

The Village of Willowbrook: Home-Rule 101



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BACKGROUND



- What is municipal “home-rule?”
 - Municipality’s right to govern its own affairs
 - “Home rule” refers to the authority of a constituent part (administrative division) of a U.S. state to exercise powers of governance and perform functions pertaining to its government and affairs delegated to it by the central (state) government. The latitude of authority granted to local governments varies by state.
- To what extent do municipalities have control?
 - In Illinois: some municipalities are home-rule; others are governed by “Dillon’s Rule”

Home-Rule Municipalities



- Home-rule municipalities in Illinois have the right to pass laws to govern themselves as they see fit, provided they obey the state and federal constitutions
- Municipalities with at least 25,001 citizens are automatically given home-rule authority
- Smaller municipalities may elect to become home-rule by referendum

DILLON'S RULE



- **Non-home-rule municipalities: subject to *Dillon's Rule*:**
 - "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"
 - Non-home-rule municipalities may only exercise powers expressly authorized by state law. They thus depend on authority granted by the General Assembly and Governor
- **40 states apply Dillon's Rule**
- **A home-rule unit may elect to become non-home-rule by referendum**

CONSTITUTIONAL ORIGINS OF HOME-RULE



- The State of Illinois has had four different Constitutions throughout its history
- The last version was adopted in 1970
- Article 7: addresses units of local government and confers home-rule authority
- Section 6(a) of Article 7:
 - “Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt”

Pros / Cons



- **Arguments for Home-Rule Authority:**
 - Local officials have the best sense of how to govern their constituencies
 - Affords local control / autonomy to municipalities
 - Provides more options for generating tax revenue
 - Allows for variety: different municipalities = different approaches to governance
- **Arguments against Home-Rule Authority:**
 - Expands the size of local government
 - Increased variety of laws/rules/taxes can potentially be confusing

What Powers Does Home-Rule Confer?



- **The Power to Tax**
 - Home rule units can impose taxes provided they are not based on or measured by income, earnings, or occupation, or are preempted by State legislation.
- **The Power to Issue Licenses (but not “for revenue”)**
 - Home rule units may suspend or revoke licenses held by businesses, as an enforcement mechanism, to ensure that the business collects and remits, to the home rule unit, taxes placed on the businesses’ customers by ordinance
- **Article 7, subsection 6(m): powers and functions of home rule units are to be construed liberally**
- **Note: If a home rule county ordinance conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction**

What Powers Does Home-Rule Confer?



- A Note on Home-Rule Authority to Tax:

Pre-Home Rule the Village enacted Special Recreation Property Tax for ADA Park Programs

The current administration of the Village of Willowbrook has made the commitment ***not*** to use the Village's home-rule authority to implement new property taxes within the Village.

What Powers Does Home-Rule Confer?



- **Article 7, subsection 6(1) of the Constitution provides:**
 - “The General Assembly may not deny or limit the power of home rule units (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government or (2) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.”

Limits on Home-Rule Authority



- Local ordinances must pertain to local government and affairs rather than state or national problems.
Schillerstrom Home, Inc. v. City of Naperville, 198 Ill. 2d 281, 290, 762 N.E.2d 494 (2001)
- Three-part test for determining whether a particular problem is of statewide or of local concern:
 - (1) examining the nature and extent of the problem;
 - (2) determining the unit of government that has the most vital interest in a solution to the problem; and
 - (3) examining the role traditionally played by local government or state government in dealing with the problem

Limits on Home-Rule Authority



- Home-rule authority is limited where the state or federal legislature has ***preempted*** municipal control
- Article 7, Section 6(i) of the Constitution provides:
 - Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive

Limits on Home-Rule Authority



- **Article 7, subsection 6(d) of the Constitution provides:**
 - “A home rule unit does not have the power (1) to incur debt payable from ad valorem property tax receipts maturing more than 40 years from the time it is incurred or (2) to define and provide for the punishment of a felony.”
- **Home rule units may establish mandatory minimum sentences for ordinance violations within the six (6) month maximum. *City of Chicago v. Roman*, 184 Ill. 2d 504, 705 N.E.2d 81 (1998).**

