Virginia must learn to change too or be left behind because of its inability to adapt."

"This article would loosen some of the legislative reins on local government and treat cities and counties more alike, principally by reversing the present constitutional philosophy. The General Assembly is directed to start from scratch and outline by statute the organization, government. Power changes of boundaries, consolidation and dissolution of counties, cities, towns and regional governments."

The summary was clearly erroneous, but it was the type of language that struck fear in the hearts of local officials. Certainly it did not create support for abolishing the Dillon Rule.

Further, the executive directors VML and VACO got on the telephone and started talking with their counter-parts in various home rule states. They found it was not unusual for general assemblies in those states to pass laws denying local governments powers in a wide variety of areas.

Even the report of the Commission on Constitutional Revision set forth 13 different areas where the General Assembly might want to prohibit local action. These included such areas as providing for the taxation of subjects reserved for taxation by the state, prescribing the manner for election of local officials and prescribing the duties or compensation of police officers, firefighters or other public officers whose duties or compensation are prescribed by the constitution or general laws of the General Assembly.

Local officials worried that the General Assembly would get into the mode of denying powers and end up denying more than they would grant through home rule. In addition, several provisions were included in the local government section of the proposed changes that VML did not like, such as requiring towns to have a population of 25,000 before they could become cities and requiring referendums to enact or amend charters. The attention of the organization was drawn to killing these provisions as opposed to going after something new.

On the other hand, local officials agreed with several provisions included in the proposed changes, and this gave them something to point to as benefiting local governments without supporting home rule. Of particular importance was a revision that gave the General Assembly authority to pass special laws relating to a single locality. Thus, a special law can be used to grant a locality a needed power or even to give a county powers similar to a city through the granting of a charter. Also, local officials felt that with the General Assembly meeting every year

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rather than every two years, local government could get their concerns met in a more timely fashion.

Finally, some local officials found comfort in placing the burden of decision-making on the General Assembly. In short, members of the General Assembly, rather than local officials, would catch the heat for controversial decisions.

With the lack of a compelling reason to adopt home rule, local officials seemed pleased with their new constitution that did not change the status quo of Dillon's Rule.

A Change of Heart

By the early 1980's, after the Virginia Supreme Court had issued some narrow interpretations of local government powers, particularly dealing with land use and zoning, VML had learned just how important Dillon's Rule is to local governments. Howard Dobbins general counsel for the league, wrote a column in ***Virginia Town & City*** calling the decision of the General Assembly not to overturn Dillon's Rule "unfortunate," since that time, the abolition of Dillon's Rule, or at least the reversal of its strict interpretation to a liberal interpretation, has been a key legislative position of the league.

Since Judge Dillon articulated his rule in 1873, several developments have removed its philosophical underpinnings, not the least of which occurred right here in Virginia in 1908 when Staunton became the first American city to hire a city manager. Today, competent professional management has replaced "boss" politics and is the norm rather than the exception. In addition, Virginia's General Assembly has removed much of the danger of an "unwise and extravagant" local government by the passage of laws such as the Freedom of Information Act, the Conflict of Interest Act, the Public Procurement Act, and the Public Finance Act. These laws as well as the auditor of public accounts and the operation of the grievance procedure ensure high levels of honesty and competency in local government.

Not only has the condition of local government that Judge Dillon saw disappeared, but other conditions of local government have changed as well. Today, local governments operate under pressure for services coming from all sides. With increasing taxes, citizens expect the most for their tax dollar and demand quality programs. Federal mandates require more of local governments while federal financial assistance is disappearing. The cost of providing services has escalated with inflation just like the cost of living and rapid growth has put pressure on many of Virginia's local governments and often demands quick action. Today's times require innovative solutions of local governments, and the Dillon Rule restricts the power and flexibility which local governments must have to address their needs.

Times have changed and continue to change rapidly, and Virginia must learn to change too or be left behind because of its own inability to adapt. Virginia's local governments need the authority to cope with their own problems without the delay of the legislature, and the legislature needs the freedom to define and address the many issues of state-wide concern confronting the commonwealth. Many legislators have been heard to express concern about the volume of work that must be accomplished during the session. Our state legislators do not need to concern themselves with the numerous purely local matters local officials currently are forced to bring before the General Assembly.

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The vision of local government that Judge Dillon depicted does not exist today, and there are numerous checks and balances on the “unwise and extravagant” exercise of local power. The General Assembly can legislate on issues of statewide significance, the courts can review local government actions, today’s active press serves as a watchdog for all government activity and the electorate certainly has the last say by exercising its power at the ballot box. The time has come to reverse the Dillon Rule and grant a liberal construction of local government powers in Virginia.

