

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Nancy Brown at 1:30 p.m. on January 14, 1993 in Room 521-S of the Capitol.

All members were present.

Committee staff present: Michael Heim, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Lois Hedrick, Committee Secretary

Conferees appearing before the committee: Don Moler, League of Kansas Municipalities
Beverly Bradley, Kansas Association of Counties
Gerry Ray, Johnson County Commission

Others attending: See Guest List (Attachment 1)

Michael Heim, Legislative Research Department, outlined existing Kansas statutes establishing local units of government and their rights; some of which are enabling statutes, others that limit such actions, and those which mandate actions. The state has absolute power over the number and existence of local governmental units--limited only by the state's Constitution. Mandatory statutes limit powers; permissive statutes give optional powers. County Home Rule was established by statute; the city Home Rule is constitutional.

Don Moler, League of Kansas Municipalities, then discussed the constitutional city Home Rule, enacted in 1961 (Attachment 2).

Beverly Bradley, Kansas Association of Counties, described the statutory county Home Rule, enacted in 1974. She also listed the 24 exemptions from the rule as listed in KSA 101(A).

Gerry Ray, Johnson County Commission, provided practical examples of the ways in which City and County Home Rule can operate. Some discussion was held concerning the relationships of state-to-local, local-to-state, and limits of Home Rule.

Committee members generally discussed situations they have noted in their jurisdictions, including the use of charter ordinances and annexation rights.

The meeting was adjourned at 2:35 p.m. The next meeting is scheduled for 1:30 p.m., January 19, 1993, in Room 521-S of the State Capitol.

GUEST LIST

COMMITTEE: HOUSE LOCAL GOVERNMENT COMMITTEE

DATE: JANUARY 14, 1993

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HOME RULE FOR KANSAS CITIES: A GUIDE FOR CITY OFFICIALS

Kansas cities have enjoyed home rule powers since July 1, 1961. However, many city officials still are uncertain about what home rule means and how it may be used.

The purpose of this guide is to explain how Kansas home rule works, in lay terms. There is no attempt to explore all the legal complexities of this subject, merely an attempt to explain the basic principles of home rule.

Officials wanting more information on the legal aspects of home rule are directed to the publication *Home Rule for Kansas Cities*, a manual published by the League of Kansas Municipalities. For a summary of home rule, see also Chapter 3 of the *Handbook for the City Governing Body*, published by the League.

HOME RULE: WHAT IS IT?

Home rule, simply stated, is the right of the people of a city to govern themselves. Specifically, it refers to the constitutional grant of power to cities in Kansas to pass laws on matters of local affairs. To really understand what this means we must go back to a time when cities did not have home rule.

For the first 100 years of statehood, the cities of Kansas were entirely dependent on those powers granted to them by the state legislature. Instead of being free to govern themselves, cities were in fact prisoners of the legislature. No matter what the local need or the urgency of any local issue, a city could not take any action unless the legislature had passed a law specifically giving the city authority to take that action.

This state of affairs existed until July 1, 1961, when the home rule amendment to the Kansas Constitution (Article 12, Sec. 5) became effective. That was the day cities were granted home rule powers to legislate in regard to their local affairs and government and free themselves from state laws that applied to them but did not apply uniformly to all cities.

As stated by the Kansas Supreme Court in *Claflin v. Walsh*, 212 Kan. 1 (1973): "No longer are cities dependent upon the state legislature for their authority to determine their local affairs and government. Since home rule, cities have power granted directly from the people through the constitution without statutory authorization."

Under home rule, all incorporated cities in Kansas have broad powers of self government. Cities do not have to take any action to gain home rule powers because the people of Kansas, by voting to amend the Kansas Constitution, directly conferred home rule powers on all cities.

Home rule is democracy in action. It means that the people of any city, through their elected representatives, have the power to govern themselves. By being able to pass laws in the exercise of their home rule powers, cities are free to experiment; to try new approaches to solve old and new problems. No longer must things be done in the "same old way."

The constitutional amendment creating home rule says that "cities are hereby empowered to determine their local affairs and government. . .". It also says to the courts that the power of cities to exercise home rule "shall be liberally construed for the purpose of giving to cities the largest measure of self-government."