Limits on Home-Rule Authority



- Article 7, subsection 6(e) of the Constitution provides:
 - “A home rule unit shall have only the power that the General Assembly may provide by law (1) to punish by imprisonment for more than six months or (2) to license for revenue or impose taxes upon or measured by income or earnings or upon occupations.”
 - The Local Government Committee at the 1970 Illinois Constitutional Convention explained the purpose of the limitation to “license for revenue” was to prohibit home rule units from utilizing licenses to raise revenue and to maintain home rule units’ ability to license to cover the costs of regulation.
 - An occupation tax is a tax upon a given occupation or the provider of particular services, with services defined as including all sales transactions other than sales of tangible property. *American Beverage Association v. City of Chicago*, 404 Ill. App. 3d 682, 684 (1st Dist. 2010). An occupation tax attempts to either regulate or control a given business or occupation or attempts to impose a tax for the privilege of exercising, performing, or operating a certain occupation, trade, or profession.

Limits on Home-Rule Authority



- The General Assembly can only limit the power of home rule units to tax by passing legislation by a vote of at least three-fifths of its elected members. Ill. Const. Art. VII, § 6(g). The same is true for a limitation on any other power or function of a home rule unit not exercised or performed by the State
- Article 7, Subsection 6(h) of the Constitution provides:
 - “The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (l) of this Section.”

Federal Preemption



- The Supremacy Clause of the United States Constitution allows Congress to preempt local laws. *See U.S. Const. Art. VI, cl. 2* (“the laws of the United States . . . shall be the supreme law of the Land”)
- Federal law may preempt a municipal ordinance in three ways:
 - (1) when Congress clearly expresses an intention to do so (“express preemption”);
 - (2) when Congress clearly has intended, by legislating comprehensively, to occupy an entire field of regulation (“field regulation”); and
 - (3) when a local ordinance conflicts with federal law (“conflict preemption”)

Labor Implications of Home Rule



- **Home-Rule Municipalities May Alter Statutory Labor/Employment Procedures**
 - Home rule municipalities may use their powers to adopt home rule ordinances altering or even abolishing the disciplinary and other employment procedures set forth in the Illinois Municipal Code
 - Home rule municipalities adopting civil service may enact local ordinances that conflict with or supplement the civil service provisions of the Illinois Municipal Code
 - Home rule municipalities may abolish civil service altogether
 - Home rule municipalities cannot eliminate duty to bargain under Public Labor Relations Act
 - Home rule municipalities cannot create a statute of limitations for charges of unreasonable use of force against a police officer

Labor Implications of Home Rule



- **Authority to Alter Statutory Procedures**
 - Board Police and Fire Commissioners (BPFC)
 - ✦ Because “police protection” is not considered a matter of “statewide concern,” it is within home rule powers
 - ✦ Home rule municipalities may modify requirements of the Board of Police and Fire Commissioners statutes , including:
 - Create new positions
 - Grant the Village Manager power to hire and terminate chiefs at will

“Government and Affairs”



- An ordinance pertains to local government and affairs (and is thus permissible under home-rule authority) where it addresses local, rather than state or national problems. *Schillerstrom Homes, Inc. v. City of Naperville*, 198 Ill. 2d 281, 290, 762 N.E.2d 494, 499 (2001).
- Often a problem is of concern to both state and local governments, and where this occurs courts must resolve the tension between the value of a uniform regulatory landscape and the value of a potentially more diverse one. *City of Chicago v. StubHub, Inc.*, 2011 IL 111127, ¶ 24, 979 N.E.2d 844, 852 (2011).

“Government and Affairs”



- To determine whether a local ordinance that pertains to both state and local governments is a permissible use of home rule authority, Illinois courts weigh the following three factors:
 - (1) The nature and the extent of the problem;
 - (2) Which unit of government has the most vital interest in a problem’s solution; and
 - (3) What role local and statewide authorities have traditionally played in dealing with the problem. *See StubHub*, 2011 IL 111127 at ¶ 24

“Nature and extent of the problem”



- **Local ordinances that address areas that are also of state concern are more likely to be deemed unconstitutional; examples include ordinances that open new markets and/or maintaining consumer protections—issues that were more a matter of state concern than local concern.**

“Which unit of government has the most vital interest?”