About the Author

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12. Of the reasons identified in question 11, choose the one that is most compelling and explain your choice.

13. Since the 1980's, there have been many changes that have prompted many people to doubt the wisdom of not overturning Dillon's Rule. What were these changes?

a.

b.

c.

14. Of the changes identified in question 13, choose the one that is most compelling and explain your choice.

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Dillon’s Rule by Clay Wirt

Student Response Questions Answers

1. When Virginia’s first General Assembly created “shires,” or counties, what were the duties of the county officials?
 - COUNTY OFFICIALS WERE CHARGED WITH KEEPING THE PEACE AND ADMINISTRATIVE DUTIES WHICH INCLUDED THE COLLECTION OF TAXES, ADMINISTRATION OF JUSTICE, AND LAW ENFORCEMENT.
2. What is the purpose of a city charter?
 - CITY CHARTERS CREATE INDEPENDENT CITIES AND AUTHORIZE THEIR POWERS.
3. What powers are granted to special districts?
 - SPECIAL DISTRICTS ARE GIVEN SPECIFIC POWERS SUCH AS THE POWER TO DEVELOP WATER AND SEWER SYSTEMS.
4. What power is denied special districts?
 - SPECIAL DISTRICTS ARE DENIED THE POWER TO RAISE TAXES.
5. Describe John Forest Dillon’s, Chief Justice of the Iowa Supreme Court, opinion of local governments 100 years ago.
 - DILLON BELIEVED THAT THE PEOPLE MOST QUALIFIED TO GOVERN DID NOT WORK FOR LOCAL GOVERNMENTS. THOSE THAT CHOSE TO WORK FOR LOCAL GOVERNMENTS WERE OFTEN LESS INTELLIGENT, LACKED EXPERIENCE AND MORAL CHARACTER, AND WOULD MANAGE RESOURCES FRIVOLOUSLY.
 - ABOVE ALL, DILLON MISTRUSTED LOCAL OFFICIALS.
6. In your opinion, explain why you think his assessment of local governments is or is not true today.
 - ANSWERS MAY VARY—STUDENTS SHOULD FOCUS ON HOW LOCAL BOARD SUPERVISORS ARE ADDRESSING ISSUES UNIQUE TO THEIR COUNTIES, CITIES, OR TOWNS.
7. According to Dillon’s Rule, what types of powers do local governments have?
 - a. POWERS GRANTED IN EXPRESSED WORDS
 - b. POWERS IMPLIED BY THE POWERS EXPRESSLY GRANTED
 - c. POWERS ESSENTIAL TO DECLARED OBJECTS AND PURPOSES OF THE CORPORATION
8. In one statement, summarize the meaning of the “rule of strict construction.”
 - ANSWERS MAY VARY—EXAMPLE – IF THERE IS A QUESTION THAT A POWER HAS BEEN GRANTED TO A LOCAL GOVERNMENT, THAN THE POWER HAS NOT BEEN GRANTED.
9. Judge Dillon’s mistrust of local government officials was based on reality and his opinion.
 - a. During his era, why was it realistic to believe that many local governments were corrupt?—MANY LOCAL OFFICIALS WERE ACCEPTING GRAFT.
 - b. Based on the reality of the era, what conclusion did Dillon draw?—SINCE LOCAL GOVERNMENTS WERE CREATED BY STATE GOVERNMENTS, THEY HAD NO INHERENT POWERS, BUT RATHER ONLY POWERS DELEGATED BY STATE LAW OR STATE CONSTITUTION.

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10. After reading the section of the reading “What is Municipal Home Rule?”, what do you think is the best definition of municipal home rule?
 - STATE CONSTITUTIONS AUTHORIZE LOCAL GOVERNMENTS TO ENACT HOME RULE CHARTERS WHICH GIVE LOCAL GOVERNMENTS POWERS.

