



Members Only

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Municipal Home Rule*

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In Ohio, municipal corporations (cities and villages) have certain powers granted to them in Article XVIII of the Ohio Constitution that exist outside their authority found in the Revised Code. Because these powers originate in the Constitution, laws passed by the General Assembly that interfere with them are invalid as applied to municipal corporations unless those laws otherwise are sanctioned by the Constitution. These constitutionally granted powers, known as “home rule” powers,¹ include the power of local self-government, the exercise of certain police powers, and the ownership and operation of public utilities. This paper briefly discusses each of these powers.

A word of caution is needed: some of the numerous court cases interpreting these home rule powers may appear to conflict with the general principles stated in this paper. While the courts have established some basic principles relative to these home rule powers, they are not always consistently applied. Thus, it is best to view the following principles as guidelines, with the caveat that, in the area of municipal home rule, situations are open to court interpretation on a case-by-case basis.

Powers of Local Self-Government

Section 3 of Article XVIII of the Ohio Constitution reads as follows:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

This section grants municipal corporations two types of authority: the power of local self-government and the power to adopt and enforce local police, sanitary, and other similar regulations that are not in conflict with general laws. The section’s limiting language “that are not in conflict with

The General Assembly cannot interfere with powers granted to municipal corporations by the Ohio Constitution unless the Constitution sanctions the interference.

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general laws” applies only to the passage of police, sanitary, and other similar regulations and does not apply to the powers of local self-government. *Ohio Assn. of Pub. School Emp., Chapter No. 471 v. Twinsburg* (1988), 36 Ohio St.3d 180. Municipal corporations may be required, however, to follow procedural requirements in state law when they exercise their local self-government powers. See **“Adoption of Charter to Exercise Local Self-Government Powers,”** on the following page.

The exact scope of “all powers of local self-government” has not been defined by the courts, but numerous cases have established standards for determining what the term includes. A basic standard applied by the Ohio Supreme Court is to determine if an issue has impact outside the territory of the municipal corporation. In *Beachwood v. Bd. of Elections of Cuyahoga Cty.* (1958), 167 Ohio St. 369, 371, the Court described the limits of the power of local self-government as follows:

The power of local self-government granted to municipalities by Article XVIII relates solely to the government and administration of the internal affairs of the municipality, and, in the absence of [a] statute conferring a broader power, municipal legislation must be confined to that area. . . . [citation omitted.] Where a proceeding is such that it affects not only the municipality itself but the surrounding territory beyond its boundaries, such proceeding is

no longer one which falls within the sphere of local self-government but is one which must be governed by the general law of the state.²

And in *State ex rel. Evans v. Moore* (1982), 69 Ohio St.2d 88, 89-90, the Court further stated:

. . . [P]ursuant to the “state-wide concern” doctrine, a municipality may not, in the regulation of local matters, infringe on matters of general and statewide concern. . . . A city may not regulate activities outside its borders, and the state may not restrict the exercise of the powers of self-government within a city. . . .

While the courts have not specifically defined the limits of “local self-government,” they have found the following to be matters of local self-government:

- Internal organization;
- The control, use, and ownership of certain public property;
- Salaries of municipal officers;
- Recall of municipal elected officials;
- Regulation of municipal streets;
- Procedures for the sale of municipal property.

On the other hand, courts have found the following to be matters of statewide concern and, thus, outside the scope of municipal home rule powers of local self-government:

- Detachment of territory;
- Annexation;
- Prevailing wage law;



Public employee collective bargaining law.

Adoption of Charter to Exercise Local Self-Government Powers

Section 7 of Article XVIII of the Ohio Constitution reads as follows:

Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

Sections 8 and 9 of Article XVIII of the Constitution provide the procedures for adoption and amendment of a municipal charter.

A charter is necessary only to exercise local self-government home rule powers, not police powers. However, a charter is not needed to exercise all aspects of local self-government. In 1980, the Ohio Supreme Court held that a noncharter municipal corporation must follow the procedure prescribed by state statutes in matters of local self-government, but may enact an ordinance that is substantively at variance with state law in such matters. *Benevolent Assn. v. Parma* (1980), 61 Ohio St.2d 375. So a charter is not necessary in order to exercise a substantive power of local self-government, but the procedures used to exercise such a power require a charter if they vary from

state law. Municipal corporations that do not adopt a charter must follow the procedures provided in state law.

Exercise of Municipal Police Powers

The second power granted in Section 3 of Article XVIII is the power to adopt and enforce local police, sanitary, and other similar regulations that are not in conflict with general laws. "Police power" has been defined as the authority to make regulations for the public health, safety, and morals and the general welfare of society. *Miami County v. Dayton* (1915), 92 Ohio St. 215. Examples of regulations found to be police regulations include those pertaining to zoning, animal control, fluoridation of water, and "bait and switch" advertising.

