



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNSEL

MEMORANDUM

To: County and Regional Governance Study Committee

From: Tim Devlin, Legislative Counsel

Date: August 23, 2024

Subject: Introductory Notes on County Governance in Vermont

This memorandum is intended to provide only a brief introduction to county-level government in this State and the relevant constitutional and doctrinal factors impacting any potential alteration of county governance. Although a list of regional governmental entities is included as an appendix, the structure of those various entities is not expounded on here.

In summary, Vermont's county governance is very limited and namely involves regional law enforcement performed by sheriffs and State's Attorneys and the care and superintendence of county property by assistant judges, i.e. county courthouses and offices for county officers. The Vermont Constitution grants the General Assembly the legislative power to create and modify counties, similar to other political subdivisions of the State. If more robust county governance were to ultimately be established, it is likely that issues commonly encountered between the General Assembly and political subdivisions of the State—such as the Nondelegation Doctrine and principles encountered in Dillon's Rule—would arise and be resolved similarly.

I. Existing County Governance in Vermont is Limited.

The Vermont Supreme Court succinctly described Vermont's county structure in [*Town of Stowe v. Lamoille Cnty*](#) (134 Vt. 402, 405–06 (1976)):

The Vermont county is a unit of special functions. It operates as an electoral district for assistant judges, state's attorneys, and sheriffs, as well as, in some cases, state senators and probate judges. It is a judicial district for the superior court and some probate court systems, and maintains courthouse facilities . . . It also has certain administrative responsibilities in connection with its own functions. A county has no territory which it governs, in the sense that the state or a town governs. It passes neither statutes nor ordinances. All of its territory is overlain with state sovereignty and underlain with contiguous town government.

The court went on to characterize counties' powers as weak in nature:

The limited nature of the county’s governmental operation carries with it a further restriction. Since this agency has no generalized governing function, any implication of power with respect to the carrying out of functions it has been assigned must be viewed as correspondingly abridged. A municipality may have to have resort to fairly broad application of police power in a limited geographical context, since it is a true governing body. Its limits are set by the state and by the state’s own exercise of that same police power. No such broad based exercise of authority is contemplated for a county.

Id. at 406.

County government possesses elements of both the State’s judicial and executive branches, but currently *no legislative function*. The lower or “Superior Courts” exist within each county. See [4 V.S.A. § 30\(b\)](#) (“The Supreme Court shall by rule divide the Superior Court into 14 geographical units that shall follow county lines . . .”). Straddling the judiciary and executive are the Assistant Judges, who are not only judges but also administrators of the county government, that is county courthouses and some infrastructure and staff for other county officers. Assistant judges are authorized by statute to set county budgets and levy taxes. See [24 V.S.A. §§ 133–135](#).

There are numerous county-level executive officers: county clerk, county treasurer, county auditor, high bailiff, sheriff, and State’s Attorney. See [24 V.S.A. Chapter 5](#). Some, like sheriffs and State’s Attorneys, have significant duties and roles in county-level government. Others, such as high bailiffs and county auditors, have little or no duties. The sheriffs, State’s Attorneys, and high bailiffs¹ are “constitutional officers” meaning their existence and election are guaranteed by the Vermont Constitution and they are only removable from office by the voters or by impeachment.² See [Vt. Const. ch. II, §§ 43, 50, and 53](#). Sheriffs, State’s Attorneys, high bailiffs, and assistant judges (as well as probate judges) are voted into office. See [Vt. Const. ch. II, §§ 43, 50, 51, and 53](#).

These county-level offices are nevertheless integrated into State governance through state-wide oversight (Office of the State Court Administrator, see [4 V.S.A. § 21](#); Department of State’s Attorneys and Sheriffs, see [24 V.S.A. § 367](#)), funding of some operations, classification of some employees (see [24 V.S.A. § 290\(b\)](#)), and the retirement system of employees (see [3 V.S.A. chapter 16: Vermont Employees' Retirement System](#)).

II. There are Few Constraints on Reconstruction of County Governance by Vermont Constitutional or Legal Doctrines.

The Vermont Constitution grants the General Assembly the power to create and modify counties and their governance. Chapter II, Section 6, [\[Legislative Powers\]](#), states: “. . . [The General Assembly] may prepare bills and enact them into laws, redress grievances, grant charters of incorporation, . . . constitute towns, boroughs, cities and counties . . .” (Emphasis added.)

¹ See [Memorandum to the Senate Committee on Government Operations, January 10, 2024, re 1974 Amendments to the Vermont Constitution re the Office of High Bailiff](#).

² See [Memorandum to the Senate Committee on Government Operations, January 12, 2024, re Summary of the Impeachment Process Under the Vermont Constitution](#).

