

## **Miscellaneous findings: Term limits are not an option in the charter of a NH town** (municipal charters cannot set term limits for elected office).

***Hooksett v. Baines***, 148 N.H. 625 (2002): New Hampshire Supreme Court held that a term limit provision in a town charter was not authorized by **RSA 49-B** and that the provision conflicted with the state's comprehensive statutory election laws and was, thus, preempted. "If the legislature had intended to explicitly grant municipalities the power to recall elected officials," the superior court wrote, "it could have done so by adding that power to those listed in **RSA 49-B:2**."

<https://www.nhmunicipal.org/court-updates/town-charter's-recall-provision-ruled-invalid>

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### **Definition of *home rule***

: self-government or limited autonomy in internal affairs by a dependent political unit (such as a territory or municipality)

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### **Town Charter's Recall Provision Ruled Invalid**

***Knowles v. Latham (2005) (recall of elected officer)***

(A state superior court decision and, therefore, has limited statewide precedential authority)

At issue in the case was whether **RSA Chapter 49-B** and the home rule provision of the New Hampshire Constitution grant the town authority to adopt a recall provision in its charter.

The recall provision in the charter [for Seabrook] was explicitly authorized by **RSA 49-B:2**, which authorizes municipalities to adopt charter provisions concerning the "terms of office" of elected officials. The superior court disagreed, citing ***Hooksett v. Baines***,

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It is important to note that the charter statutes were significantly amended and expanded by the legislature in 1991 and that Seabrook's charter pre-dated these amendments. **RSA 49-D:3, I(e)** currently provides that charters establishing a town council as both the governing and legislative body of the town – in other words, there is no town meeting – may include recall provisions "as described in **RSA 49-C**," which is the statute on city charters. To complicate matters, however, there are no recall provisions in the current version of **RSA 49-C**. Whether that fact is simply a glitch in the statutes or raises more serious doubt about the validity of such recall provisions is a question yet to be decided. However, town charters that establish a governing body and a separate legislative body—such as selectmen and town meeting—may not include recall provisions.

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In the [United States](#), **home rule** refers to the authority of a constituent part of a [U.S. state](#) to exercise powers of governance delegated to it by its state government. In some states, known as **home rule states**, the state's constitution grants municipalities and/or counties the ability to pass laws to govern themselves as they see fit (so long as they obey the state and federal constitutions). In other states, only limited authority has been granted to local governments by passage of statutes in the state legislature. In these states, a city or county must obtain permission from the state legislature if it wishes to pass a law or ordinance which is not specifically permitted under existing state legislation.

Forty of the fifty states apply some form of the principle known as [Dillon's Rule](#), which says that local governments may only exercise powers that the state expressly grants to them, to determine the bounds of a municipal government's legal authority.<sup>[1]</sup> The [National League of Cities](#) identifies 31 Dillon's Rule states, 10 home rule states, 8 states that apply Dillon's Rule only to certain municipalities, and one state (Florida) that applies home rule to everything except taxation.<sup>[2]</sup> Each state defines for itself what powers it will grant to local governments. Within the local sphere, there are four categories in which the state allows discretionary authority:<sup>[2]</sup>

- Structural – power to choose the form of government, charter and enact charter revisions,
- Functional – power to exercise local self government in a broad or limited manner,
- Fiscal – authority to determine revenue sources, set tax rates, borrow funds and other related financial activities,
- Personnel – authority to set employment rules, remuneration rates, employment conditions and collective bargaining.

**NH: “Not a home rule state.” (Others: Limited home rule state.) Yes, NH is a Dillon’s Rule State.**

[https://en.wikipedia.org/wiki/Home\\_rule\\_in\\_the\\_United\\_States](https://en.wikipedia.org/wiki/Home_rule_in_the_United_States)

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New Hampshire is a ["Dillon Rule"](#) state, meaning the state retains all powers not specifically granted to municipalities. Even so, the legislature strongly favors local control, particularly concerning land use regulations. New Hampshire municipalities are classified as [towns](#) or cities, which differ primarily by the form of government. Most towns generally operate on the [town meeting](#) form of government, where the registered voters in the town act as the town legislature, and a [board of selectmen](#) acts as the executive of the town. Larger towns and the state's thirteen cities operate either on a [council–manager](#) or [council–mayor](#) form of government. There is no difference, from the state government's point of view, between towns and cities besides the form of government. All state-level statutes treat all municipalities identically.

[https://en.wikipedia.org/wiki/New\\_Hampshire](https://en.wikipedia.org/wiki/New_Hampshire)

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## **Municipal Employee and Municipal Official – Is There a Difference?**

Only a few municipal offices require any additional qualifications beyond citizenship and residency. Town managers, for instance, are selected “with special reference to education, training, and experience” for the position. **RSA 37:3**. For the most part, however, there are no additional qualifications for elected office, and municipalities do not have the power to add qualifications. See, for example, ***Hooksett v. Baines***, 148 N.H. 625 (2002) (municipal charters cannot set term limits for elected office).

<https://www.nhmunicipal.org/town-city-article/municipal-employee-and-municipal-official--there-difference>

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**6. Other NH Cases Construing Charter Amendment Authority Narrowly.** In other so-called “home rule” cases, it has been held that a town has no authority to enact term limits as part of a charter amendment, because that would be inconsistent with the State Legislature’s comprehensive legislative scheme governing elections. (See *Town of Hooksett v. Baines*, 148 N.H. 625 (2002). The Supreme Court also overturned the City of Manchester’s attempt, via charter amendment, to convert the school district, which had previously been a separate legal entity (as in Lebanon) into a department of the City. In the course of its opinion (*City of Manchester v. School Distr. of Manchester*, 150 N.H. 664 (2004)). These cases further demonstrate our N.H. Supreme Court’s trend toward construing charter provisions narrowly.

<https://lebanonnh.gov/DocumentCenter/View/11843/2020-04-23-Waugh-Opinion-Re-Welcoming-Lebanon-Ordinance?bidId=>

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## **Assistant Attorney General’s review of Newmarket’s draft Charter in 2013**

The only other concern we have is with Article 8, Section 8.6 of the charter. This section prescribes the procedure for recall of town councilors. We understand that there is no currently proposed amendment to this section; however, you should be advised that on March 7, 2005, the Rockingham County Superior Court (MCHUGH, J.), in *Knowles, et al v. Latham et al*, 2004-E-0361, struck down a similar recall provision in the Seabrook Town Charter. The court found in that case that the legislature did not provide municipalities with the authority to include recall and removal procedures in their charters. While the court’s decision is not binding you should consider removing this section from the charter.

[https://www.newmarketnh.gov/sites/g/files/vyhlif3536/f/file/file/letter\\_from\\_ag\\_on\\_proposed\\_charter\\_amendments.pdf](https://www.newmarketnh.gov/sites/g/files/vyhlif3536/f/file/file/letter_from_ag_on_proposed_charter_amendments.pdf)