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HGO Primer on Vermont’s Open Meeting Law & Legislative Authority over Municipal Government

Vermont’s Open Meeting Law (OML)

I. Vermont Constitution, Ch. I, Art. 6

“That all power being originally inherent in and co[n]sequently derived from the people, therefore, all officers of government, whether legislative or executive, are their trustees and servants; and at all times, in a legal way, accountable to them.”

- Article 6 is not self-executing. This means that the General Assembly has the power to determine how the broad principles of Article 6 are given effect.
- “To say that Article 6 is not self-executing is to say that the Legislature may select the means and details of executing the broad principles articulated in Article 6. Thus, the realization of Article 6’s philosophical vision is subject to those reasonable practical contours that the Legislature should set forth.” Rutland Herald v. Vermont State Police, 49 A.3d 91, 104 (Vt. 2012).

II. Open Meeting Law, 1 V.S.A. Ch. 5, subchapter 2

- 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, agencies, authorities, or instrumentalities of the State or its political subdivisions.
- The OML applies to “meetings” of these public bodies. With some exceptions, a “meeting” is “a gathering of a quorum or more of the members of a public body for purposes of discussing the business of the public body or for the purpose of taking action.”
- A public body must follow a specific set of procedures in order to comply with the OML. [1 V.S.A. § 312](#). A public body must:
 - Record minutes for all meetings and make the minutes available to the public.
 - Post agendas at least 48 hours before a regular meeting and 24 hours before a special meeting.

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- “Publicly announce” (disseminate to media organizations serving the area) any special meeting and post notices in designated physical locations at least 24 hours before the special meeting.
 - If a quorum or more of the public body meets electronically, then the public body must designate a physical meeting location where the public can attend and participate in the meeting. A member of the public body or one staff member must be present at the physical meeting location.
- 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 upon a two-thirds vote of the body.
 - If an aggrieved person alleges a violation of the OML, the public body may respond by either acknowledging the violation or by determining that no violation has taken place. If the public body acknowledges the violation, it may cure the violation by holding a subsequent meeting to reconduct any action taken. If the public body determines that no violation has taken place, the aggrieved person may appeal to the Civil Division of the Superior Court. [1 V.S.A. § 314](#).
 - [2022 Act No. 157](#) amended the Public Records Act to add provisions related to the meetings of public bodies during a declared state of emergency. Under 1 V.S.A. § 312a, a public body located in an area affected by an emergency that cannot meet in a physical meeting location may meet electronically without designating a physical meeting location. The public body may also post agendas and notices in electronic locations.

III. Temporary Authority

Between 2020-2022, the General Assembly enacted a series of alternative OML procedures in order to permit public bodies to meet electronically and to post notices electronically in lieu of designated locations (examples considered: post office and grocery store):

- [2022 Act No. 78](#) (expires January 15, 2023).
- [2020 Act No. 92](#) (effective during the declared state of emergency due to COVID-19).
- [2020 Act No. 113](#) (effective during the declared state of emergency due to COVID-19).

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Municipal Government

I. Vermont Constitution

The Vermont Constitution does not vest municipal governments with any express or inherent powers. Instead, the Constitution grants the General Assembly the authority to create and alter municipal governments as a core and exclusive legislative power.

As a result, the creation of municipal governments, and the delegation of authority to municipal governments, must be the result of a legislative act.

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

In reviewing the General Assembly’s constitutional authority over municipal governments, Vermont courts have stated that Vermont is a “Dillon’s Rule” state. Dillon’s Rule provides that municipalities have only those powers that are granted to them by the legislature.

Vermont courts have further stated that municipal powers are subject to strict construction and that “whatever is not unequivocally granted in [an act] is taken to have been withheld.” *E.B. & A.C. Whiting Co. v. City of Burlington*, 106 Vt. 446 (Vt. 1934)

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

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- “[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)).

Other notable decisions: *Waterbury v. Melendy*, 109 Vt. 441 (Vt. 1938); *Sabre et al. v. Rutland R. R. Co. et al.*, 86 Vt. 347 (Vt. 1913); *Athens School Dist. v. Vt. State Bd. Of Ed.*, 237 A.3d 671 (Vt. 2020); *Sargent v. Clark*, 83 Vt. 523 (Vt. 1910); and *Valcour v. Vill. of Morrisville*, 104 Vt. 119 (Vt. 1932).

III. 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](#).

III. Charters- Brief Overview

- A municipal charter is a set of “special laws” that apply exclusively to one municipal corporation.
- Chartered municipalities derive specific powers from legislatively-approved charters. Often, charters are a vehicle for municipalities to acquire unique powers, exclude themselves from a particular demand of general law, or to add or eliminate local

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offices.

- There are currently 86 chartered cities, towns, and villages; 9 solid waste districts; 9 fire/utility districts; 1 recreational district; 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.*