

Municipal Law, Charters, and Dillon's Rule

The relationship between the State and its municipalities takes three primary forms: creature, agent, and delegate. It may be helpful to keep these roles in mind as you consider bills in this subject area.

Sources of Law: 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 All general laws passed pursuant to this section may be altered from time to time or repealed.”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.

General Municipal Law- Brief Overview

- Grants general powers available to every municipality and designs a default form of municipal government. Covers a mixture of legislative delegation and agency:
 - Structure of government and officers;
 - Legislative authority, ordinances, and enforcement;
 - Finances, taxes, and indebtedness;
 - Public services, infrastructure, lands, funds, and development.
- The municipal police powers are an area of frequent amendment and concern. These powers are mostly kept in chapter 61 of Title 24; the enumerated list of municipal police powers is in [24 V.S.A. § 2291](#).

Charters- Brief Overview

- Chartered municipalities derive specific powers from legislatively-approved charters. Often, charters are a vehicle for municipalities to deviate from the demands of general law, to eliminate offices that are not necessary within the local government, or to acquire powers over issues of local concern.
- There are currently 84 chartered cities, towns, and villages; 8 solid waste districts; 10 fire/utility districts; 1 transportation authority; and 1 public safety authority.
- Charters are adopted pursuant to the procedure set in [17 V.S.A. § 2645](#). Voters must approve the adoption of a charter proposal.
- There are principles of interpretation that apply to conflicts between charters and general law:
 - “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.” Looker v. City of Rutland, 144 Vt. 344, 347 (1984).
 - “Another relevant rule of statutory construction is that the later of two legislative provisions must prevail.” Id.

Public Records Act

I. General Framework

- The PRA, 1 V.S.A. chapter 5, subchapter 3, grants the public a general right to inspect or copy any public record of a public agency subject to a specific procedure and series of exemptions.
- Under the PRA procedure, a public agency has specific timeframes to respond to a request depending on the scope of the request and the location and volume of the records. The default timeframe is 3 business days; the timeframe for “unusual circumstances” is 10 business days.

- [1 V.S.A. § 317\(c\)](#) contains the enumerated PRA exemptions. There are a few that have been the subject of frequent concern and attention, including the Public Records Study Committee: Subdivisions (c)(5) (law enforcement investigations) and (c)(7) (personal documents).
- PRA exemptions are either mandatory or discretionary. Mandatory exemptions are often accompanied by the phrase “and shall be kept confidential.”
- In some instances, agencies are granted the authority to adopt PRA exemptions as part of rulemaking authority. The Administrative Procedures Act specifically requires agencies to provide notice of a new PRA exemption on the cover page submitted to LCAR. LCAR will send these rules to the House and Senate Committees on Government Operations for review.
- There are 42 enumerated exemptions in the PRA, and at least 243 exemptions scattered throughout the V.S.A. These exemptions are compiled in a list by the Office of Legislative Council, and codified in Title 1 as a note to the PRA.
 - The PRA requires the Office of Legislative Council to review and update the list every two years. The next list submission is December 2019.

II. VTEL Wireless and 1 V.S.A. § 317(c)(6)

- A member of the public submitted a PRA request to the Department of Public Service for VTEL Wireless’s 2016 “annual report.” The report was provided to Public Service in an unredacted form for its use and in a redacted form for public accessibility purposes. 30 V.S.A. § 22 places a gross revenue tax on the telecommunications companies and requires each to file the annual report that provides supporting information for the basis of the return.
- VTEL and others asserted that the annual reports were exempt from disclosure under 1 V.S.A. § 317(c)(6) (tax returns).
 - “(6) A tax return and related documents, correspondence, and certain types of substantiating forms which include the same type of information as in the tax return itself filed with or maintained by the Vermont Department of Taxes *or submitted by a person to any public agency in connection with agency business.*”
 - Under this PRA exemption, the entirety of a tax return is exempt from disclosure. Although VTEL submitted a redacted annual report for public disclosure, the court stated that an endorsement of this practice by the court “would run contrary to 1 V.S.A. § 317(c)(6), which exempts the entire return *and does not authorize the Department to disclose selected portions.*”
- The Department responded by stating that using (c)(6) to exempt the entire annual report would run contrary to SCOV precedent in Finberg v. Murnane, 159 Vt. 431 (1992).
 - In Finberg, a PRA requestor sought the names and addresses of a specific class of taxpayer. The City of Burlington responded to the request by applying (c)(6) because the requested information would *also* appear on tax returns.
 - SCOV rejected Burlington’s application of the exemption and determined that *information* and not *returns* were being sought.
- The Superior Court held that the Finberg analysis did not apply in this case, and that the PRA requests in the instant case sought the actual tax returns. Therefore, the (c)(6) exemption applied and the Department was prohibited from disclosing the records.

- Additional Notes: The court states that “The [PRA] itself does not authorize agencies to disclose portions of exempt records as non-exempt.”

III. Act 166 and PRA Exemption Sunsets

- As of January 1, 2019, every new PRA exemption will be subject to a default 5-year sunset. This sunset may be extended through reenactment of the exemption, or through a provision excepting the exemption from the sunset. 1 V.S.A. § 317(e)(1).
- Records created during the period of exemption remain exempt after the sunset, unless the exemption states otherwise. 1 V.S.A. § 317(f).

Open Meeting Law (OML)

- The OML, [1 V.S.A. §§ 310–314](#), grants the public a general right to attend the meetings of a broad array of public bodies, including boards, councils, and commissions of the State, of any agency, authority, or instrumentality of the State, of political subdivisions of the State, and any committees of those bodies.
- Under [1 V.S.A. § 313](#), the “executive session” provision of the OML, members of a public body may close a meeting to the public only under certain circumstances and after following a specific procedure.
- Unresolved discussions from last biennium: *serial meetings*. Serial meeting issues are triggered when members of a public body use a series of communications to discuss, deliberate, or take action on any item of business that is within the subject matter of the public body. Serial meeting provisions were removed in the Senate amendment to H.910 (Act 166) of 2018.

Vital Records

- The State system of managing Vital Records is mostly contained in Title 18 and relates to birth and death certificates, marriage licenses, divorces and annulments, and other records relating to vital events.
- Act 46 of 2017 significantly restructured the State’s vital records laws and introduced a Statewide System of records that will be administered by the State Registrar within the Department of Health. The Department of Health is given rulemaking authority to implement the Statewide System.
- Act 46 was subsequently amended before its effective date by Act No. 11 of 2018 (Special Session), Sec. I.1-I.11 to push the effective date to July 1, 2019.
- Big picture issues addressed by the bills:
 - Limiting the disclosure of vital record information and confidentiality.
 - Integrity of the system; limitations on access and issuance of records.
 - Rationalizing and centralizing the process for creation, registration, correction, and amendment of vital event certificates.
 - Creation of the Statewide Registration System to be the sole, official repository of vital event certificate data.