Home rule, although a very broad grant of power, does not mean that cities are completely free of state legislative control. The home rule amendment places some very specific limitations upon the exercise of home rule. Those limitations are explained on page 4.

WHY HOME RULE?

There are a number of excellent reasons for granting the residents of cities the right to govern themselves. The right of self-determination is at the very heart of our system of government. Just as states feel they have a "right" to determine state affairs without interference from the national government, cities should have the right to determine local affairs.

Home rule permits cities to act promptly to deal with immediate problems and opportunities. Prior to home rule, cities were entirely dependent on the legislature for their ability to act. They could only do those things the state said they could do. No matter how urgent the problem, cities had to wait for the legislature to either come up with a solution or grant cities specific authority to seek their own solution.

Like people, there are no two cities completely alike. They do not have equal needs nor the same goals. Home rule permits each local governing body to tailor solutions to fit local needs. Also, home rule permits the governing body to take actions which enable the city to move towards achieving its long-range goals.

A common criticism of government is that it is not as responsive as it should be. Home rule not only gives elected officials greater authority to make their own decisions, it also forces them to accept responsibility for their decisions. The pre-home rule excuse that "We can't do it because the state won't let us" went out when home rule came in. Under home rule, elected officials become just as responsible for actions they fail to take as for those actions which they do take. Freedom from the state legislature carries responsibilities.

Home rule places primary responsibility for city affairs in the hands of the elected city officials. It gives them the authority to act in a positive and responsible manner in solving the problems of their city and to achieve city goals.

Home rule, while giving cities the responsibility for local affairs, also deters state legislative interference in local affairs. No longer does the legislature have the absolute right to grant certain powers to one city or group of cities while denying the same powers to other cities. Nor does the legislature have the power to bind one city to certain actions to the exclusion of other cities.

The legislature still has considerable authority to tell cities what to do and how to do it. But to exercise this authority in a binding manner, the legislature must make its enactments uniformly applicable to all cities. Unless the legislature does this, cities may, in effect, exempt themselves from that law's application.

HOME RULE: LIMITATIONS

Home rule power is not absolute. Cities must comply with state laws that apply uniformly to all cities and must conform to applicable federal laws and to the U.S. and Kansas Constitutions. In addition, the home rule power of cities is limited by the power of the state legislature to act exclusively in some areas and optionally in others. Those limitations are summarized as follows:

Exclusive State Powers. The home rule amendment vests absolute and exclusive power in the state legislature in regard to city incorporation and city boundary changes: annexation, merger, consolidation or dissolution of cities. Cities must comply with state law on these subjects.

Optional State Powers. By the terms of the home rule amendment, cities are also bound to follow state laws which apply uniformly to all cities. It does not matter whether these state laws deal with matters of local concern or matters of statewide concern. If a law applies uniformly to all cities, cities are required to follow it.

The Constitution further states that *if* the legislature chooses to exercise control, cities are bound by laws limiting or prohibiting the levy of any tax, excise, fee charge or other exaction if the law applies uniformly to all cities or to all cities of the same class. The legislature can create up to four classes of cities for this purpose. To date, with only one exception the legislature has not passed laws to limit or prohibit taxes which apply uniformly to cities within classes. The exception is a law creating two classes of cities for the purpose of levying a local sales tax.

The legislature may exercise exclusion control over limits of indebtedness of cities. Statutes prescribing limits on bonded debt or any other debt must be followed by cities and are not subject to home rule modification.

HOME RULE: WHEN AND HOW IT IS USED

Cities exercise their home rule powers whenever they pass two kinds of ordinances—an ordinary ordinance and a charter ordinance. The proper use of these two kinds of ordinances is explained below.

Ordinary Ordinances

The constitution says that: "Cities are hereby empowered to determine their local affairs and government. . . Cities shall exercise such determination by ordinance passed by the governing body with referendums only in such cases as prescribed by the legislature. . .". *This is the most significant language in the home rule amendment.* It gives cities the power to initiate legislation by ordinary ordinance without having to rely on state enabling statutes for the authority to do so. The term "ordinary" is not found in the constitution. It is used to classify those home rule ordinances which are not charter ordinances.