Municipal laws for the exercise of municipal police powers cannot be in conflict with general laws. What are "general laws"? The Ohio Supreme Court defined those laws as follows in *Village of West Jefferson v. Robinson* (1965), 1 Ohio St.2d 113 (paragraph three of syllabus):

The words "general laws" as set forth in Section 3 of Article XVIII of the Ohio Constitution means [sic] statutes setting forth police, sanitary or similar regulations and not statutes which purport only to grant or to limit the legislative powers of a municipal corporation to adopt or

A municipal charter is necessary to specify procedures of local self-government that vary from state law.

Municipal laws for the exercise of municipal police powers cannot be in conflict with "general laws."



enforce police, sanitary or other similar regulations.

Therefore, a state statute that purports only to grant or limit the legislative authority of municipal corporations and does not prescribe a mode of conduct is not a “general law” within the meaning of Section 3 of Article XVIII. For example, a state law that only would prohibit political subdivisions from restricting the ownership, possession, transportation, or transfer of firearms or ammunition probably would not be a general law since it would merely limit the legislative authority of a municipal corporation without also providing state standards in those areas.

Conflicts with General Laws

The generally accepted test for determining whether a conflict exists between a municipal ordinance and a general law is set forth in *Village of Struthers v. Sokol* (1923), 108 Ohio St. 263, in paragraphs two and three of the syllabus:

2. In determining whether an ordinance is in “conflict” with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa.

3. A police ordinance is not in conflict with a general law upon the same subject merely because certain

specific acts are declared unlawful by the ordinance, which acts are not referred to in the general law, or because certain specific acts are omitted in the ordinance but referred to in the general law, or because different penalties are provided for the same acts, even though greater penalties are imposed by the municipal ordinance.

In cases where the municipal ordinance includes a criminal penalty, the Ohio Supreme Court made it clear in *Toledo v. Best* (1961), 172 Ohio St. 371 (syllabus), that:

[w]here the only distinction between a state statute and a municipal ordinance, proscribing certain conduct and providing punishment therefor, is as to the penalty only but not to the degree (misdemeanor or felony) of the offense, the ordinance is not in conflict with the general law of the state.

Stated another way in *Niles v. Howard* (1984), 12 Ohio St.3d 162, 165:

[w]hen a municipal ordinance varies in punishment with the state statute such ordinance is not in conflict with the statute when it only imposes a greater penalty. . . . [But if the] ordinance had altered the degree of punishment to a felony rather than a misdemeanor it would have been unconstitutional. However, . . . [if] the ordinance only increased the penalty from a lesser misdemeanor to a first degree misdemeanor, it is not in conflict with the general laws of Ohio.



So when an ordinance changes a state law penalty from a misdemeanor to a felony, or vice versa, there is a conflict with state law, and the municipal ordinance is unconstitutional. This is because, as stated in *Cleveland v. Betts* (1958), 168 Ohio St. 386, 389:

[a]lthough the ordinance . . . does not permit what the statute prohibits, and vice versa, it does contravene the expressed policy of the state with respect to crimes by deliberately changing an act which constitutes a felony under state law into a misdemeanor [or vice versa], and this creates the kind of conflict contemplated by the Constitution. Conviction of a misdemeanor entails relatively minor consequences, whereas the commission of a felony carries with it penalties of a severe and lasting character. . . .

An example of a conflict between a municipal corporation's police powers and a general law that does not involve penalties is found in *Canton v. Whitman* (1975), 44 Ohio St.2d 62, in which the Court upheld a state statute requiring municipal corporations to fluoridate their water supplies. The city (Canton) argued that fluoridation was a local matter and chose not to fluoridate its water supply. The Ohio Supreme Court held that, while fluoridation of municipal water supplies is a proper exercise of municipal police power, it is equally a proper subject for the exercise of the state's police power. So the state fluoride statute was a general law and

controlled over any conflicting municipal ordinance.

Municipal Authority to Own and Operate Utilities

The Ohio Constitution specifically grants municipal corporations the right to operate utilities. Section 4 of Article XVIII reads as follows:

Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the products or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility.

Section 6 of Article XVIII reads as follows:

Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per cent of the total service or product supplied by such utility



The municipal home rule power to own and operate a public utility extends a municipality's power beyond its borders.

Other limitations found in the Ohio Constitution apply to municipal corporations.

within the municipality, provided that such fifty per cent limitation shall not apply to the sale of water or sewage services.

These utility home rule powers are subject to fewer restrictions than the more general home rule powers, but the restrictions discussed below under "**Other Limitations on Municipal Home Rule Power**" apply to them. Not every issue that could be found to be a matter of the operation of a utility, however, falls under these utility home rule provisions. For example, in the *Canton* fluoridation case discussed above, fluoridation of the municipal water supply was found to be a matter of public health—a police power—rather than a matter of the operation of the municipal water utility. The Ohio Supreme Court found that the state's exercise of its police power had only an incidental effect on the municipal corporation's operation of a public utility.

Unlike the other home rule power constitutional provisions, these constitutional utility provisions grant a municipal corporation powers beyond its borders. Municipal corporations are authorized not only to sell and deliver surplus utility products or services outside their borders, but also to establish and operate utilities in these "outside" areas. And to implement these powers, a municipal corporation is granted, among other powers, eminent domain authority outside its borders.

