

City Government in New Hampshire

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When people think of local government in New Hampshire, a many envision the picturesque snow covered town halls in March with all of the townsfolk sitting inside getting ready for the town meeting. This has always been a New England tradition and conjurers up Rockwell images in people's heads. While it is true that most municipalities are governed in this matter in the State, almost more than half of the people in the state cannot get involved in a town meeting. Out of the 234 municipalities 13 are Cities. In my paper I intend to examine the history of City government in New Hampshire and the ways it is implemented across the Granite State.

Author's Note

I have decided to write a paper on this topic as a result of my experiences in local government. In 1995, I was elected to serve as a ward Councilman in the city of Somersworth. At the age of 19, I was the youngest person in the state ever elected to serve as a councilman at that time. When I would go to school at the University of New Hampshire I found myself explaining to people what I did as a councilman. People from out of state could not believe a community of 12,000 people was big enough to be considered a city. Those people from the state were just not familiar with that system of government. In either case they would always refer to my community as a "town" and to me as a "selectman." This situation got even more confusing when I was appointed as Acting Mayor in 1998. For many years I wondered why communities decided to become cities while other large ones elected to stay towns. This paper is a result of my research into the

matter. While I will use the experiences of my own city of Somersworth in many instances, it was basically the same in many cities at the time no matter the size.

What is a City?

When people think of a city, the images of a booming and bustling metropolis comes to mind. However, cities can be as small as 7,000 people or as large as 125,000 people in New Hampshire. The distinction between towns and cities in New Hampshire is the form of the legislative body. The legislative body in a town has traditionally been the town meeting, in which any citizen of the town of voting age may take part in the decision making process in the community. While in a city, the legislative body is a representative form as either a city council or board of aldermen. In 1979, the state's municipal charter home rule bill made it harder to distinguish between towns and cities when they made it possible for towns to adopt the council form of government for their community. Currently six towns in New Hampshire have adopted this form (Newmarket, Derry, Londonderry, Bedford, Durham, Hudson and Henniker.)¹

The size of the geographical area of the municipality has no bearing on the decision on whether or not a community becomes a city or town. For while Pittsburgh is 288 square miles, it is a town and Somersworth is only 10

¹ Peter J. Loughlin New Hampshire Practice: Local Government Law (Orford, NH, Equity) 1994

square miles and yet it is a city. Population has no bearing on the decision either. While Salem in 1990 had a population of 25,746 it is a town, while Franklin, with a population of 8,304 in 1990, is a city. Historically, most of the municipalities in New Hampshire became cities only by obtaining a charter by special act of the legislature, but since 1979 local communities have been able to become cities without action from the state legislature, though none have.²

The key distinction between towns and cities is that in cities all ordinances, appropriations and other major municipal duties are decided by a small number of elected representatives. While similar actions in towns requires a vote of the entire citizenry at annual or special town meetings.

History of City Government

During the colonial period until the mid 1800s, all municipalities in New Hampshire were governed under the town meeting form of government. This was not only true for New Hampshire, but also throughout New England. As municipalities grew in size, the efficiency of the town meeting declined. While this is true, communities did not rush to change their form of government. Boston, which was settled in 1630, did not become a city until 1822 when it reached the population of 40,000. In New Hampshire, Portsmouth was a typical example of the larger communities. Despite the fact that only a few people were making the decisions in a town meeting, many

² Id. Pg. 6

did not like the idea of a representative form of local government. It wasn't until the late 1840s did the town's people vote in favor of petitioning the State legislature to incorporate them as a City.³

At the same time that Portsmouth was debating the merits of a city charter; many mill communities were sprouting up on the state's rivers thanks to the Industrial Revolution. Manchester was the first to realize the inefficiency of the town meeting with the growing population of their city and petitioned the General Court. In 1846, they became New Hampshire's first city.⁴

However, cities were not always formed for efficiency or good government. In Somersworth, a mill community ruled by the Great Falls Manufacturing Company, this was the case. In the 1880s, the Company; while it still held control of the community; became worried of the growing tendency of the town, with its increasing population of Irish immigrants, to vote the Democratic ticket and against the largely Republican company in the community. This trend was viewed with alarm and the idea to switch to the city form of government. The possibilities for the company in such a system were numerous, but the most favorable was that of the division of the community into wards. While the old town meeting could be, and was, manipulated the opportunity to gerrymander ward boundaries and have a more subtle type of control under the city government was more favorable. So it was for power reasons the town meeting was replaced by a city government

³ Id. Pg. 68- 69

⁴ Id. Pg. 68

in 1893. The first mayor of the city actually campaigned on the platform to return Somersworth to a town, but the company over powered him.⁵

