

OHIO MUNICIPAL LEAGUE HOME RULE

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HOME RULE IN OHIO

Municipalities are governed by Article XVIII of the Ohio Constitution and Title 7 of the Ohio Revised Code.

A. Article XVIII, Section 3 of the Constitution grants two types of authority to all municipalities.

1. Exercise all powers of local self-government.
2. Enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

B. Article XIII, Section 6 and Article XVIII, Section 2 of the Constitution empower the General Assembly to pass laws for the organization of municipalities.

1. Chapters 731 and 733 of the ORC establish a general plan of government for municipal corporations. Absent action by the electors, this plan is in effect.
2. Chapter 705 of the ORC provides three alternative statutory plans for municipalities. Municipal electors may select one of these plans instead of the general statutory plan.

a. Commission Plan

b. City Manager Plan

c. Federal Plan

C. Article XVIII, Sections 7 and 8 provide another alternative plan that can be chosen by the electors of the municipality; a charter form of government.

1. Section 7 allows any municipality to “... frame and adopt ... 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.”
2. Section 8 outlines the procedure to be followed in framing and adopting such a charter.

- i. All municipalities can exercise home rule authority. It is not limited to chartered municipalities. Ohio Const., Article XVIII, Section 3.

A. The right to exercise “all powers of local self-government” is unfettered, except by the limitations of what constitutes local self-government. This issue is far from clear.

- 1. Included as matters of local self-government
 - a. Internal organization
 - b. Control, use and ownership of certain public property
 - c. Recall of elected officials
 - d. Regulation of municipal streets
 - e. Procedures for sale of municipal property

2. Outside the scope of local self-government

- a. Detachment of territory
- b. Annexation
- c. Prevailing wage law
- d. Public collective bargaining law

3. Courts have developed “statewide concern” doctrine; if a matter impacts more than solely local interests, it is not solely a matter of local concern and not protected by this grant of authority.
 - a. *Bucyrus v State Dept. of Health*, 120 Ohio St. 426 (1929). State ordered city to install a sewerage system.
 - b. *State ex rel. Evans v Moore*, 69 Ohio St2d 88 (1982). Upper Arlington passed an ordinance exempting city contracts from the prevailing wage law.
 - c. In recent years, the General Assembly has included in its legislation language that the subject matter of the legislation is “a matter of statewide concern”. Some courts have accepted this language on its face, thereby creating a *de-facto* preemption of the power of local self-government. The correct analysis is that such language cannot bind the court and whether something is a matter of statewide concern is a legal determination to be made by the court.
4. In sum, if a matter is of solely local concern, a municipality may exercise its power over that matter.

B. The right to enforce local police, sanitary and other similar regulations within the municipality's boundaries is limited by the "conflict with general law" doctrine.

1. Municipal laws that exercise the "police power" cannot conflict with "general laws".

"Police powers" has long been defined as the authority to make regulations for the public health, safety, morals and general welfare of society. *Miami Cty. v Dayton*, 92 Ohio St. 215 (1915)

In *Canton v State*, 95 Ohio St3d (2002), the Ohio Supreme Court delineated a four part test defining what constitutes a "general law":

- i. Must be part of a statewide and comprehensive legislative enactment;
- ii. Must apply to all parts of the state alike and operate uniformly throughout the state;
- iii. Must set forth police, sanitary or similar regulations, rather than purport to limit or grant the power of a municipality to regulate; and,
- iv. Must prescribe a rule of conduct upon citizens generally.

- a. Conflict is a muddled term in Ohio decisions.
 - i. The Ohio Supreme Court stated the basic test in *Village of Struthers v Sokol*, 108 Ohio St. 263 (1923); whether the ordinance prohibits or licenses what the state statute prohibits or forbids, and *vice versa*. In that case, the village criminalized an act not addressed by state law.
 - ii. The Court continued on this course when it upheld an ordinance which varied the penalty on a criminal offense, making it more severe than the state law. *Toledo v Best*, 172 Ohio St. 371 (1961). The Court cautioned that if the ordinance had changed the misdemeanor to a felony, it would be in conflict.
 - iii. A 1975 state law requiring municipal corporation to fluoridate their water supplies trumped a local decision not to do so. *Canton v Whitman*, 44 Ohio St 2d 62 (1975).
 - iv. A year later, the Court introduced the theory of conflict-by- implication, leading to the potential for result oriented decisions where the courts find no direct conflict. *American Financial Services Ass'n v Cleveland*, 112 Ohio St. 3d 170 (1976).

- III. The importance of the chartered municipality has limited impact on the exercise of home rule powers.
 - A. A charter city creates its own form of government and is not bound by the constraints of Title 7.
 - B. Non-chartered municipalities must follow the procedures prescribed by state statute in exercising matters of local self-government. *Northern Ohio Patrolmen's Benevolent Ass'n v Parma*, 61 Ohio St.2d 375 (1980).

III. Home Rule Analysis

A. The Ohio Supreme Court has established three-step analysis.

1. Is municipal act an exercise of local self-government or an exercise of the police power? If local self-government, the analysis ends.
2. If the act is an exercise of police power, is the state statute at issue a general law? If not, the analysis ends.
3. Does the ordinance conflict with the general law?

III. Other Limitations on Home Rule

A. United States Constitution

B. Ohio Constitution

1. Article XII, Section 2: ten mill limitation on property tax
2. Article VIII, Section 6: "lending of credit"
3. Article II, Section 1f: reserves to citizens of a municipality the rights of initiative and referendum
4. Article XV, Section 10: civil service
5. Article II, Section 34: nothing in constitution impairs or limits the power of the General Assembly to pass laws that fix and regulate hours of labor, establish a minimum wage, or provide for the comfort, health, safety and general welfare of all employees
 - a. *Rocky River v State Empl. Rel. Bd.*, 43 Ohio St3d 1 (1989); collective bargaining law
 - b. *Lima v State*, 122 Ohio St.3d 155 (2009); local residency laws

VI. Recent Legislation.

- A. Red Light Cameras
- B. Municipal Income tax regulations and collections
- C. Small cell legislation (control of municipal right-of-ways)