- The Illinois Supreme Court has held that weapons control was a suitable field for local regulation in large part because the ordinance addressed the village’s local interest in reducing crime within its boundaries, minimizing the effects of domestic violence and reducing handgun accidents involving children.

“Local v. Statewide Roles”



- **Ordinances that are deemed to pertain to local government and affairs:**
 - Tax on retail sale of alcohol *Mulligan v. Dunne*, 61 Ill. 2d 544, 549-51 (1975)
 - Control of streets and alleys wholly located within borders of city *Crain Enterprises, Inc. v. City of Mound City*, 189 Ill. App. 3d 130, 137-38 (5th Dist. 1989)
 - Local seat belt laws *Village of Mundelein v. Franco*, 317 Ill. App. 3d 512, 519-23 (2d Dist. 2000)
 - Outdoor advertising sign regulation *Scadron v. City of Des Plaines*, 153 Ill. 2d 164 (1992)

“Local v. State Roles in Regulating”



- **Ordinances that are deemed not to pertain to local government and affairs:**
 - *Commonwealth Edison Co. v. City of Warrenville*, 288 Ill. App. 3d 373, 379 (2d Dist. 1997) (regulation of public utility projects is purely a state concern, thus local ordinance is preempted)
 - *County of Cook v. Village of Rosemont*, 303 Ill. App. 3d 403, 409-10, (1st Dist. 1999) (where the purpose of an ordinance is to exempt a village from implementing a county amusement tax, the ordinance pertains to the government and affairs of the County, not the Village, and has an impermissible effect on intergovernmental affairs);
 - *City of Evanston v. Regional Transportation Authority*, 202 Ill. App. 3d 265, 274 (1st Dist. 1990) (the City could not apply city zoning ordinance to regional bus facility because facility was operated by regional governmental authority and meant to service a region; a part cannot regulate the whole)

Power of Taxation



- In *S. Bloom, Inc. v. Korshak*, 52 Ill. 2d 56, 284 N.E.2d 257 (1972), the Court upheld Chicago's cigarette tax ordinance, holding that the ordinance placed the tax incident on the consumer and thus was not an occupation tax in violation of constitutional provisions governing powers of home rule units.
- In *City of Evanston v. County of Cook*, 53 Ill. 2d 312, 291 N.E.2d 823 (1972), the Court upheld a simultaneous tax by the City and Cook County on the retail sale of new motor vehicles.
- The Court in *Jacobs v. City of Chicago*, 53 Ill. 2d 421, 292 N.E.2d 401 (1973), upheld the City's parking tax ordinance of \$.15 per 24 hours. The ordinance stated that the parking tax was not a tax upon the operator of the parking facility, but that the ultimate incidence of and the liability for the tax was to be borne by the person who sought the privilege of occupying the space within the parking facility.

Power of Taxation



- Example of disallowed tax:
- In *Chicago Health Clubs, Inc. v. Picur*, 124 Ill. 2d 1, 528 N.E.2d 978 (1988), the Court held that the City of Chicago's tax on membership fees was an occupation tax within the meaning of constitutional provision requiring General Assembly authorization for home rule city's occupation tax and that tax was not a tax on amusement within the meaning of statutory authorization of tax on amusements.

