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Iowa

I. Summary of Home Rule in Iowa

- Under Home Rule, cities and municipal corporations in Iowa have broad authority to legislate in any areas not inconsistent with the laws of the General Assembly, except they are unable to levy any taxes unless such are expressly authorized by the General Assembly.
- County governments in Iowa were granted powers mirroring those of cities and municipal corporations, meaning they also have broad authority to legislate in any areas not inconsistent with the laws of the General Assembly. Counties also do not have the power to levy any tax unless expressly authorized by the General Assembly.
- Iowa codified the state's Home Rule.

II. Source of Municipal Home Rule Authority

In 1968, Iowa amended its constitution to grant municipalities home rule authority. Article III, § 38A grants municipal corporations "home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the general assembly."[1] Further, the amendment provides that municipalities are not limited to exercising powers that are granted to them expressly by the state.[2]

Iowa's Home Rule is codified in chapters 362, 364, 368, 372, 380, 384, 388, and 392 as the City Code of Iowa.

III. Scope of Municipal Home Rule Authority

The Home Rule amendments of the Iowa Constitution give cities the broad authority to determine their "local affairs and government" in a manner not inconsistent with state statutes, except that cities are expressly denied fiscal home rule. Detailed state statutes flesh out the skeletal home rule provided in the constitution. The Constitution clearly rejects Dillon's Rule as a canon of statutory construction.

[1] Iowa Const. art. III, § 38A.
[2] "The rule or proposition of law that a municipal corporation possesses and can exercise only those powers granted in express words is not a part of the law of this state." Iowa Const. art. III, § 38A.

Although the constitutional grant of power is for "local affairs and government," the category seems to be open-ended save for the taxation power denied cities. The Iowa Supreme Court has described its home rule system as "legislative" wherein cities have "the authority to act unless a particular power has been denied them by statute."[3] Further, limitations on a municipality's power over local affairs are not implied; they must be imposed by the legislature.[4] Municipalities may enact ordinances on matters that are also the subject of state statutes, "unless the ordinance invades an area of law reserved by the legislature to itself."[5] Municipalities are free to set standards more stringent than those imposed by state law unless state law provides otherwise.[6] When it comes to a municipality's home rule powers in relation to the county where it sits, "[i]f the power or authority of a county conflicts with the power and authority of municipal corporation, the power and authority exercised by a municipal corporation shall prevail within its jurisdiction."[7]

IV. County Home Rule

In 1978, Iowa amended its constitution again to grant counties home rule authority. Article III, § 39A grants "counties or joint county-municipal corporation governments . . . home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the general assembly."[8] Further, the amendment provides that the state may "provide for the creation and dissolution of joint county-municipal corporation governments . . [and] for the establishment of charters in county or joint-municipal corporation governments."[9] Article 39A provides that counties are not limited to exercising powers that are granted to them expressly by the state.[10] Iowa's Home Rule is codified in Chapter 331.

V. Preemption

Consistent with legislative home rule, in Iowa, the legislature retains "unfettered power to prohibit a municipality from exercising police powers, even over matters traditionally thought to involve local affairs."[11] The Iowa Supreme Court has recognized express preemption and implied preemption with implied preemption consisting of both "conflict" preemption and

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[3] *James Enterprises, Inc. v. City of Ames*, 661 N.W.2d 150, 153 (Iowa 2003) (internal quotations and citation omitted).
[4] *Sioux City Police Officers' Ass'n v. City of Sioux City*, 495 N.W.2d 687, 693-94 (Iowa 1993) (citing Iowa Code § 364.3(3); *City of Des Moines v. Gruen*, 457 N.W.2d 340, 343 (Iowa 1990); *Bryan v. City of Des Moines*, 261 N.W.2d 685, 687 (Iowa 1978)).
[5] *Goodenow v. City Council of Maquoketa, Iowa*, 574 N.W.2d 18, 26 (Iowa 1998).
[6] *Id*.
[7] Iowa Const. art. III, § 39A.
[8] *Id*.
[9] *Id*.
[10] *Id*. ("The proposition or rule of law that a county or joint county-municipal corporation government possesses and can exercise only those powers granted in express words is not a part of the law of this state.").
[11] *City of Davenport v. Seymour*, 755 N.W.2d 533, 538 (Iowa 2008).

