Local Government

P-1 Home Rule

Introduction

The Kansas Supreme Court reaffirmed in 2004 that cities have broad home rule powers granted directly by the people of the State of Kansas and that the constitutional home rule powers of cities shall be liberally construed to give cities the largest possible measure of self-government. The opinion, State ex rel. Kline v. Unified Government of Wyandotte County/Kansas City, Kansas, upheld the ability of cities to authorize by charter ordinance the Sunday sale of alcoholic liquor despite a state law prohibiting such sales. The Court found the state liquor laws were nonuniform in their application to cities and therefore subject to charter ordinance. See also Farha v. City of Wichita, a 2007 case affirming the ruling on Kline.

This article examines briefly the history of home rule in Kansas, and explains the different variations of Kansas local government home rule.

Most states confer home rule powers on some or all of their cities and counties. The U.S. Advisory Commission on Intergovernmental Relations in 1993 reported cities in 37 states and counties in 23 states have constitutional home rule powers. Another 11 states provide home rule for cities by statute and 13 additional states provide statutory home rule for counties. In Kansas, cities’ home rule authority is authorized constitutionally, while counties are granted home rule powers by statute.

What Is Home Rule?

[‘Home rule’ is] ... limited autonomy or self-government granted by a central or regional government to its dependent political units. It has been a common feature of multinational empires or states – most notably, the ancient Roman Empire and the British Empire – which have afforded measured recognition of local ways and measured grants of self-government provided that the local populations should remain politically loyal to the central government. It has also been a feature of state and municipal government in the United States, where state constitutions since 1875 have frequently...
been amended or revamped to confer
general or specifically enumerated
self-governing powers on cities and
towns, and sometimes counties and
townships. (Source: www.britannica.
com/EBchecked/ topic/270114/home-
rule)

The United States’ system of
governance has many different
levels. These levels – federal, state
and local – all have a specific role to
play in providing public services for
the citizenry. At times, these levels of
governance can overlap, or create
gaps in the provision of services,
leaving uncertainty about who has what
type of authority.... (Source: “Dillon’s
Rule or Not?”, National Association
of Counties, Research Brief, January
2004, Vol. 2, No. 1.)

The question of authority between levels of
government has taken different forms historically.
In the United States, local governments are
considered creatures of the state as well as
subdivisions of the state and as such are dependent
upon the state for their existence, structure, and
scope of powers. State legislatures have plenary
power over the local units of government they
create, limited only by such restrictions they have
imposed upon themselves by state law or by
provisions of their state constitutions, most notably
home rule provisions. The courts in the late 19th
century developed a rule of statutory construction
to reflect this rule of dependency known as “Dillon’s
Rule.”

Dillon’s Rule states that a local government has
only those powers granted in express words, those
powers necessarily or fairly implied in the
statutory grant, and those powers essential to
the accomplishment of the declared objects and
purposes of the local unit. Any fair, reasonable,
or substantial doubt concerning the existence of
power is resolved by the courts against the local
government. Local governments without home
rule powers are limited to those powers specifically
granted to them by the Legislature.

While local governments are considered dependent
on the state, and therefore not autonomous, the
political landscape changed significantly in Kansas
beginning in the early 1960s. The following section
describes the development of home rule powers
for cities, counties, and, to a lesser extent, school
districts.

City, County, and School District Home
Rule—Brief History of Kansas Home
Rule Provisions

A new era in city-state relations was inaugurated
on July 1, 1961, the effective date of the City
Home Rule Constitutional Amendment approved
by voters at the November 1960 general election.
Cities now can look directly to the Kansas
Constitution, Article 12, Section 5, for the source
of their powers. Cities are no longer dependent
upon specific enabling acts of the Legislature.
The Home Rule Amendment has, in effect, stood
Dillon’s Rule on its head by providing a direct
source, from the people, of legislative power for
cities.

Home rule for counties was enacted by statute
in 1974. The county statutory grant generally is
patterned after the city home rule constitutional
amendment.

In 2003, schools were granted expanded
administrative powers referred to by some as
limited home rule powers. This limited grant
of additional administrative power to schools
occurred as a result of several years of effort
to expand the powers of school districts by the
Kansas Association of School Boards and other
groups.

Constitutional Home Rule Grant for Cities

The key constitutional language contained in
Article 12, Section 5, of the Kansas Constitution,
reflecting the broad scope of the grant of home
rule power for Kansas cities is as follows:

- “Cities are hereby empowered to
determine their local affairs and
government including the levying of
taxes, excises, fees, charges, and other exactions.

- “Cities shall exercise such determination by ordinance passed by the governing body with referendum only in such cases as prescribed by the legislature, subject only to enactments of the legislature of statewide concern applicable uniformly to all cities, to other enactments applicable uniformly to all cities... and to enactments of the legislature prescribing limitations of indebtedness.”

- “Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city.”

- “Powers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self-government.”

The Home Rule Amendment applies to all cities regardless of their size. Further, the Home Rule Amendment is self-executing in that there is no requirement that the Legislature enact any law implementing it, nor are cities required to hold an election or adopt a charter, constitution, or some type of ordinance declaring their intent to exercise home rule powers.