Ordinary home rule ordinances are the backbone of city home rule powers. Cities have exercised their home rule power through the enactment of ordinary ordinances on a wide variety of subjects, including: removal of junk vehicles from private property; human relations commissions; riot control; occupation taxes; and consumption of cereal malt beverages. Other types of ordinary ordinances by which cities exercise their home rule powers relate to governmental structure, administrative organization, personnel and procedural matters. Ordinary ordinances adopted under a city's constitutional home rule powers are enacted in the same manner as ordinances passed pursuant to state statutory authority. Generally an ordinance which a city passes without reliance upon enabling state legislation is an ordinary home rule ordinance.

The fact that the state legislature has passed laws on a subject does not necessarily deprive the city of the power to deal with the same subject by ordinary ordinance. A state law and an ordinance on the same subject may exist side by side if the ordinance is not in *conflict* with the state law. If a conflict exists between the provision of an ordinance and a state law, the ordinance is invalid.

Court decisions provide the guide for determining whether an ordinance conflicts with state law. In dealing with the technical issue of conflict the city should contact the city attorney.

Charter Ordinances

The home rule amendment provides that a city may, by charter ordinance, exempt itself from or provide substitute provisions for any state statute which applies to that city but is not "uniformly applicable to all cities." What does this mean? How does it work?

This means, first of all, that if the city disagrees with some state law which applies to that city—but does not apply in the same way to all cities—the city can, so to speak, get rid of that particular law. This is done by passing a charter ordinance which states in official language that the law no longer applies to the city. The city in effect repeals this state law insofar as it would apply to that city.

Suppose you like part of the state law but you wish part of it were different. You simply adopt a charter ordinance which essentially says "the city has changed this law as follows." Then you state the law as you have changed it. The city, in effect, amends the state law insofar as it would apply to that city.

Now obviously, you don't adopt charter ordinances in exactly the words used above. But after you get all the legal niceties down in the proper order, it comes out meaning what was said above. That is what the home rule amendment means when it states that cities may exempt themselves from the "whole or any part" of a state law, or may provide substitute provisions for any state law which applies to the city but does not apply uniformly to all cities.

While the form of a charter ordinance is similar to a regular or ordinary ordinance, there are a number of important differences. One of the major differences is that there are additional legal requirements which must be met in order to pass a charter ordinance. It takes a two-thirds vote of the city governing body and must be published once each week for two consecutive weeks.

Also the city must wait for 60 days following the final publication of the charter ordinance to permit citizens to file a protest petition requesting an election on the ordinance. If a valid protest petition is filed, the city governing body has two choices. It can forget the ordinance, in which case it does not become law. Or the city can set a date for a referendum on the charter ordinance. The law does not require the city to call an election if a valid protest petition is filed. The law, however, does provide that if a protest petition is filed, a charter ordinance cannot take effect unless an election is held and a majority of those voting vote for the charter ordinance. A defeat of the proposed charter ordinance at the polls does not in any way affect the governing body's ability to pass other charter ordinances, even one identical to the defeated one.

The governing body does not have to wait for a protest petition before it holds an election on whether to adopt a charter ordinance. If the governing body wants to hold such an election, it just passes an ordinance setting a date to vote on the charter ordinance. In such a case, the charter ordinance will become effective if it receives a majority vote of the people. When the charter ordinance does become effective, a certified copy must be filed with the Secretary of State.

The above is a brief summary of the method of enacting a charter ordinance. It may sound unnecessarily complex, but if you think of a charter ordinance as a repeal or an amendment to a state law, which it is, the special procedure appears reasonable. The city is in effect substituting its judgment as to what the law should be for that of the legislature.

The League of Kansas Municipalities maintains a library of thousands of charter ordinances enacted by approximately 500 Kansas cities. These charter ordinances cover a wide variety of subjects. Copies of sample charter ordinances are provided upon request.

APPLYING HOME RULE

A good way to explain how home rule works is to outline the options cities have because of home rule.

