The Dillon Rule

Virginia Association of Local Tax Auditors

April 29, 2016

Henrico County, VA

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THE DILLON RULE: A VIRGINIA TRADITION

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THE DILLON RULE EXAMINED

THE WHO

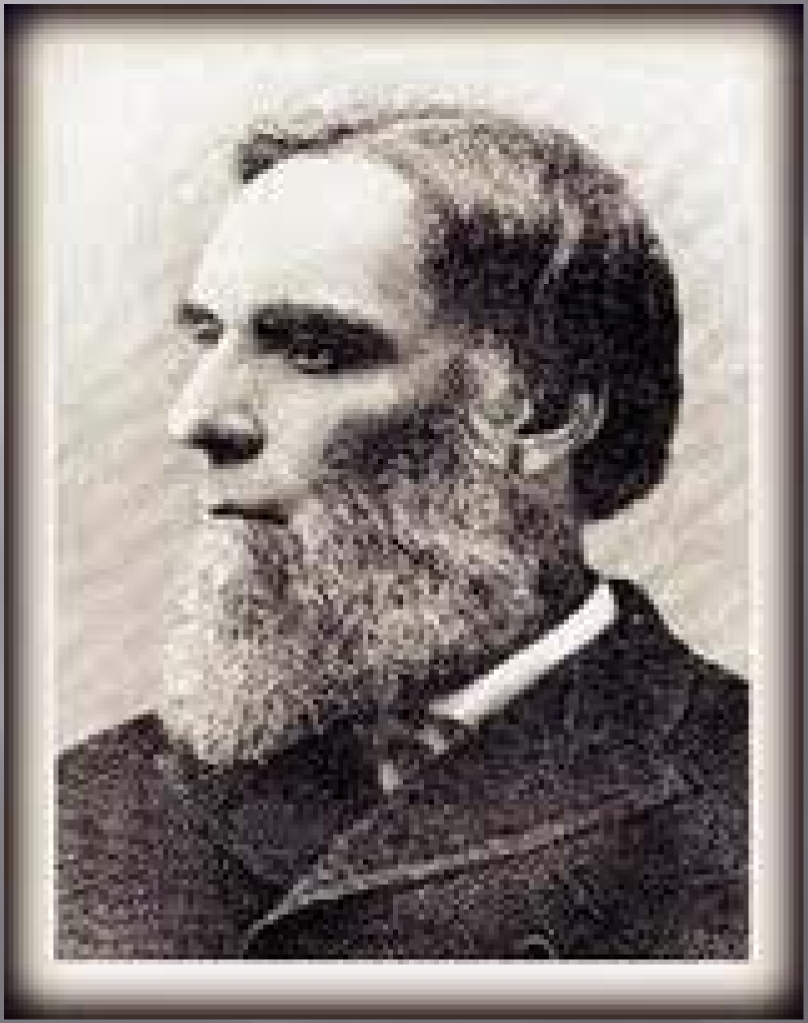
THE WHAT

THE WHY

Who was Dillon?

THE WHO

THE WHO



JOHN FORREST DILLON (1831-1914)

New York native

Studied medicine at University of Iowa at age 19

Abandoned medical practice to study law

Admitted to Iowa Bar in 1852

Member of Iowa Supreme Court (1864-69)

JOHN FORREST DILLON (1831-1914)

Appointed by President Ulysses S. Grant to Eighth Circuit Court of Appeals (1869-79)

Authored Municipal Corporations in 1872

Law Professor at Columbia & Yale

President of American Bar Association

THE WHAT

Statement of the Dillon Rule:

Local governments limited to those powers:

►expressly granted them by the state legislature

►fairly or necessarily implied from expressly granted powers

►essential and indispensable

Any reasonable doubt concerning existence of power resolved against locality

THE DILLON RULE ARRIVES IN VIRGINIA

1896: Supreme Court of Virginia decided City of Winchester v. Redmond:

- ►Winchester offered $500 reward for capture of arsonists
- ►Redmond captured the arsonists but city reneged on offer
- ►Redmond sued city to collect reward and was awarded $500

On appeal, the Supreme Court:

- ►reversed award, quoted Judge Dillon, and ruled for city
- ►city lacked power to offer reward

1983: General Assembly enacted statute granting localities power to offer and pay reward

THE DILLON RULE REMAINS ALIVE AND WELL IN THE COMMONWEALTH

Tax case examples – Supreme Court of Virginia:

1965: Board of Supervisors of Henrico County v. Corbett
No power to enact retail sales and use tax ordinance.

1996: Hampton Nissan Ltd. Partnership v. City of Hampton
No power to collect overpayments of license tax.

2002: City of Virginia Beach v. Int’l Family Entertainment
No power to tax satellites orbiting in space.

THE DILLON RULE REMAINS ALIVE AND WELL IN THE COMMONWEALTH

Examples of Implied Power – Supreme Court of Virginia:

1991: Ticonderoga Farms v. County of Loudoun

Statute granting express power to prohibit solid waste disposal activities necessarily includes power to regulate those activities.

1997: City of Chesapeake v. Garner Enterprises

Statute granting express power to regulate existing structures supporting a nonconforming use includes the implied power to regulate new construction supporting a nonconforming use.

THE DILLON RULE AND THE GENERAL ASSEMBLY: "MOTHER MAY I?"

Localities forced to make legislative requests for power to do various things. Some examples:

►give retiring firefighters their boots and helmets as keepsakes (YES)

►post notice of public hearings on internet instead of in newspaper (NO)

►cut tall grass and weeds on private property (YES)

►sell specially trained police dogs to handlers (YES)

THE DILLON RULE AND THE GENERAL ASSEMBLY: "MOTHER MAY I?"

More examples:

►ban guns in public libraries and other public buildings (NO)

►mail, instead of hand-deliver, summonses for passing stopped school buses based on photographic evidence (YES)

►levy meals tax without referendum (NO)

►regulate private drone use (NO)

THE WHY

The Dillon rule: Boon or Bane?

BOON

Former Governor Bob McDonnell:

“The Dillon Rule provides uniformity of regulations and practices that is helpful to our economy and Commonwealth.”

Virginia Chamber of Commerce:

“The Dillon Rule represents a positive tradition of legislative oversight and encourages economic growth through a consistency of laws throughout the state.”

THE WHY (Continued)

Senator David Suetterlein:

“We benefit greatly from the Dillon Rule” because it “gives businesses greater predictability of policies they’re going to have if they’re going to expand in other parts of Virginia. So, the rules won’t change on them drastically when they cross political subdivision lines.”

Judge Dillon:

“Those best fitted by their intelligence, business experience, capacity and moral-character do not go into local public service.”

Local government is “unwise and extravagant.”

THE WHY (Continued)

BANE

- ►Rule ties localities' hands in their efforts to solve community problems.
- ►Rule floods the General Assembly with trivial or silly requests.

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