"field" preemption.[12] Express preemption applies where the state has "specifically prohibited local action in a given area."[13] In such cases, the state "ordinarily provides the courts with the tools necessary to resolve any remaining marginal or mechanical problems in statutory interpretation."[14]

Conflict preemption, a form of implied preemption, applies when a municipality's ordinance "cannot exist harmoniously with a state statute because the ordinance is diametrically in opposition to it."[15] The Iowa Supreme Court has repeatedly held that municipal ordinances should be presumed to be valid when applying the conflict preemption analysis.[16] As such, for conflict preemption to apply, "the conflict [between state law and a municipal ordinance] must be obvious, unavoidable, and not a matter of reasonable debate."[17]

Field preemption, a second form of implied preemption, applies "when the legislature has so covered a subject by statute as to demonstrate a legislative intent that regulation in the field is preempted by state law" or the legislature establishes its "desire to have uniform regulations statewide."[18] Like the analysis used for conflict preemption, courts should apply a "stringent" test for field preemption, and "[e]xtensive regulation in the area alone is not sufficient."[19] Courts should not "speculate on legislative intent" and must find "persuasive concrete evidence of an intent to preempt the field in the language that the legislature actually chose to employ."[20]

VI. Local Legislative Immunity

Forty-three state constitutions have some sort of "speech or debate" clause, which essentially provides *absolute immunity* to state legislators for their legislative acts. Federal legislators enjoy the same immunity. These constitutional provisions ensure that legislators cannot be held liable for their actual speech or debate on the legislative floor, nor for other legislative acts such as voting and participating in committee meetings.

Neither the Iowa Constitution nor its Code appear to contain a broad speech or debate clause. The Iowa Code, however, does provide that "[a] member of the general assembly shall not be held for slander or libel in any court for words used in any speech or debate in either house or at any session of a standing committee."[21] The Iowa Supreme Court, in addition, has

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[12] *Id*. at 538–39.
[13] *City of Davenport v. Seymour,* 755 N.W.2d 533, 538 (Iowa 2008) (citing *Goodell v. Humboldt County*, 575 N.W.2d 486, 492-93 (Iowa 1998); *Chelsea Theater Corp. v. City of Burlington*, 258 N.W.2d 372, 373 (Iowa 1977)).
[14] *Id*. at 538.
[15] *Id*. at 539.
[16] *Id.*; *see also Iowa Grocery Industry Ass'n v. City of Des Moines,* 712 N.W.2d 675, 680 (Iowa 2006); *Dilley v. City of Des Moines*, 247 N.W. 2d 187, 190 (Iowa 1976).
[17] *Seymour*, 755 N.W. at 539.
[18] *Id.*; *see also Gooddell v. Humboldt County*, 575 N.W.2d 486, 493 (Iowa 1998).
[19] *Id.*
[20] *Id. See also Goodell*, 575 N.W.2d at 493.
[21] Iowa Code Ann. § 2.17.

adopted "a rule of absolute immunity for actions taken in connection with [local elected officials'] official duties" as long as the officials "were acting in a *legislative* capacity."[22]

VII. Other Relevant Considerations

Single Subject Rule:

Article III, Section 29 of the Iowa Constitution requires that "[e]very act shall embrace but one subject, and matters property connected therewith; which subjects shall be expressed in the title."[23] Courts, in determining whether an act violates this requirement, will ask whether the act "encompass[es] two or more dissimilar or discordant subjects that have no reasonable connection or relation to each other."[24] Even if matters grouped together as a single subject "might more reasonably be classified as separate subjects, no violation occurs if these matters are nonetheless relevant to some single more broadly stated subject."[25] Ultimately, to comply with the constitutional requirement, "the matters contained in the act must be germane" and matters are germane when "all matters treated [within the act] should fall under one general idea and be so connected with or related to each other, either logically or in popular understanding, as to be part of … one general subject."[26]

Special & Local Laws:

The Iowa Constitution provides that the general assembly "shall not pass local or special laws in the following cases:"

- For the assessment and collection of taxes for state, county, or road purposes;
- For laying out, opening, and working roads or highways;
- For changing the names of persons;
- For the incorporation of cities and towns;
- For vacating roads, town plats, streets, alleys, or public squares;
- For locating or changing county seats.
- In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the state; and no law changing the boundary lines of any county shall have effect until upon being submitted to the people of the counties affected by the change, at a general election, it shall be approved by a majority of the votes in each county, cast for and against it.