11. In 1969 a proposal failed that would have reversed Dillon’s Rule and allowed local governments to have home rule charters. What were the reasons that organizations such as the Virginia Municipal League and the Virginia Association of Counties did not support the proposal?
 - a. THE GENERAL ASSEMBLY HAD BEEN RESPONSIVE TO LOCAL GOVERNMENTS.
 - b. THE UNIFORM CHARTERS ACT ALLOWS FOR CITIES OR TOWNS TO ASK OF THE GENERAL ASSEMBLY A CHARTER PROVISION WHICH GIVES THE LOCALITY ALL POWERS NOT DENIED BY THE CONSTITUTION OR STATE STATUE.
 - c. FEAR OF THE UNKNOWN—WHAT WOULD HAPPEN UNDER HOME RULE?
 - d. IN MANY HOME RULE STATES, GENERAL ASSEMBLIES PASSED LAWS DENYING LOCAL GOVERNMENT POWERS. OPPONENTS FEARED THAT EVENTUALLY THE GENERAL ASSEMBLY WOULD DENY MORE POWERS THAN THEY WOULD GRANT UNDER HOME RULE.
 - e. SINCE THE GENERAL ASSEMBLY MEETS EVERY YEAR, LOCALITIES GET THEIR NEEDS ADDRESSED AND MET REGULARLY.
 - f. SOME LOCAL OFFICIALS WERE HAPPY WITH THE GENERAL ASSEMBLY MAKING HARD DECISIONS FOR WHICH THERE COULD BE OPPOSITION.

12. Of the reasons identified in question 11, choose the one that is most compelling and explain your choice.
 - ANSWERS MAY VARY

13. Since the 1980’s, there has been many changes that have prompted many people to doubt the wisdom of not overturning Dillon’s Rule. What were these changes?
 - a. CITIES HAVE HIRED CITY MANAGERS.
 - b. THE GENERAL ASSEMBLY HAS PASSED THE FREEDOM OF INFORMATION ACT, THE CONFLICT OF INTEREST ACT, THE PUBLIC PROCUREMENT ACT, AND THE PUBLIC FINANCE ACT.
 - c. LOCAL GOVERNMENTS ARE FEELING MORE PRESSURE AND SUBJECT TO MORE ACCOUNTABILITY FROM CITIZENS TO SPEND TAX DOLLARS WISELY, FEDERAL MANDATES, AND THE COST AND RESPONSIBILITY OF PROVIDING SERVICES.

14. Of the changes identified in question 13, choose the one that is most compelling and explain your choice.
 - ANSWERS MAY VARY

Names of Group Members _____

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Virginia Codes

In groups of 3–4, review the powers granted counties or cities and towns in the Code of Virginia. After the group has reviewed the powers, choose 10 powers that the group thinks are most vital for an effectively functioning local governing board and 10 powers that are least important and answer the follow–up questions. Be prepared to share your group responses with the class.

10 of the Most Important Powers	10 of the Least Important Powers
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.
6.	6.
7.	7.
8.	8.
9.	9.
10.	10.

Group Response Questions

1. What criteria did your group use to decide which powers are most important and which are least important?

2. Were there areas of disagreement among the group members?
 - a. If the answer is yes, describe the areas of disagreement.

Individual Response

Review your responses to the chart. Based on your responses, explain why you think Dillon's Rule is an effective method to manage the interaction between local governments and the General Assembly.

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Virginia Codes Powers of Counties

Powers of Counties

§ 15.2—1200. General powers of counties

Any county may adopt such measures as it deems expedient to secure and promote the health, safety and general welfare of its inhabitants which are not inconsistent with the general laws of the Commonwealth. Such powers shall include, but shall not be limited to, the adoption of quarantine regulations affecting both persons and animals, the adoption of necessary regulations to prevent the spread of contagious diseases among persons or animals and the adoption of regulations for the prevention of the pollution of water which is dangerous to the health or lives of persons residing in the county.

§ 15.2—1201. County boards of supervisors vested with powers and authority of councils of cities and towns; exceptions.

The boards of supervisors of counties are hereby vested with the same powers and authority as the councils of cities and towns by virtue of the Constitution of the Commonwealth of Virginia or the acts of the General Assembly passed in pursuance thereof. However, with the exception of ordinances expressly authorized under Chapter 13 of Title 46.2, no ordinance shall be enacted under authority of this section regulating the equipment, operation, lighting or speed of motor-propelled vehicles operated on the public highways of a county unless it is uniform with the general laws of the Commonwealth regulating such equipment, operation, lighting or speed and with the regulations of the Commonwealth Transportation Board adopted pursuant to such laws. Nothing in this section shall be construed to give the boards of supervisors any power to control or exercise supervision over signs, signals, marking or traffic lights on any roads constructed and maintained by the Commonwealth Transportation Board. No powers or authority conferred upon the boards of supervisors of counties solely by this section shall be exercised within the corporate limits of any incorporated town except by agreement with the town council.

In the County of Fairfax an ordinance may be adopted by the board of supervisors under this section after a descriptive notice of intention to propose the same for passage has been published once a week for two successive weeks in a newspaper having a general circulation in the county. After the enactment of such an ordinance by the board of supervisors, no publication of the ordinance shall be required and such an ordinance shall become effective upon adoption or upon a date fixed by the board of supervisors.