While there appears to be no Vermont case law examining the parameters of the legislative power to constitute *counties* in particular, the courts have long upheld the General Assembly’s plenary power to create and modify other “subordinate government entities.” [*Dresden School Dist. v. Norwich Town School Dist.*](#), 124 Vt. 227, 232 (1964) (holding that “[t]he power of the Legislature to create subordinate government entities for purposes of dealing with local affairs is broad enough to include [interstate school districts]” and that “the power of the Legislature to create necessary agencies to implement and administer governmental functions is unquestioned, so long as constitutional prohibitions are observed, including the requirement of separation of powers”); *see also* [*Athens Sch. Dist. v. Vermont State Bd. of Educ.*](#), 2020 VT 52, ¶ 38, (recognizing that the General Assembly “may confide a broad grant of authority to a subordinate agency in intricate matters affecting the general welfare in natural resources, health, education and economics”) quoting [*Vt. Home Mortg. Credit Agency v. Montpelier Nat’l Bank*](#), 128 Vt. 272, 278, (1970). Indeed, it may be appropriate to surmise from court decisions that counties, as political subdivisions of the State, could be restructured in a manner that would not even require all of the same constitutional strictures imposed upon state government. *See* [*Ferry v. City of Montpelier*](#), 2023 VT 4, ¶ 44 (stating “the idea that the Constitution sought to provide a framework for statewide government specifically and therefore the provisions in Chapter II do not apply to local government, which is structurally subordinate to and distinguishable from statewide government”) (citation omitted).

The applicability of certain legal doctrines that arise in municipal contexts may also occur in county governance, depending on the powers ultimately granted to those counties. The principles of Dillon’s Rule and its counterpart “home rule”³—which in Vermont, municipalities’ existence and powers flow completely from the State—while created in response to questions surrounding municipalities, may lend themselves to the county context; that is, there is no inherent power of counties in Vermont. *See* [*Lamoille Cnty.*](#), 134 Vt. at 406 (Stating that “[n]o such broad based exercise of [police power] authority is contemplated for a county” and “[a]ny [county] powers asserted to exist by implication of law must find their justification in the necessities springing from statutory specifics”). Further, if county governments were to be granted any kind of legislative powers, such a grant would be subject to the Nondelegation Doctrine. That is, the General Assembly may delegate broad legislative authority to counties if that delegation does not encroach on core legislative functions and is accompanied by appropriate limitations. *See* [*Athens Sch. Dist.*](#), 2020 VT at ¶ 40 (citing [*State v. Auclair*](#), 110 Vt. 147, 163 (1939)).

The Vermont Constitution only contains four other direct references to the word “county,” and these either relate to redistricting for representatives and senators⁴ or refer to the county-level offices of assistant judges and county clerks.⁵

³ *See* [*City of Montpelier v. Barnett*](#), (2012 VT 32, ¶ 20) (“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.”) (internal quotation marks and citations omitted).

⁴ [Vt. Const. ch. II, § 13. \[Representatives; number\]](#) and [§ 18. \[Senators; numbers; qualifications\]](#): [. . .] “In establishing [representative and senatorial] districts, which shall afford equality of representation, the General Assembly shall seek to maintain geographical compactness and contiguity and to adhere to boundaries of *counties* and other existing political subdivisions.” (Emphasis added.)

⁵ *See* [Vt. Const. ch. II, § 43. \[Biennial elections\]](#) and [§ 62. \[Record of deeds\]](#).

Appendix i: List of Vermont Regional Governmental Entities

Local Regional Governmental Entities: (*Note: some are considered “municipalities.”)

- Communications Union Districts, *see* [30 V.S.A. Chapter 82](#).
- Consolidated Water Districts*, *see* [24 V.S.A. Chapter 91](#).
- Consolidated Sewer Districts*, *see* [24 V.S.A. Chapter 105](#).
- Fire Districts*, *see* [20 V.S.A. Chapter 171](#).
- Mass Transit Authorities; Regional Transit Authorities; Regional Transit Districts, *see* [24 V.S.A. Chapter 127](#).
- School Districts*, *see* [16 V.S.A. Chapter 9](#).
- Union School Districts; Unified Union School Districts*, *see* [16 V.S.A. Chapter 11](#).
- Solid Waste Districts, *see* [24 V.S.A. Chapter 61, Subchapter 13](#); *see also* [24 V.S.A. Chapter 121](#), as formed as Union Municipal Districts.
- Regional Career Technical Center School Districts, *see* [16 V.S.A. Chapter 37, Subchapter 5A](#).
- Regional Planning Commissions (RPCs), *see* [24 V.S.A. Chapter 117, Subchapter 3](#).
- Rural Economic Development Infrastructure Districts*, *see* [24 V.S.A. Chapter 138](#).
- Union Municipal District, *see* [24 V.S.A. Chapter 121](#). *See also* the Joint Municipal Survey Committee.

State Regional Governmental Entities:

- Emergencies:
 - o Regional Emergency Management Committees. Established by the Division of Emergency Management. *See* [20 V.S.A. § 6\(d\)](#).
- Environment:
 - o Environmental District Commissions. Under Act 250, there are nine Environmental District Commissions that are roughly aligned with the counties. These issue the Act 250 permits. *See* [10 V.S.A. § 6026](#). (Provided by Legislative Counsel Ellen Czajkowski.)
- Healthcare: (Provided by Assistant Director Jen Carbee.)
 - o [Agency of Human Services Districts](#). Each administers some programs and services locally.
 - o [Department of Health Offices](#). The Department has 12 local health offices throughout the State.
 - o [Blueprint for Health, Health Service Areas](#); perhaps also “Community Health Teams.”
- Labor and Employment:
 - o [Department of Labor’s Development Offices](#). The Department operates 12 regional workforce development offices across the State. (Provided by Legislative Counsel Rik Sehgal.)
- Transportation:
 - o [Vermont Agency of Transportation’s Maintenance Districts](#)

Existing County Officers and Offices: assistant judges, county clerk, county treasurer, county auditor, sheriff, high bailiff, State’s Attorney. *See* [24 V.S.A. Chapter 5](#).