Iowa Const. art. III, § 30.

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[22] *Teague v. Mosley*, 552 N.W.2d 646, 649 (Iowa 1996).
[23] Iowa Const. art. III, § 29.
[24] *Utilicorp United Inc. v. Iowa Utilities Bd., Utilities Div., Dep't of Commerce*, 570 N.W.2d 451, 454 (Iowa 1997) (internal quotation and citation omitted).
[25] *Id*. (internal quotations and citation omitted).
[26] *Id*. (internal quotations and citation omitted).

Unfunded Mandates:

The Iowa State Mandates Act lays out protections for local governments from state unfunded mandates. The act's purpose is to "enunciate policies, criteria, and procedures to govern future state-initiated specification of local government services, standards, employment conditions, and retirement benefits that necessitates increased expenditures by political subdivisions or agencies and entities which contract with a political subdivision to provide services."[27] It provides:

> If, on or after July 1, 1994, a state mandate is enacted by the general assembly, or otherwise imposed, on a political subdivision and the state mandate requires a political subdivision to engage in any new activity, to provide any new service, or to provide any service beyond that required by any law enacted prior to July 1, 1994, and the state does not appropriate moneys to fully fund the cost of the state mandate, the political subdivision is not required to perform the activity or provide the service and the political subdivision shall not be subject to the imposition of any fines or penalties for the failure to comply with the state mandate unless the legislation specifies the amount or proportion of the cost of the state mandate which the state shall pay annually.

Iowa Code Ann. § 25B.2.

Private Laws:

An additional consideration in assessing whether a local government has the authority to adopt a particular policy is whether state law recognizes a "private law exception." Private law can generally be defined as law that "establishes legal rights and duties between and among private entities."[28] Some states, either by constitutional provision, statute, or case law, prohibit municipalities from regulating private law. This can take the form of a "subject-based" exception prohibiting any regulation of "private law" or a narrower exception prohibiting private rights of action.[29] Professor Paul Diller has classified Iowa as a state where "there is no clear judicial authority for or against the proposition that cities may create private rights of action."[30]

Emergency Powers:

To ensure that the state is adequately prepared to deal with any emergencies, the Iowa Legislature granted the governor and "executive heads or governing bodies of the political subdivisions of the state" emergency powers as outlined in Subtitle 12 of the Iowa Code.[31] The

[27] Iowa Code Ann. § 25B.2.
[28] Gary T. Schwartz, *The Logic of Home Rule and the Private Law Exception*, 20 UCLA L. Rev. 671, 688 (1973).
[29] *See* Paul A. Diller, *The City and the Private Right of Action*, 64 Stan. L. Rev. 1109 (2012).
[30] *Id*. at 1132, n. 111.
[31] Iowa Code Ann. § 29C.1(2).

governor is granted broad powers during the existence of a public disorder emergency, including, for example, the power to prohibit "[p]ublic gatherings of a designated number of persons within a designated area," the power to prohibit "[s]uch other activities as the governor reasonably believes should be prohibited to help maintain life, health, property, or the public peace,"[32] and the power to "[s]uspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders or rules, of any state agency, if strict compliance with the provisions of any statute, order or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency by stating in a proclamation such reasons."[33] In addition, "[u]pon request of a local governing body, the governor may also suspend statutes limiting local governments in their ability to provide services to aid disaster victims."[34]

State law also authorizes the "establishment of local organizations for emergency management in political subdivisions of the state."[35] A "local emergency management agency" is defined as a "countywide joint county-municipal public safety agency" established to oversee emergency control services "under the authority of a commission."[36] The local emergency management commission is, in part, granted the power to develop "mutual aid arrangements for reciprocal disaster services and recovery aid and assistance in case of a disaster too great to be dealt with unassisted."[37] These local commissions are to coordinate with the department of homeland security and emergency management in carrying out the provisions of the state's emergency management statutes.[38]

[32] Iowa Code Ann. § 29C.3.
[33] Iowa Code Ann. § 29C.6(6).
[34] *Id*.
[35] Iowa Code Ann. § 29C.1(1).
[36] Iowa Code Ann. § 29C.2(6).
[37] Iowa Code Ann. § 29C.11(1).
[38] Iowa Code Ann. § 29C.9.