Areas that Counties May Regulate and Exercise Power

15.2—1201.2—Discount for early payment of taxes

15.2—1202—Appropriation of money to incorporated towns

15.2—1203—Governing body may require treasurer to pay claims

15.2—1204—Appropriations for advertising resources, etc., by counties

15.2—1205—Allocation of county funds or property to authorities created by county

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- 15.2—1206—Pistols and revolvers; license tax on dealers
- 15.2—1207—Same; reports of sales
- 15.2—1209—Prohibiting outdoor shooting of firearms or arrows from bows in certain areas
- 15.2—1209.1—Counties may regulate carrying of loaded firearms on public highways
- 15.2—1210—Prohibiting hunting in certain areas
- 15.2—1211—Boundaries of magisterial and election districts
- 15.2—1214—County may provide motor vehicle liability insurance to protect operators of motor vehicles owned or leased by county, school board, etc.
- 15.2—1215—Authority to cut growth of grass or lawn area in certain counties
- 15.2—1216—Provision of information to prospective buyers in planned development units
- 15.2—1217—Regulation of emission of smoke from fuel-burning equipment
- 15.2—1218—Prevention of trespassing; animals running at large on highways
- 15.2—1219—Prohibiting sale on highways of plants, shrubs or trees
- 15.2—1220—Regulation by certain counties of persons and vehicles
- 15.2—1222—Regulation of certain motion pictures shown at drive-in theaters
- 15.2—1223—Regulation of horse riding schools
- 15.2—1224—Authority to equip and maintain television transmission and relay facilities
- 15.2—1225—Authority to establish hospitals
- 15.2—1229—Petty cash funds
- 15.2—1230—Monthly financial reports of officers and offices
- 15.2—1231—Centralized competitive purchasing by chief administrative officer
- 15.2—1232—Posting of bond not prerequisite to exercise of right by county
- 15.2—1232.1—Auctions; pawnshops; secondhand dealers; peddling; fraud and deceit in sales; weights and measures
- 15.2—1235—Rules and regulations to govern county purchases
- 15.2—1236—Purchases and sales to be based on competition
- 15.2—1237—Legal review of contracts; filing
- 15.2—1238—Certification of sufficient funds

Name _____

Period _____ Date _____

15.2–1239—Orders and contracts in violation of article

15.2–1241—Signing records when chairman has died, moved, etc., before signing them

15.2–1242—Minutes of meetings and proceedings

15.2–1243—Governing body to receive, audit and approve claims; warrants

15.2–1244—Limitations on issuance of warrants

15.2–1245—Procedure for allowance of claims

15.2–1246—Appeal from disallowance of claim

15.2–1247—When disallowance of claim final; exception; when no execution to be issued

15.2–1248—No action against county until claim presented to governing body

15.2–1249—Amounts allowed endorsed on claim; copies of record and accounts to be furnished

Name _____

Period _____ Date _____

Virginia Codes Powers of Cities and Towns

Powers of Cities and Towns

§ 15.2—1100. Powers conferred; exercised by council.

A municipal corporation shall have and may exercise any or all powers set forth in this article, regardless of whether such powers are set out or incorporated by reference in a municipal charter. All powers vested in a municipal corporation by this chapter shall be exercised by its governing body.

§ 15.2—1101. Exercise of powers outside boundaries.

If a municipal corporation seeks to exercise the powers set forth in this article outside its boundaries, such powers shall, except as to existing nonconforming use, be subject to the zoning regulations of the locality in which the power is sought to be exercised, provided that, except as to existing nonconforming uses, such locality also observes the zoning regulations of the municipality as to any of such locality's property located within the corporate limits.

§ 15.2—1102. General grant of power; enumeration of powers not exclusive; limitations on exercise of power.

A municipal corporation shall have and may exercise all powers which it now has or which may hereafter be conferred upon or delegated to it under the Constitution and laws of the Commonwealth and all other powers pertinent to the conduct of the affairs and functions of the municipal government, the exercise of which is not expressly prohibited by the Constitution and the general laws of the Commonwealth, and which are necessary or desirable to secure and promote the general welfare of the inhabitants of the municipality and the safety, health, peace, good order, comfort, convenience, morals, trade, commerce and industry of the municipality and the inhabitants thereof, and the enumeration of specific powers shall not be construed or held to be exclusive or as a limitation upon any general grant of power, but shall be construed and held to be in addition to any general grant of power. The exercise of the powers conferred under this section is specifically limited to the area within the corporate limits of the municipality, unless otherwise conferred in the applicable sections of the Constitution and general laws, as amended, of the Commonwealth.