In 1881, the New Hampshire Supreme Court observed in the case *State v. Hayes* that when a town reached the population of 10,000 or 12,000 people, that a representative or city type of government with a representative legislative body and an executive head was necessary. Between 1846 and 1893, all but two of the thirteen cities in New Hampshire, had petitioned the legislature and received incorporations as cities. They were as follows:

<i>Manchester</i>	1846
<i>Portsmouth</i>	1849
<i>Concord</i>	1853
<i>Nashua</i>	1853
<i>Dover</i>	1855
<i>Keene</i>	1873
<i>Rochester</i>	1891
<i>Laconia</i>	1893
<i>Somersworth</i>	1893
<i>Franklin</i>	1895
<i>Berlin</i>	1897

⁵ The Corporation: A History of the Great Falls Manufacturing Co. A Somersworth Historical Document
1948 Pg 96

The only two municipalities to achieve city charters in the 1900s are Claremont in 1947 and Lebanon in 1957. All thirteen had to petition the legislature to do so.⁶

The Early Governments

The early government structure for cities in New Hampshire was much like the government on the state and federal level. It consisted of a Mayor as chief executive and a bicameral legislature. The two bodies that made up the legislature were the Board of Aldermen and the Common Council. Each branch of the local legislature had a check on the other, with the mayor having the final veto power. When an issue was of great importance, such as hiring a city officer, the dealings with city property, electing members of the board of assessors or education, the two houses of the legislative branch would meet and be presided over by the mayor. They then would be referred to as the city councils.⁷

The Common Council

The Common Council no longer exists in New Hampshire as is did in the late 19th and early 20th century. The Common Council was the lower of the two houses in the city councils. It was made up of a certain number of members from each ward. The number of members was set at a maximum of 18 in 1899. This meant that there would usually be 3 from each ward. The common council was set up almost like a representative town meeting

⁶ Loughlin pg 74

⁷ Loughlin Pg 69

instead of a city council, which you may think given its name as a council. The chose one of its own members to serve as the President of the Council, who served with the powers of a town moderator. The Common Council was the only one of the bodies of power that could convene a session of the City councils. All ordinances that related to finances were to begin in this body.⁸

The Early Board of Aldermen

The Board of Aldermen was by far the more powerful of the two bodies in the city councils. The mayor and aldermen jointly exercised all of the executive power of the City and the administration of the police, except when it was vested solely in the mayor. The mayor served as the chairman of the Board. The membership of the board was smaller than that of the common council with usually one member from each of the wards. This Board of Mayor and Aldermen served much like the selectmen in a town with the same powers and duties as well as being responsible for most municipal appointments.⁹

The Role of the Mayor Under Early Charters

The role of the mayor was spelled out in each of the original city charters and was made uniform by the adoption of state statutes in 1867.

⁸ Id. 70

⁹ Id. 83

These statutes have changes little over the years and Chapter 45 of the state's RSAs is still pretty much in affect today.¹⁰

Under the statutes the mayor was the only person in the city to be elected by the citizens from each ward, or at-large. They are the chief executive officer, preserver of the peace, in charge of executing all laws in the city, and the supervisor of all subordinate officers.

In 1890, the New Hampshire Supreme Court further described the powers of the mayor in a case in which the mayor of Nashua refused to recognize the newly elected street commissioner. The court noted that the duties of a mayor are similar to those of the governor of the state. The mayor is not omnipotent and city employees are not under the control of the mayor. The power of supervision doesn't include the right to dictate to officers whose duties are prescribed by law how they should perform them. The mayor is to review the problems of the officer's inattention and begin the proper procedures to remove tem from office. ¹¹

The Fall of the Bicameral City Government

The City Councils version of local government was not without its problems. The bicameral nature of a city government set communities up for many sources of confrontation between the bodies. It was pretty well known that the superior powers of the Board of Aldermen did not sit well with the members of the Common Council and that the opinion of the lower Common Council and their president was not something that the mayor and aldermen

¹⁰ Id. 80

¹¹ Id. 81

wanted to hear. So both bodies tried everything possible to block the actions of the other.¹²

As was previously mentioned, the number of wards determined the number of aldermen and councilmen. The state legislature would then in return gerrymander ward boundaries in order to have their majority party to have the major representation in the city governments. However, it was very common to have the mayor and aldermen of one party and the common council from the other.¹³

While it is true that the bicameral nature did set the cities up for controversies, this was not probably the reason for problems. Most of the arguments and divisiveness existed prior to the communities' incorporation as a city, just that the forum for the exchange had changed.

