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State and Local Government

J-3 Home Rule

The Kansas Supreme Court in *State ex rel. Kline v. Unified Government of Wyandotte County/Kansas City*, 85 P. 3d 1237 (Kan. 2004) reaffirmed cities have broad home rule powers granted directly by the people of the State of Kansas, and the constitutional home rule powers of cities shall be liberally construed to give cities the largest possible measure of self-government.

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

Most states confer some degree of home rule powers on some or all of their cities and 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 defined as limited autonomy or self-government granted by a central or regional government to its dependent political units. It has been a feature of state and municipal government in the United States, where state constitutions since 1875 frequently have been amended to confer general or specifically enumerated self-governing powers on cities and towns, and sometimes counties and townships.

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 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 are 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

Constitutional Home Rule Grant for Cities

After July 1, 1961, cities were no longer dependent upon specific enabling acts of the Legislature. 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 reads 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.

Though the Home Rule Amendment grants cities the power to levy taxes, excises, fees, charges, and other exactions, the Legislature 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 exist for purposes of imposing revenue limitations or prohibitions. The 2006 Legislature reduced the number of classes of cities to one for the purpose of restoring uniformity of local retailers’ sales taxes.

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, cities may enact additional non-conflicting local regulations compatible with the uniform state law.

Statutory Home Rule Grant for Counties

Home rule for counties was enacted by statute in 1974. The county statutory grant is patterned after the Home Rule Amendment. 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 2018 Supp. 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 Act, 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.

City and County Home Rule Differences

The major distinction between county home rule and city home rule is that county home rule is granted by statute, whereas the city home rule is granted directly by the people. Because of its constitutional origins, only the voters of Kansas can ultimately repeal city home rule after two-thirds of both houses of the Kansas Legislature have adopted a concurrent resolution calling for amendment or repeal, or a constitutional convention has recommended a change. The Legislature can restrict city home rule powers only by enacting uniform laws that apply in the same way to all cities unless the subject matter is one of the few specific areas listed in the Home Rule

Amendment, such as taxing powers and debt limitations. By contrast, the Legislature has more authority to restrict or repeal statutory county home rule. Finally, the other factor distinguishing city and county home rule is the existence of numerous exceptions to county home rule powers found in the County Home Rule Act.

Statutory Expansion of School District Powers

In 2003, schools were granted expanded administrative powers referred to by some as limited home rule powers. KSA 72-8205 was amended to expand the powers of school boards as follows:

- The board may transact all school district business and adopt policies 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 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; and
- The board shall exercise the power granted by this subsection by resolution of the board of education.

“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 that 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 allows cities or counties to 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 10.0 percent protest petition and election procedure.

County charter resolutions must be passed by a unanimous vote in counties where a three member commission exists, unless the board determines ahead of time to submit the charter resolution to a referendum, in which case a two-thirds vote is required. In counties with a five- or seven-member commission, a two-thirds vote is required to pass a charter resolution unless the charter resolution will be submitted to a vote, in which case a majority is required.

County charter resolutions must be published once each week for two consecutive weeks in the official county newspaper and are subject to a 2.0 percent or 100 electors (whichever is greater) protest petition and election procedure.

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