Cities also are granted the power to levy taxes, excises, fees, charges, and other exactions by the Home Rule Amendment. The Legislature, however, may restrict this power by establishing not more than four classes of cities—cities of the first, second, and third class having been defined in law. These classes are not classes for general government purposes. Rather, these are constitutional classes for purposes of imposing revenue limitations or prohibitions.

The only example, to date, where the Legislature has classified cities for the purpose of imposing limits upon or prohibiting taxes has been in the area of local retailers’ sales taxes. In fact, 2006 SB 55 addressed this issue by reducing the number of classes of cities to one for the purpose of local retailers’ sales taxes.

The rules are simple—cities can be bound only by state laws uniformly applicable to all cities, regardless of whether the subject matter of the state law is one of statewide or local concern. If there is a nonuniform law that covers a city, the city may pass a charter ordinance and exempt itself from all or part of the state law and provide substitute or additional provisions. If there is no state law on a subject, a city may enact its own local law. Further, if there is a uniform law that does not expressly preempt local supplemental action, then cities may enact additional nonconflicting local regulations compatible with the uniform state law.

Statutory Home Rule Grant for Counties

The County Home Rule Act provides that “the board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate...” subject only to the limits, restrictions, and prohibitions listed in the act (KSA 19-101a). The statutory grant, likewise, contains a statement of legislative intent that the home rule powers granted to counties shall be liberally construed to give counties the largest measure of self-government. (KSA 19-101c).

County home rule is self-executing in the same manner as city home rule. The power is there for all 105 counties to use. No charter or local constitution need be adopted nor any election held to achieve the power, except in the case of Johnson County, which is covered by a special law authorizing the adoption of a charter by county voters. Voters in Johnson County approved the charter in November 2002.

Counties can be bound by state laws uniformly applicable to all counties. Further, nonuniform laws
can be made binding on counties by amending the county home rule statute, which now contains 38 limitations on county home rule. Counties may act under home rule power if there is no state law on the subject. Counties also may supplement uniform state laws that do not clearly preempt county action by passing non-conflicting local legislation.

**Statutory Expansion of School District**

KSA 72-8205 was amended in 2003 to expand the powers of school boards as follows:

- The board may transact all school district business and adopt policies that the board deems appropriate to perform its constitutional duty to maintain, develop, and operate local public schools.

- The power granted by this subsection shall not be construed to relieve a board from compliance with state law or to relieve any other unit of government of its duties and responsibilities which are prescribed by law, nor to create any responsibility on the part of a school district to assume the duties or responsibilities are required of another unit of government.

- The board shall exercise the power granted by this subsection by resolution of the board of education.

The expanded administrative powers of school districts have not been reviewed by an appellate court to date.

**“Ordinary” versus “Charter” Ordinances or Resolutions**

**Ordinary Home Rule Ordinances**

City home rule must be exercised by ordinance. The term “ordinary” home rule ordinance was coined after the passage of the Home Rule Amendment but is not specifically used in the Kansas Constitution. The intent of using the term is to distinguish ordinances passed under home rule authority are not charter ordinances from all other ordinances enacted by cities under specific enabling acts of the Legislature. Similar terminology is used to refer to “ordinary” county home rule resolutions.

There are several instances where cities and counties may use ordinary home rule ordinances or resolutions. The first occurs when a city or county desires to act and there is no state law on the subject sought to be addressed by the local legislation. A second instance is where cities or counties may enact ordinary home rule ordinances or resolutions when there is a uniform state law on the subject, but the law does not explicitly preempt local action. The city or county may supplement the state law as long as there is no conflict between the state law and the local addition or supplement. A third instance involves situations where either uniform or nonuniform enabling or permissive legislation exists, but a city or county chooses not
to utilize the available state legislation and instead acts under home rule.

City Charter Ordinances and County Charter Resolutions

A city charter ordinance is an ordinance that exempts a city from the whole or any part of any enactment of the Legislature that is nonuniform in its application to cities and that provides substitute or additional provisions on the same subject. A county charter resolution may be used in essentially the same manner.

Procedures for passage of city charter ordinances require a two-thirds vote of the members of the governing body of the city. Publication of the charter ordinance is required once each week for two consecutive weeks in the official city newspaper. The charter ordinance is subject to a 10 percent protest petition and election procedures.

County charter resolutions must be published once each week for two consecutive weeks in the official county newspaper and are subject to a 2 percent or 100 electors (whichever is greater) protest petition and election procedure.

Conclusion

Cities and counties in Kansas have broad home rule powers, although the home rule powers of cities are more enduring due to the constitutional basis for these powers. The Kansas appellate courts, for the most part, have construed the home rule powers of both cities and counties in broad fashion, upholding the exercise of the powers. There are, however, some appellate decisions that have negated home rule actions and, in the process, have established restrictive rules of interpretation that cannot be reconciled with other home rule decisions. Whether the court has developed two conflicting lines of rationale for deciding home rule cases has not been resolved.

The expanded administrative powers of school districts are referred to as limited home rule powers. The scope of these expanded powers is considerably less comprehensive when compared to the city and county home rule powers.