Seeing the controversy that this form caused, when Franklin petitioned the state government to become a city they requested to become a different type of city. Unlike the cities that came before them, their charter never had the provisions to have a bicameral legislature and never had the provision for a board of aldermen. The Franklin charter gave all of the powers for all municipal and fiscal affairs in one officer, the mayor, and one board called the council. The mayor and council would sit as one board. The mayor would be voted by the people at-large and would have a veto power over the Council.¹⁴

¹² Id. 71

¹³ Id. 72

¹⁴ Id. 86

In 1905, Portsmouth followed the lead of Franklin and abolished the Board of Aldermen and kept their City Council. Manchester followed suit in 1915 and abolished their Common Council and vested all of the powers in the Board of Mayor and Aldermen. In the early 1900s all bicameral city governments were abolished in New Hampshire.¹⁵

The Birth of the City Manager form of Government

The state legislature first enacted the necessary provisions to allow city manager in 1929. In not only cities, but towns in the same year, the municipalities could hire a City/Town Manager only if a referendum was held and the people in the community would agree to do so. The City manager at that time was not a change of the form of government. The city manager was only hired to help the governing board in the operation of the city. The mayor continued to be the chief executive officer.¹⁶

The city council-manager form of government, as it is understood today did not fully develop until the 1940s. In 1947 Portsmouth gave up its strong mayor and adopted the city manager form. In the same year, the town of Claremont petitioned the state to grant them a city charter. The city charter of Claremont at the time was almost identical to that of Portsmouth, it was approved and Claremont became the first to never have a strong Mayor and Lebanon became the second a decade later.¹⁷

¹⁵ Id. 73

¹⁶ Id. 87

¹⁷ Id. 88

The Local Option City Charter

In 1963, the State enacted a law called the “Enabling Act for Local Option City Charters.” This was a major step in the development of city government in New Hampshire. This act allowed existing cities to draft and amend city charters within a certain framework set by the state without having to petition the state as to how they are governed. This did not allow towns to abolish their town meeting to become a city without getting permission from the state though, only the legislature could grant incorporation.

The Act allowed for the formation of a charter commission and to submit plans to adopt one of the forms of government under the state statutes or of those in existing cities. These charter amendments would only take effect after a binding referendum vote of the people of the city. Prior to 1963 any change in any portion of a city’s charter could be found in the state laws under specific act, now they cannot.¹⁸

Home Rule Charters-

The blurring of the lines between cities and Towns

In 1966, the state of New Hampshire amended their state constitution and adopted a Home Rule amendment. This with the subsequent 1979 Home Rule- Municipal Charter statutes provided by the legislature greatly altered

¹⁸ Id. 74-76

municipal government, as it was known in the state. The amendment repealed the 1963 Local Option Charter Act and allowed municipalities to chose how they were to be governed: both cities and towns. This was the first time towns were able to adopt modern charters without seeking approval of the legislature. This also allowed towns to move away from the open town meeting form and have a town council with the powers similar to the city councils.

There were also benefits to city powers too. No longer did cities have to rely on state statutes or other charters for models on which they could amend their own charters. They were now empowered to craft their own legislative provisions. In Lebanon, the voters approved a provision to allow for citizen initiatives, by which a certain portion of the voting public could petition the council to have an issue placed on the ballot as a binding referendum question. The power for citizen referendum however was not extended to that of budgetary process. In Claremont, some citizens attempted to change the city charter to allow for an annual vote of the city budget. The State Supreme Court ruled that this however was not an approved form of a city government and they would revert to becoming a town.¹⁹

The Players Today

Today cities in New Hampshire are similar, however greatly different. A majority (11) operates under the council-manager form of government with a ceremonial mayor as the chair of the council. Two cities, Nashua and

¹⁹ New Hampshire Practice Local Government Law Supplement 1994 15

Manchester have a strong mayor form of government with a Board of Aldermen. However, the amount of power, the ways in which they are selected, and the ways in which they interact are dependent upon the individual community. The players for the most part are either one of the three following: the Mayor, the City Manager, or the Councilman/Alderman.

The Mayor

In New Hampshire, there are really two types of Mayor: strong or weak. Strong mayors are the chief executive officer of a city, while a weak mayor is the ceremonial head of the community.

Both Nashua and Manchester continue today to have a strong mayor. The exact power a mayor has varies from each of the cities. The only common law is that they have a veto. State law under the Board of Aldermen gives the mayor veto power over the actions of the board. No veto can be overturned without a 2/3 vote of the board.²⁰

The powers of these two cities mayors vary depending upon each city's charter. In Nashua, the mayor has much more power. The mayor, with consent of the board of aldermen appoints many of the city officers, including the city clerk, solicitor and treasurer. They and all other officers serve at the pleasure of the mayor and his opinions. The mayor has no other power on the board of aldermen than to advise them.²¹

²⁰ NH RSA Ch. 49

²¹ Loughlin 98

In Manchester however, the mayor serves as chair of the board, as well as the Board of Education. In addition, he appoints all members of the committees for both boards. The mayor and the board of aldermen however, appoint the city officers. In both cities, the mayors are in charge of drafting the budgets. The mayor of Manchester serves a term of two years²² and the Mayor of Nashua serves for four.²³

In the other eleven cities, which operate under a council-manager form of government, the mayor is the ceremonial head of government and presides over the city council meetings. In some instances, such as Franklin and Rochester, the mayor may have a veto power.²⁴ In a majority of the cities, the mayor has one vote, like any other councilman, or the may vote in case of a tie.