Areas that Cities and Towns May Regulate and Exercise Power

15.2—1103—Charter provisions not affected; conflict between chapter and charter

15.2—1104—Taxes and assessments

15.2—1104.1—Tax on admissions to charitable events

15.2—1105—Borrowing money and issuing evidence of indebtedness

15.2—1106—Control and management of affairs; books, records, accounts, etc., of agencies

15.2—1107—Departments, offices, boards, etc

Name _____

Period _____ Date _____

- 15.2—1108—Gifts, donations, bequests or grants
- 15.2—1109—Milk, food and food products
- 15.2—1110—Swimming pools, lakes and other waters
- 15.2—1111—Regulation of cemeteries and burials
- 15.2—1112—Aid to military units
- 15.2—1113—Dangerous, etc., business or employment; transportation of offensive substances; explosive or inflammable substances; fireworks
- 15.2—1113.1—Prohibiting hunting in certain areas
- 15.2—1114—Auctions; pawnshops; secondhand dealers; peddling; fraud and deceit in sales; weights and measures
- 15.2—1115—Abatement or removal of nuisances
- 15.2—1116—Smoke; fuel-burning equipment
- 15.2—1117—Light, ventilation, sanitation and use and occupancy of buildings
- 15.2—1119—Hospitals, sanatoria, homes, clinics, etc
- 15.2—1120—Detentive, correctional and penal institutions
- 15.2—1121—Cemeteries
- 15.2—1122—Parking or storage of vehicles
- 15.2—1123—Airports and facilities
- 15.2—1124—Police jurisdiction over lands, buildings and structures; jurisdiction of offenses; appeals; jurisdiction in certain public buildings with magistrate's offices
- 15.2—1125—Licenses and permits; fees; bonds or insurance
- 15.2—1126—Posting of bond not prerequisite to exercise of right by municipality
- 15.2—1127—Vacant building registration; penalty
- 15.2—1129—Encouragement of use of city facilities in certain cities
- 15.2—1129.1—Creation of arts and cultural district
- 15.2—1129.2—Creation of local economic revitalization zones
- 15.2—1131—Establishment of personnel system for city administrative officials and employees
- 15.2—1132—Volunteer property maintenance and zoning inspectors in certain cities
- 15.2—1133—Purchase of electric power and energy; duration of contracts; source of payments

Names of Group Members _____

Period _____ Date _____

From the Desk of the Attorney General

Among the many duties of the Attorney General of the Commonwealth of Virginia and his staff is to provide written advice to members of the General Assembly and other government officials. Various localities around the state have questions concerning the legality of pending ordinances and are concerned about violating the Constitution of Virginia. Sometimes questions arise over the applicability of Dillon’s Rule and the impact of the rule on pending decisions. Below, is an excerpt of a letter that the Office of the Attorney General sent to an official addressing the issue and the possibility of conflicting with Dillon’s Rule.

In groups of 3 – 4, read the letter and respond to the questions following the letter. While you are reading and discussing the letter, think about the impact of the opinion of the attorney general on the people of the particular community.

Letter #1 – April 1, 1997

- Written to Ms. Margaret Dean Moncure, County Attorney for Nelson County

Issue Presented

You ask whether a county that is not a member of a regional jail authority may contract with a private corporation to construct, maintain and operate a holding facility to serve as the county jail. If so, you also ask whether the county must comply with the competitive procurement requirements of the Virginia Public Procurement Act before entering into negotiations with the private corporation for housing prisoners.

Background

You relate that a private corporation has approached Nelson County regarding construction of a holding facility that will house local, state and federal prisoners. The corporation has offered to negotiate an agreement with the county to house prisoners who would otherwise be held in the Nelson County jail. The county plans to close the Nelson County jail; the county would not own, maintain or operate the holding facility; and the county is not a member of a regional jail authority.

Applicable Law and Discussion

Section 15.1257 of the *Code of Virginia* requires that “[t]he governing body of every county ¼ shall provide ¼ within or without [the] courthouse, ¼ jail.” A prior opinion of the Attorney General concludes that the obligation imposed by § 15.1257 is mandatory. Section 53.171 provides a judicial process to ensure that each county maintain a jail that is secure, in good repair and otherwise adequate. I find no statute enabling a county that is not a member of a regional jail authority to enter into a contract with a private corporation to house prisoners in a facility operated by the private corporation. Under Dillon’s rule of strict construction local governmental powers, a locality may not engage in a particular activity unless the authority for it to do so is expressly granted in a statute or necessarily implied from a power that is expressly granted.

