

H. 871 (Montpelier charter; regulation of Berlin Pond)

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

- “[A]ny regulation by the City of the use of Berlin Pond must ultimately be derived from, and limited by, the State’s original power over the pond. This premise is based on the confluence of two longstanding legal principles: the public trust doctrine and Dillon’s Rule. According to the public trust doctrine, the State of Vermont holds Berlin Pond in trust as a navigable public water; according to Dillon’s Rule, the scope of the City of Montpelier’s authority to regulate Berlin Pond is limited to the authority granted by the State.” Id. at 449.
 - Public Trust: “[T]he State may, compatible with holding Berlin Pond in public trust, delegate certain authority to regulate its use to another body, in this case the City of Montpelier.” Id. at 452.
 - Dillon’s Rule: “Dillon’s Rule means that the City of Montpelier’s regulatory authority over Berlin Pond must be based on an unambiguous grant of power over the pond by the State of Vermont. In this way, Dillon’s Rule is consonant with the public trust doctrine.” Id. at 453.
- The 1894 charter “specifically granted the city council the power ‘[t]o make all regulations and ordinances for preventing the corruption and for the protection of the water supply of the said city and for the protection from injury of any dam, reservoir, aqueduct, pipe, hydrant, or source of supply of water connected with any water plant now owned or hereafter acquired by said city . . .’” Id. at 462.
- Court analyzed the subsequent amendments to the charter — which largely eliminated that language —and ultimately stated that in “summary, we hold that the City of Montpelier does not have the power under its charter to prohibit swimming, fishing, or boating on Berlin Pond.” Id. at 472.
 - “Our decision reflects the fact that, under the laws of this state, the recreational use of Berlin Pond is a matter of state concern requiring a resolution at the state level . . . [a]ccordingly, our decision places the ultimate resolution of this matter with the state government.” Id. at 473.
 - “Although we are sympathetic to the City’s significant concern for regulating the source of its drinking water, the City’s powers are limited to those conferred upon it by the State of Vermont. After careful examination of the state statutes and the City’s charter, we are unable to find any direct or indirect authorization for the City to regulate recreation use of Berlin Pond Our opinion today does not hold that recreational use of Berlin Pond must be permitted. We conclude only that valid regulation would require action by the

State — either by direct regulation or by delegating such power to the City — and this has not yet occurred.” *Id.* at 444.

Vt. Const. Ch. II, § 67 (Hunting; fowling and fishing)

The inhabitants of this State shall have liberty in seasonable times, to hunt and fowl on the lands they hold, and on other lands not inclosed, and in like manner to fish in all boatable and other waters (not private property) under proper regulations, to be made and provided by the General Assembly.

- “The rights secured by this section of the constitution were not intended to be absolute and unconditional, but were to be governed and controlled by such proper regulations as might thereafter be made by the general assembly. The right was reserved to the general assembly to determine what were seasonable times in which to hunt and fowl, and having exercised this right, the court will not assume (certainly in the absence of proof) that it has been exercised in an unconstitutional manner. The numerous statutes which have been passed for the protection of game and fish, have been deemed necessary to the beneficial enjoyment of the constitutional right, and the court will not hold such laws unconstitutional, until it is clearly shown that they are so prohibitory as to virtually deprive the inhabitants of the right secured to them by the constitution.” State v. Norton, 45 Vt. 258, 259-260 (1873).
- “This statute [10 V.S.A. § 4702, prohibiting using artificial light to spot, locate, or take a wild animal] involving as it does, conduct relating specifically to wild animals, stems from the legislative regulation of activities entirely concerned with the fish and game law [other citation omitted]. This is an exercise of the police power reserved to the Legislature under Chapter 1, Article 5 of the Vermont Constitution [internal police].” The exercise of police power signifies the governmental power of conserving and safeguarding the public safety, health, and welfare [other citation omitted]. In Chapter II, § 63 [now § 67] of the Vermont Constitution, the people of Vermont, by their Constitution, have also invested the Legislature with the authority to exercise this broad power where the wildlife of their State is concerned [citing State v. Haskell, 84 Vt. 429 (1911)]. In that case, then Justice Watson noted . . . that ‘in the exertion of such power the Legislature is vested with a large discretion.’” State v. Racine, 133 Vt. 111, 113 (1974).
- “The power of proper regulation of common fishery in such public waters is by the Constitution reserved to the General Assembly [citing current Vt. Const. Ch. II, § 67]; and, in the exercise of police power, it may adopt such measures, within constitutional limits, as it deems necessary for the preservation of such public property and the common rights therein.” Hazen v. Perkins, 92 Vt. 414, 105 A. 249, 251 (1918).
- See [10 App. V.S.A. § 138](#) (Hatchery Brook closure).
- See also [24 App. V.S.A. chapter 207, § 22](#) (Village of Bellow’s Fall charter; Minard’s Pond; prohibition on use of pond and removing fish therefrom).