“Police Powers”



- **Police Power: capacity of states / municipalities to regulate behavior and enforce order within their territory for the betterment of the health, safety, morals, and general welfare of their inhabitants**
- **Source of municipal “police power:”**
 - **Article 7, Section 6(a) of Illinois Constitution**
 - ✦ **In general, these provisions provide the authority to home rule municipalities to “control their own affairs in the areas of public health, safety, welfare, etc., unless the Illinois General Assembly specifically limits them from doing so.” of *DePue v. Viacom International, Inc.*, 632 F. Supp. 2d 854 (C.D. Ill. 2009).**

“Police Powers”



- Municipal regulation based on the exercise of police power, “must bear a reasonable relationship to the public interest sought to be protected and the means adopted must be a reasonable method of accomplishing the chosen objective.” *National Paint & Coatings Assoc., v. City of Chicago*, 803 F. Supp. 135 (N.D. Ill. 1992).
- After a municipality determines that a problem exists and takes action to protect and promote the safety and welfare of its citizens, “the legislation is presumed to be a valid exercise of [its] police power.” *Id.*

“Police Powers”



- Courts have a duty to determine if a municipality has exceeded its constitutional limitations. *Congress Care Center Associates v. Chicago Dept. of Health*, 260 Ill. App. 3d 586, 632 N.E.2d 266 (1st Dist. 1994).
- Courts determine if the home rule municipality’s authority has been preempted or if the impact of the regulation affects other governmental entities
- Courts will not disturb or reject regulation based solely on a difference of opinion regarding the particular regulation

“Police Powers”



- Is it a permissible regulation by a home-rule municipality? Yes:
 - Licensing - *Oak Park Trust and Savings Bank v. Village of Mount Prospect*, 181 Ill. App. 3d 10, 536 N.E.2d 763 (1st Dist. 1989)
 - Liquor – broad powers - *Town of Normal v. Seven Kegs, Two Tappers and Two Barrels*, 234 Ill. App. 3d 715, 599 N.E.2d 1384 (4th Dist. 1992)
 - Landlord-tenant - *Landry v. Smith*, 66 Ill. App. 3d 616, 384 N.E.2d 430 (1st Dist. 1978)

“Police Powers”



- Is it a permissible regulation by a home-rule municipality? Yes:
 - Health & Safety - many sections of the Illinois Municipal Code that allow home rule and non-home rule municipalities to regulate
 - Amusements - *Rothner v. City of Des Plaines*, 554 F. Supp. 465 (N.D. Ill. 1981).
 - Penalties - *City of Chicago v. Cotton*, 356 Ill. App. 3d 1, 826 N.E.2d 405 (1st Dist. 2005).

Zoning



- A home rule unit may pass any zoning ordinance as long as it complies with the constitutional requirements set forth in *LaSalle National Bank v. County of Cook*, 12 Ill. 2d 40 (1957) (“the LaSalle Factors”)
- Zoning ordinances and related decisions will be upheld as long as, “they represent a rational means to accomplish a legitimate purpose” and are not found to be “arbitrary, unreasonable, and bearing no substantial relation to the public health, safety, morals, comfort, or general welfare.” *Dunlap v. Village of Schaumburg*, 394 Ill. App. 3d 629 (1st Dist. 2009)

Zoning



- The LaSalle Factors (Court's considerations when evaluating proposed zoning ordinance):
- (1) the existing uses and zoning of nearby property, (2) the extent to which property values are diminished by the particular zoning restrictions, (3) the extent to which the destruction of property values of plaintiff promotes the health, safety, morals or general welfare of the public, (4) the relative gain to the public as compared to the hardship imposed upon the individual property owner, (5) the suitability of the subject property for the zoned purpose, and (6) the length of time the property has been vacant as zoned considered in the context of land development in the area in the vicinity of the subject property. *LaSalle National Bank*, 12 Ill. 2d at 46-47.

Court Decisions Limiting Home-Rule Powers



- Regulations pertaining to environmental issues and election issues are more likely to be deemed outside of a home rule municipality's police powers.
 - Environmental regulations are more likely to be preempted due to the scope of State environmental statutes. *See Carlson v. Briceland*, 61 Ill. App. 3d 247, 377 N.E.2d 1138 (1st Dist. 1978).
 - Municipalities have the ability to legislate concurrently with the State concerning environmental protection. *See City of Chicago v. Pollution Control Board*, 59 Ill. 2d 484, 322 N.E.2d 11 (1975).
- No run-off for elections, because elections are a matter of statewide concern. *Leck v. Michaelson*, 129 Ill. App. 3d 593, 472 N.E.2d 1166 (1st Dist. 1985)

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