Suppose the city wants to take a particular action that is a matter of local affairs and government. A city may only act if it has authority to take that action. The authority will come either from state enabling legislation or home rule. The steps to be taken in making that determination may be summarized as follows:

1. Check the state statutes. The grant of home rule powers to cities does not mean that state statutes may be ignored. It is always necessary to see whether the legislature has already dealt with the subject on which the city proposes to take action. An ordinary ordinance which conflicts with state law is invalid, although local law which compliments or supplements state law is valid.

2. Assume that there is no state law on the subject the city wants to deal with. Before home rule this would end the matter--a city could not act without statutory authority. Now the absence of state legislation means that the city is free to pass an ordinance authorizing the action to be taken. It can do this because of the constitutional grant of power to determine local affairs and government. The city can provide its own enabling legislation. In other words, if the state legislature has not legislated to provide authority to the city, the city may legislate by ordinary ordinance to provide the authority.

3. Suppose that a check of the statutes discloses that the state legislature has passed a law on the subject and that the state law applies to the city. In that case several possibilities arise.

a) If the state law authorizes what the city wants to do, the exercise of home rule power is not necessary. The state legislature has provided authority to act, and it is generally best to use that authority, although the use of home rule is not necessarily preempted by the availability of state enabling legislation.

b) If the state law does not go far enough, the city may use its home rule power to pass an ordinance which supplements or adds to the state law. A state law and ordinance on the same subject can exist side by side if the provisions of the ordinance are not in conflict with the state law.

c) If the state law contains provisions which are contrary to what the city wants to do, so that a city ordinance would be in conflict with the state law and therefore invalid, the city may be able to make the state law inapplicable to the city by use of a charter ordinance. This will depend on whether the state law applies uniformly to all cities. If the state law applies uniformly to all cities, a charter ordinance cannot be used. All cities must follow the state law if it applies uniformly to all cities. If the state law does not apply uniformly to all cities, a charter ordinance may be used to exempt the city from that law's application.

CONCLUSION

The home rule amendment made two fundamental changes in state-local distribution of governmental powers. First, it granted cities the power to legislate on matters of local affairs and government. Second, it restricted the power of the state legislature to treat cities differently and to enact binding nonuniform restrictions on local affairs. Because they have the ability to exempt themselves by charter ordinance, cities are not bound to follow state laws (except in certain specified areas) unless those laws are uniformly applicable to all cities. The Kansas legislature has the final and ultimate power, but the home rule amendment places restraints on the manner in which the legislature exercises its ability to preempt local lawmaking on a given subject.

The use of home rule is as varied as the make-up of the many cities throughout the state. It reflects the individual needs, problems and desires of the hundreds of individual communities.

Home rule is not a panacea for all the problems faced by Kansas cities. Home rule is, however, a tool which can be used to provide imaginative solutions to many of the problems which beset local government.

Home rule is a challenge to those responsible for charting the course of their communities. It is a challenge to think big, to dream with imagination and to dare to shun the ordinary in quest of a better tomorrow and a brighter future.

One final tip to the elected city governing body member. If you think a proposed action is in the best public interest of your citizens, take the attitude that it can be done until proven otherwise. Don't always ask, "May we do this?" A better question, in these days of home rule, is "Why can't we do this?" **THINK HOME RULE!**

Cities now have great opportunities. They are free to try out new ideas and new means of accomplishing new or old functions and activities. City governing bodies now have the opportunity to provide their citizens with the best and most efficient and effective governmental operation possible, within their capabilities and financial resources. The challenge and the authority is there--all that remains is the acceptance of the challenge and the application of vision, imagination, initiative and dedication. This must come from local officials!

Special Committee on Home Rule
League of Kansas Municipalities
July 1973

This (home rule) was brought about by the people in amending the constitution which is the organic law of the land, is paramount over the governor, legislature and courts, and receives its force from the expressed will of the people.

Kansas Supreme Court
Van Sickle v. Shanahan,
(212 Kan. 426, 451) 1973

League of Kansas Municipalities
112 West Seventh Street
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7 ATTACHMENT 2-7
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