Response

Consequently, I am of the opinion that a county that is not a member of a regional jail authority may not contract with a private corporation to construct, maintain and operate a holding facility to serve as the county.

From the Desk of the Attorney General Group Response Questions & Individual Notes

1. Summarize the action or proposed ordinance the government official is asking the attorney general to review.

2. According to the opinion of the attorney general, why does the proposed action or ordinance violate or not violate Dillon’s Rule? Your answer must provide specific examples from the letter to support your answer.

3. List positive and negative consequences of the attorney general’s opinion on the locality involved.

Positive Consequences	Negative Consequences

4. Explain why the application of Dillon’s Rule in this situation is beneficial or detrimental to the locality concerned.

Group Presentation Notes

As groups are presenting the results of their group discussions, take notes about the ordinances being considered and the responses of the attorney general. You will use this information to write a letter to the editor.

Names of Group Members _____

Period _____ Date _____

From the Desk of the Attorney General

Among the many duties of the Attorney General of the Commonwealth of Virginia and his staff is to provide written advice to members of the General Assembly and other government officials. Various localities around the state have questions concerning the legality of pending ordinances and are concerned about violating the Constitution of Virginia. Sometimes questions arise over the applicability of Dillon’s Rule and the impact of the rule on pending decisions. Below, is an excerpt of a letter that the Office of the Attorney General sent to an official addressing the issue and the possibility of conflicting with Dillon’s Rule.

In groups of 3 – 4 read the letter and respond to the questions following the letter. While you are reading and discussing the letter, think about the impact of the opinion of the attorney general on the people of the particular community.

Letter #2 – February 15, 2002

- Written to the Honorable W.B. Keister, Member, House of Delegates

Issue Presented

You ask whether the City of Radford may prescribe a \$200 fine for violation of its ordinance pertaining to permit parking.

Applicable Law and Discussion

You observe that § 46.2-1230 of the *Code of Virginia* authorizes the governing body of a locality to adopt an ordinance providing for the issuance of parking permits on public streets. You advise that Virginia law does not provide a penalty of violating such an ordinance. Further, you observe that § 46.2-1300 permits localities to adopt ordinances regulating the operation of motor vehicles on the high-ways. You note that § 46.2-113 makes it unlawful to violate the motor vehicles laws of the Commonwealth, or any local ordinance adopted under § 46.2-1300. Such violations under § 46.2-113 “constitute traffic infractions punishable by a fine or not more than \$200.” You relate that § 46.2-1300 provides no authority for localities to regulate permit parking; rather, it provides guidance to localities pertaining to authorized penalties for violation of local ordinance regulating operation of motor vehicles. Finally, you advise that application of Dillon’s Rule appears to prohibit the City of Radford from amending a parking ordinance to provide for a fine of \$200 as punishment for a violation

From the Desk of the Attorney General Group Response Questions & Individual Notes

1. Summarize the action or proposed ordinance the government official is asking the attorney general to review.

2. According to the opinion of the attorney general, why does the proposed action or ordinance violate or not violate Dillon's Rule? Your answer must provide specific examples from the letter to support your answer.

3. List positive and negative consequences of the attorney general's opinion on the locality involved.

Positive Consequences	Negative Consequences

4. Explain why the application of Dillon's Rule in this situation is beneficial or detrimental to the locality concerned.

Group Presentation Notes

As groups are presenting the results of their group discussions, take notes about the ordinances being considered and the responses of the attorney general. You will use this information to write a letter to the editor.

Names of Group Members _____

Period _____ Date _____

From the Desk of the Attorney General

Among the many duties of the Attorney General of the Commonwealth of Virginia and his staff is to provide written advice to members of the General Assembly and other government officials. Various localities around the state have questions concerning the legality of pending ordinances and are concerned about violating the Constitution of Virginia. Sometimes questions arise over the applicability of Dillon’s Rule and the impact of the rule on pending decisions. Below, is an excerpt of a letter that the Office of the Attorney General sent to an official addressing the issue and the possibility of conflicting with Dillon’s Rule.

In groups of 3 – 4 read the letter and respond to the questions following the letter. While you are reading and discussing the letter, think about the impact of the opinion of the attorney general on the people of the particular community.

Letter #3 – November 8, 2002

- Written to the Honorable Vincent F. Callahan, Jr., Member, House of Delegates

Issue Presented

You ask whether the Fairfax County School Board has the authority to amend its nondiscrimination policy to include sexual orientation.

