

Freeholders are elected officials charged with writing and proposing a county charter to the electorate. It is a novel experience to be elected as a Freeholder, probably a once-in-a-lifetime experience, but one which can leave a legacy for generations to come. It can also be a daunting task, knowing you are given charge to change, perhaps *fundamentally* change, the government of Clark County.

In order to help give some background, following is a bit of history about charters with a specific focus on the State of Washington experience.

Generally speaking, a charter is a mechanism for framing the structure of county government. It establishes a basic law that defines county government within the limitations of state and federal laws in terms of powers and duties, rights and responsibilities, and how it will fulfill the needs of its residents. Counties which approve a charter are called “home rule” counties because they have developed their own local, homegrown form of county government. Under home rule, the county government is essentially customized by the local electorate such that it is no longer subject to the “general law” form of county government established by the Washington constitution in 1889.

The concept of a charter to change governance has a long history in western culture, going all the way back to the Magna Carta (Latin for “Great Charter”). When Washington became a state in 1889, its constitution provided for cities to vote on approving their own charters (see Article XI, Section 10 of the Washington State Constitution). That original provision allowed cities over 20,000 population to adopt a charter, but Amendment No. 40 in 1964 reduced the population threshold to 10,000. In Clark County, the City of Vancouver became the first home rule government when the voters approved its charter in 1952.

Charters for local governments got their wings clipped in 1868 with the establishment of “Judge Dillon’s Rule”, or just “Dillon’s Rule.” Judge John Forrest Dillon (December 25, 1831 – May 6, 1914) was an American jurist who served on both federal and Iowa state courts, and who authored a highly influential treatise on the power of states over municipal governments. In his opinion he wrote, *“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 may it destroy. If it may destroy, it may abridge and control.”*

In other words, municipalities only have the powers that are expressly granted to them. Any ambiguities in the state legislative grant of power are thus resolved in favor of the state and against the municipality so that its powers are narrowly construed. This is still very much how law affecting local government is construed today in the State of Washington. Whether a city or county, local charters are subordinate to state law. In any case where a municipal charter and a state statute conflict, the state law will supersede the charter (in the absence of any exceptions granted by the state). Court decisions in Washington have held that state law, and the provisions of a charter, should be construed so as to be “consistent” with one another (in other words, consistent with the prevailing state law).

During the 19th century’s industrial revolution, great economic changes in the United States brought even greater social changes. Large numbers of people formerly engaged in rural agriculture began moving into the cities concurrently with great waves of immigration from Europe and Asia. The result was that municipal governments experienced chaotic burdens of rapid population and housing growth, public health epidemics, and the pressing need to build increasing amounts of infrastructure. As the industrial-economic-social revolution roared, governmental conditions in large urban areas became,

frankly, deplorable. Bossism, patronage, graft, spoils, lawlessness, poverty, abuse, unsanitary refuse, disease, all of these became commonplace. Cities began to take on a cultural aura of “evil” places.

Given these untenable conditions, coupled with the democratic heritage in the United States, the stage was set for municipal reform. Reformists turned to the concept of home rule as a mechanism for the people to gain back control and impose good government on their cities and counties. Instead of just having city and county governmental structures determined by legislatures, it was reasoned that the socio-political problems might be corrected or reduced if the local populace could frame its own form of government through a charter, at least within the limitations of Dillon’s Rule. By doing so, they could blunt the industrial revolution’s negative excesses by determining how best to secure representation on the council or commission, provide a reformed means for selecting who to run local government, define the powers that might be exercised, adopt election standards (e.g., partisan or nonpartisan, term lengths, term limits, whether elected by district or by the entire jurisdiction, etc.), and establish hiring, financial, and contracting controls.

Reformist groups took up the fight and were very successful. The first city charter laws were enumerated in the Missouri state constitution in 1875. From there they quickly spread to most other states throughout the remainder of the nineteenth century and the first half of the twentieth century, including provisions for city charters in the 1889 State Constitution for Washington. Counties in Washington, however, didn’t get the same charter capability until Amendment 21 was passed in 1948. Interestingly, also approved by the state’s voters that year was constitutional Amendment 23, a legislatively-referred proposal to allow a charter to create combined city-county governments, but to date no such city-county government has been enacted in Washington.

In the State of Washington there are currently six county home rule governments. They are (by year of charter approval) King County (1968), Clallam County (1976), Whatcom County (1978), Snohomish County (1979), Pierce County (1980), and San Juan County (2005). The 1968 charter was actually King County’s second attempt since their first attempt at a county charter failed in 1952; it was labeled a “communist plot” by charter opponents, a strategy which reflected anxieties related to McCarthyism.

Meanwhile, there have been at least eleven other counties in Washington which have attempted to embark on home rule but failed at the polls, including Kitsap County (1971, 2000, and 2002), Island County (1976), Thurston County (1979, 1986, and 1990 for city-county), Clark County (1982 for city-county, 1997, and 2002), Ferry County (1993 for city-county), Spokane County (1995), Cowlitz County (1998), Skamania County (1999), Yakima County (2011), Asotin County (2012, and 2013 for city-county), and Jefferson County (2013).

To date, Washington’s six successful home rule counties have collectively generated 118 attempted charter amendments that have been voted on by county electorates. Of those 117 attempts, 80 amendments have been passed by the voters (an approval rate of 67.8%). The four charter counties with the largest populations have established the county executive/council form of governance (King, Whatcom, Snohomish, and Pierce), while the two smaller charter counties, Clallam and San Juan, have retained the commission form. Additionally, there have been ten initiatives passed in Washington home rule counties over the past 45 years, fifty percent of which occurred in King County, although every home rule county grants the powers of initiative and referendum to their voters.

Clark County had a previously elected Board of Freeholders, from 2000 to 2002, which proposed a charter to the people on the November 2002 ballot. It was defeated by 187 votes (41,572 to 41,759).