

## Constitutional Provisions and Caselaw Regarding the Legislative Authority to Regulate Municipal Government

### *I. Vermont Constitution*

#### Vt. Const. Ch. II, § 2 (Supreme Legislative Power)

“The Supreme Legislative power shall be exercised by a Senate and a House of Representatives.”

#### Vt. Const. Ch. II, § 6 (Legislative Powers)

“The Senate and the House of Representatives . . . may prepare bills and enact them into laws, redress grievances, **grant charters of incorporation, subject to the provisions of section 69, constitute towns, boroughs, cities and counties**; and they shall have all other powers necessary for the Legislature of a free and sovereign State; but they shall have no power to add to, alter, abolish, or infringe any part of this Constitution.”

#### Vt. Const. Ch. II, § 69 (Charters, Limit on Right to Grant)

“No **charter of incorporation** shall be granted, extended, changed or amended by **special law, except for such municipal, charitable, educational, penal or reformatory corporations as are to be and remain under the patronage or control of the State**; but the General Assembly shall provide by general laws for the organization of all corporations hereafter to be created. All general laws passed pursuant to this section may be altered from time to time or repealed.”

### *II. Municipal Authority Caselaw*

#### City of Montpelier v. Barnett, 191 Vt. 441 (2012).

- “[T]he power of the municipality is limited to what has been granted by the state. John Forrest Dillon, for whom that principle is named, famously described this idea while Chief Justice of the Iowa Supreme Court: ‘Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control.’” *Id.* at 452 (citing City of Clinton v. Cedar Rapids & Mo. River R.R., 24 Iowa 455, 475 (1868)).
- “We have adopted Dillon’s Rule, declaring that a ‘municipality has only those powers and functions specifically authorized by the legislature, and such additional functions as may be incident, subordinate[,] or necessary to the exercise thereof.’” *Id.* (citing Hinesburg Sand & Gravel Co. v. Town of Hinesburg, 135 Vt. 484, 486 (1977); E.B. & A.C. Whiting Co. v. City of Burlington, 106 Vt. 446, 460-61 (1934)).

#### In re Municipal Charters, 86 Vt. 562, 86 A. 307 (1913).

- “[T]he power exercised by the Legislature is the people’s power, delegated to it by the people in the Constitution of the state, which expressly commits to the Legislature the power to ‘constitute towns, boroughs, cities, and counties.’ This power is

essentially a trust, and requires the exercise of judgment and discretion in its execution, and no authority is given to delegate it. The Legislature must, therefore, exercise its own judgment and discretion in its execution as far as necessary to discharge the personal trust committed to it.” *Id.* at 308.

### *III. Municipal Statutory Construction Caselaw*

Looker v. City of Rutland, 144 Vt. 344 (1984).

- Issue before the Supreme Court of Vermont was which law controlled: general municipal law, or the City of Rutland’s special charter law.
  - General municipal law gave selectboards the authority to alter highways.
  - Rutland’s charter gave the City’s Board of Highway Commissioners the same power to alter highways as is vested by law in selectboards. *Id.* at 346.
- “An established rule of statutory construction is that when two statutes deal with the same subject matter, and one is general and the other specific, the more specific statute must be given effect unless the legislature intended the general to control.” *Id.* at 347.
  - Court found that the general municipal law “is the more general legislative provision[,]” and that by granting the Board with the same power to alter highways as is vested by law in selectboards, “the legislature clearly intended the more specific city charter to control over the more general statute.” *Id.*
- “Another relevant rule of statutory construction is that the later of two legislative provisions must prevail.” *Id.* (other citations omitted).
  - Court found that because the City charter language was enacted after the general municipal law, “the relevant provision of the city charter of the City of Rutland is a more recent expression of the legislature’s will than is the [general municipal law] statute.” *Id.*