Response

It is my opinion that, without enabling legislation, the Fairfax County School Board has no authority to include sexual orientation in its nondiscrimination policy.

Applicable Authorities and Discussion

Virginia adheres to the Dillon Rule of strict construction, which provides that “[local governing bodies] have only those powers which are expressly granted by the state legislature, those powers fairly or necessarily implied from expressly granted powers, and those powers which are essential and indispensable.” Any doubt as to the existence of a power must be resolved against the locality. The Dillon Rule recognizes that localities are political subdivisions of the Commonwealth, which, in turn, rest on the foundation of Article I, § 14 of the Constitution of Virginia.

This Office previously has concluded that, without enabling legislation, Fairfax County has no authority to prohibit discrimination based on sexual orientation, and further, that such authority cannot be either “fairly or necessarily implied” from discrimination based on sex. Fairfax County has authority to adopt an ordinance “prohibiting discrimination in...employment...and education on the basis of race, color, religion, sex, pregnancy, childbirth or related medical conditions, national origin, age, marital status or disability.

As the Supreme Court of Virginia has noted, “[s]chool boards....constitute public quasi-corporations that exercise limited powers and function of a public nature granted to them expressly or by necessary implication, and none other.” The Fairfax County School Board is subject to the Dillon Rule as is Fairfax County. As such, the school board may exercise no greater authority than that authorized by

statute. Thus, without enabling legislation, the school board has no authority to add sexual orientation as a category in its nondiscrimination policy.

From the Desk of the Attorney General Group Response Questions & Individual Notes

1. Summarize the action or proposed ordinance the government official is asking the attorney general to review.

2. According to the opinion of the general attorney, why does the proposed action or ordinance violate or not violate Dillon’s Rule? Your answer must provide specific examples from the letter to support your answer.

3. List positive and negative consequences of the attorney general’s opinion on the locality involved.

Positive Consequences	Negative Consequences

4. Explain why the application of Dillon’s Rule in this situation is beneficial or detrimental to the locality concerned.

Group Presentation Notes

As groups are presenting the results of their group discussions, take notes about the ordinances being considered and the responses of the attorney general. You will use this information to write a letter to the editor.

Names of Group Members _____

Period _____ Date _____

From the Desk of the Attorney General

Among the many duties of the Attorney General of the Commonwealth of Virginia and his staff is to provide written advice to members of the General Assembly and other government officials. Various localities around the state have questions concerning the legality of pending ordinances and are concerned about violating the Constitution of Virginia. Sometimes questions arise over the applicability of Dillon’s Rule and the impact of the rule on pending decisions. Below, is an excerpt of a letter that the Office of the Attorney General sent to an official addressing the issue and the possibility of conflicting with Dillon’s Rule.

In groups of 3 – 4 read the letter and respond to the questions following the letter. While you are reading and discussing the letter, think about the impact of the opinion of the attorney general on the people of the particular community.

Letter #4 – March 10, 2006

- Written to the Honorable Jeffrey M. Frederick, Member, House of Delegates

Issue Presented

You ask whether a county board of supervisors has the authority to modify the boundaries of voting precincts at any time.

Response

It is my opinion that a county board of supervisors is statutorily authorized to alter the boundaries of voting precincts at any time other than within sixty days before any general election.

Background

You advise that a constituent has voted in a precinct for a number of years. However, the county Board of Supervisors recently has changed the boundaries of the constituent’s voting precinct, and his residence is now located in another voting precinct. The new voting precinct is located considerably farther from his residence than the previous precinct. You advise that after a review of the statutory provisions and a consultation with personnel of the State Board of Elections, it is your understanding that the county board establishes and modifies the boundaries of each voting precinct. Additionally, the board determines which residences are located within each voting precinct. You also advise that Board members with whom you have spoken have expressed the view that the Board of Supervisors does not have statutory authority to return the constituent’s residence to the previous precinct.

You relate that you interpret the applicable statutory provisions as authorizing the county Board of Supervisors to make precinct boundary changes at any time other than within sixty days before any general election. Therefore, it is your view that the county Board of Supervisors may choose to return the constituent and his neighbors to their previous voting precinct. You inquire whether your interpretation is correct.