Other Limitations on Municipal Home Rule Power

In addition to the limitations in Article XVIII of the Ohio Constitution mentioned above, there are other limitations on a municipal corporation's exercise of home rule powers. A municipal corporation may be limited by the United States Constitution or relevant federal laws. Also, provisions of other Articles of the Ohio Constitution limit the exercise of municipal home rule powers.

Several sections in the Ohio Constitution limit municipal power to tax and incur debt. Section 2 of Article XII prohibits the taxation of property in excess of 1% (ten mills) of its true value unless laws are enacted authorizing the levying of taxes beyond that limitation either when approved by a vote of the electorate or when provided for by the charter of a municipal corporation.

The General Assembly has enacted legislation authorizing both of these exceptions to this constitutional ten-mill limitation: section 5705.07 of the Revised Code authorizes a levy of taxes beyond the ten-mill limitation, and section 5705.18 of the Revised Code authorizes a municipal corporation to provide in its charter for a limitation other than the ten-mill limitation.



On the other hand, Section 6 of Article XIII requires the General Assembly to restrict a municipal corporation's powers to tax, assess, borrow money, contract debt, and loan its credit in order to prevent the abuse of these powers. Section 13 of Article XVIII again authorizes the General Assembly to pass laws to limit the power of municipal corporations to levy taxes and incur debt and, further, allows the General Assembly to require reports from municipal corporations as to their financial condition and transactions, to provide for the examination of municipal authority vouchers, books, and accounts, and to provide for the examination of public undertakings conducted by a municipal authority.

Section 6 of Article VIII prohibits any "city" or "town" from passing laws to become a stockholder in any joint stock company, corporation, or association whatever or to raise money for, or loan credit to or in aid of, any of those entities (this does not prohibit the insuring of public buildings or property in mutual insurance associations or companies). However, the Ohio Supreme Court held in *State ex rel. Tomino v. Brown* (1989), 47 Ohio St.3d 119 that the lending of credit for a public welfare purpose (in that case, subsidized housing), not a business purpose, did not violate this constitutional provision.

Additional constitutional provisions address a variety of other restrictions on municipal home rule

powers. Article IV creates the judicial branch of government, preventing municipal corporations from establishing courts or judgeships. Section 1f of Article II reserves for the citizens of each municipal corporation the right to initiative and referendum on all legislative matters. This right cannot be eliminated by a municipal corporation, but the procedures to effectuate this right may be provided for in a municipal charter.

Section 10 of Article XV requires appointments and promotion in the civil service of cities according to merit and fitness. There is, however, no such requirement for villages. While the Revised Code provides for a municipal civil service in cities, a city may provide for civil service in its charter instead of following those Revised Code provisions as an exercise of its constitutional local self-government powers. *State ex rel. Bardo v. Lyndhurst* (1988), 37 Ohio St.3d 106. But in some form, a city must provide for a civil service that meets Article XV's constitutional standards.

Finally, Section 34 of Article II provides that no provision of the Ohio Constitution impairs or limits the power of the General Assembly to pass laws that fix and regulate the hours of labor, establish a minimum wage, or provide for the comfort, health, safety, and general welfare of all employees. The Ohio Supreme Court has held that laws passed by the General Assembly establishing the Prevailing Wage Law, the Collective



Bargaining Law, and the Police and Fire Pension Fund are applicable to municipal corporations under this provision, overriding any municipal home rule powers.

It is worth noting, however, that the Court decision upholding the Collective Bargaining Law had an arduous history in which the tensions between Section 34 of Article II and the constitutional home rule provisions were extensively discussed. This case was heard *twice* by the Court with different results each time. Both times the decision had four Justices supporting the majority opinion, three dissenting. The first decision supported the exercise of home rule powers, saying Section 34 of Article II applied only in very limited circumstances. *Rocky River v. State Empl. Relations Bd.* (1988), 39 Ohio St.3d 196. Upon reconsideration, the Court held that Section 34 of Article II applied, overriding the constitutional home rule provisions. *Rocky River v. State Empl. Relations Bd.* (1989), 43 Ohio St.3d 1. These cases illustrate the occasional unpredictability of the holdings of Ohio courts in cases involving municipal home rule issues.

Conclusion

The Ohio Constitution's municipal home rule provisions authorize municipal corporations to govern themselves in local municipal matters independent of state laws. This authority is not, however, without limitations. When state laws and municipal ordinances clash, it is left to the courts to decide how these limitations apply.

Endnotes

¹ These powers should not be confused with those exercised under Chapter 504. of the Revised Code by townships that adopt a limited home rule government. Township "home rule" powers are not only different from municipal home rule powers, but their source is the Revised Code, so that the General Assembly can pass laws to amend or rescind township "home rule" powers without any amendment of the Ohio Constitution.

² Although home rule authority does not extend outside a municipal corporation's boundaries, the General Assembly may grant, and has granted, municipal corporations authority outside their borders. For example, under the Platting Law, municipal corporations may enact subdivision regulations that apply, in some cases, as far as three miles outside the municipal borders (sec. 711.09).

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