The way in which a mayor is chosen in these communities varies. In some communities, the council chooses the mayor from its own membership.²⁵ In others, they must specifically run for the office of mayor²⁶. In Portsmouth, there are nine council seats at-large and the highest vote getter becomes mayor.²⁷ Some serve as many as two terms²⁸ others are chosen annually²⁹.

Appointments to administrative position in a council-manager form of government are normally made by the city manager. Mayors usually make

²² Manchester NH City Charter §2.07

²³ Nashua NH City Charter §40

²⁴ Rochester NH City Charter § 10a

²⁵ Lebanon NH City Charter §419:17

²⁶ Somersworth NH City Charter §3.4

²⁷ Portsmouth NH City Charter §4.3

²⁸ Somersworth NH City Charter § 3.4

²⁹ Lebanon NH City Charter §419:17

appointments to various board or commissions, with council approval or they are made directly from the council.

Aldermen

The authority of an alderman is only slightly less than that of a councilman in many of the cities with manager form of government as a result of the veto power of the mayor. The powers are still pretty considerable since they are the body that passes all municipal legislation and approves many of the municipal appointments. The actual powers of the two boards of aldermen in New Hampshire today are actually the combined powers of the original city councils in the early 1900s.

Membership of the boards depends on each of the cities. In Manchester, it consists of 14 members: one from each of the twelve boards and two-elected city wide or at-large every two years³⁰. In Nashua, they have members from each of the nine wards elected every two years and six at-large aldermen who have staggered four year terms.³¹

The Role of a City Councilor

The members of a city council under the city council-manager form of government have the most power of any of the local forms of government in the state. They are both the governing and the legislative branches in the

³⁰ Manchester City Charter § 2.02

³¹ Nashua City Charter §40

government. They have all of the power and duties which the early city councils in convention had, or the boards of aldermen acting separately, and the powers of the common council under the previous form of government. They have all of the power of the selectmen of the towns and all municipal ordinances and budgetary matters must gain their approval. The city council also must make the policy decisions of the city, and the manager is responsible for the day-to-day operations of the community. Most charters under the council manager plan have specific provisions limiting the amount of contact the councilors have in the day-to-day operations, as well as with city employees.

There are no laws that set the number of members of city council, nor on how they are elected. City Councils vary in size from 9 members, to 12 in Rochester, to 15 in Keene.³² Depending also on the provisions in each community, the term of councilors can range from four years³³, two years³⁴, or a combination of both.³⁵

The membership can be a combination of a certain number of councilors from the wards, at-large or a combination of both. The only real requirements to run is that you are a qualified voter in the city or in your ward.

³² Somersworth NH City Charter §3.1; Rochester NH City Charter §4; Keene NH City Charter §18

³³ Somersworth NH City Charter §3.1

³⁴ Rochester NH City Charter §5

³⁵ Keene NH City Charter § 18

City Manager

Unlike the role of the councilors, mayor or aldermen, the role of the manager does not vary greatly from city to city. The city manager is the chief administrative officer of the city. They are to be solely chosen on the basis of merit. They do not have to be a resident of the community at the time of their appointment, but usually must become a resident within a certain amount of time of their appointment. The city manager is relieved of their duties when the council votes to do so. It can either take a majority or a 2/3 vote to do so. However, most city managers now sign a contract to grant them adequate severance pay in the event of their firing.

The city manager is responsible for supervising the administrative affairs of the city and carrying out the policies enacted by the city council. The manager is responsible for appointing and removing all officers of the city, except boards and commissions. It is the city manager's responsibility to prepare and bring the annual budget to the city council.³⁶

City Manager v. Mayor

There is always a debate over which of the two forms of city government is better for the city: the city manager or the strong mayor. Supporters of the strong mayor form argue that the city manager is not accountable to the people and are thus not responsible to their needs, because he is not elected.

³⁶ Loughlin 107

Supporters of the city manager form of government argue that an appointed city manager guarantees that a qualified and intelligent person will be the chief officer of the city. Also, they feel that this will ensure politics are kept out of the administration of the local government. This argument has gone on for years and it does not look like it will be resolved in the foreseeable future.

Cities in New Hampshire have an important role in its history and its people's lives. While some people say cities destroy the pure democracy, there are ever increasing trend that the new larger towns are moving towards this form of government. Whatever the case, cities still have an important role.

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