Applicable Law and Discussion

.....The Commonwealth follows the Dillon Rule of strict construction of statutory provisions and its corollary that "[t]he powers of county boards of supervisors are fixed by statute and are limited to those powers conferred expressly or by necessary implication." Additionally, the powers of boards of supervisors are fixed by statute and are limited to those conferred expressly or by necessary implication. "[T]he Dillon Rule is applicable to determine in the first instance, from express words or by implication, whether a power exists at all. If the power cannot be found, the inquiry is at an end." Chapter 3 of Title 24.2, §§ 24.2-302 through 24.2-313, governs the requirements for election districts, precincts, and polling places. Section 24.2-307 provides that: The governing body of each county and city shall establish by ordinance as many precincts as it deems necessary.

Section 24.2-307 clearly authorizes a county board of supervisors to "alter precinct boundaries subject to the requirements of [Chapter 3]." Section 24.2-305(A) requires that each precinct be composed of "compact and contiguous territory" that has "clearly defined and clearly observable boundaries." Each county precinct must also have "no fewer than 100 registered voters" and "no more than 5,000 registered voters" at the time the local governing body establishes the precinct. Finally, changes in local voting precincts may not be made "within 60 days preceding any general election." The General Assembly has not imposed other statutory requirements regarding the alteration of a local voting precinct by a board of supervisors.

When a statute is expressed in plain and unambiguous terms, whether general or limited, it is assumed that the General Assembly means what it plainly has expressed, and no room is left for construction. Therefore, the county Board of Supervisors may elect to return the constituent and his neighbors to their previous voting precinct provided that the precinct change does not occur within the sixty days before any general election.

Names of Group Members _____

Period _____ Date _____

From the Desk of the Attorney General Group Response Questions & Individual Notes

1. Summarize the action or proposed ordinance the government official is asking the attorney general to review.

2. According to the opinion of the attorney, why does the proposed action or ordinance violate or not violate Dillon’s Rule? Your answer must provide specific examples from the letter to support your answer.

3. List positive and negative consequences of the attorney general’s opinion on the locality involved.

Positive Consequences	Negative Consequences

4. Explain why the application of Dillon’s Rule in this situation is beneficial or detrimental to the locality concerned.

Group Presentation Notes

As groups are presenting the results of their group discussions, take notes about the ordinances being considered and the responses of the attorney general. You will use this information to write a letter to the editor.

Name _____
Period _____ Date _____

Letter to Your Legislator Dillon's Rule: Should it Stay or Should it Go?

Dillon's Rule developed from the mistrust state legislatures had toward local governments. That mistrust stems from corruption that was rampant in many local governments over 100 years ago. Dillon's Rule only gives local governments the expressed powers that are listed in a state's constitution. However, have we reached the point that this check on local governments is no longer needed? Is corruption still an issue? Are the people who run our States' county, city, and town governments best equipped to know the needs of the residents and how to best serve their constituents?

Although the State of Virginia has not considered a reversal of Dillon's Rule since 1969, what would happen if this issue were brought up in today's General Assembly? Would your legislator support or oppose a reversal of Dillon's Rule? Do you support or oppose a reversal of Dillon's Rule? Write a letter to your state legislator advocating or opposing a reversal of Dillon's Rule. To identify your legislator in the House of Delegates or Senate using the following link:
<http://conview.state.va.us/whosmy.nsf/main?openform>.

Your letter should include the following:

1. A definition of Dillon's Rule.
2. Your opinion concerning the reversal of Dillon's Rule.
3. The positive and negative impact of reversing or maintaining Dillon's Rule.
4. For each point you make, you must support that point with information gathered from the activities and discussions in previous activities.

Name _____
Period _____ Date _____

Background Information for Students

Key Terms

Expressed power

- powers that are explicitly given to government in writing

Implied power

- powers that are inferred from the powers that are expressly granted to government

Inherent power

- powers that are essential to the objectives of government

Municipal home rule

- based on the principle of self-government which provides local governments limited authority to address local issues

Rule of strict construction

- a government only has those powers that are granted in the constitution and if there is any doubt whether or not a power exist then the government does not have that power

Statute

- law passed by state legislature

Ordinance

- law passed by city or county government

Key Facts

Difference between counties, independent cities, and towns

- County - Geographic unit of government of a state
- Independent city – located outside the authority of counties and are independent of counties
- Towns – unlike cities, towns are part of a county and governed by an elected town council. Residents of towns pay taxes and vote in both jurisdictions.

The role of the attorney general

- Among the many duties of the attorney general, one includes providing legal advice to the Governor, executive agencies, state board and commission, and institutions of higher learning. The office also represents the agencies before the court. In addition, the office issues official opinions to members of the General Assembly and government officials. For further information, visit the attorney general's website - http://www.oag.state.va.us/OUR_OFFICE/index.html.