IDAHO

CONSTITUTIONAL AND STATUTORY PROVISIONS

Idaho Constitution

- IDAHO CONST. art. 12, §2 Local police regulations authorized.

Any county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws.

Idaho Statutes

- IDAHO CODE § 50-301. Corporate and local self-government powers.

Cities governed by this act shall be bodies corporate and politic; may . . . exercise all powers and perform all functions of local self-government in city affairs as are not specifically prohibited by or in conflict with the general laws or the constitution of the state of Idaho.

LIMITED GRANT OF POLICE POWER TO CITIES

The Idaho Constitution grants local police powers to cities and counties. State law additionally grants cities powers to "perform all functions of local self-government in city affairs." Although these grants of power are reasonably broad, the Idaho courts have proclaimed themselves followers of Dillon's Rule,[1] stressing that municipalities may exercise only those powers expressly granted to them or necessarily implied from the powers granted.[2] Because the police power does not include the power to tax, if a municipality seeks to impose a tax, it must point to specific legislative authorization.[3]

State courts have identified three general restrictions that apply to ordinances enacted pursuant to the authority conferred by the state constitution and statutes: (1) the ordinance or regulation must be confined to the limits of the governmental body enacting the same, (2) it must not

[1] Caesar v. State, 610 P.2d 517, 519 (Idaho 1980) (referring to Dillon's Rule as the "prevailing view in Idaho").
[2] State v. Freitas, 335 P.3d 597, 603-04 (Idaho App. 2014) (citing *Caesar*, 610 P.2d at 520); *see also* Alliance for Property Rights & Fiscal Responsibility v. City of Idaho Falls, 742 F.3d 1100, 1103 (9th Cir. 2013) (citing Idaho Supreme Court for proposition that "municipal corporations have three sources of power and no others: [(1)] [p]owers granted in express words; [(2)] [p]owers fairly implied in or incident to those powers expressly granted; and [(3)] [p]owers essential to the accomplishment of the declared objects and purposes of the corporation") (citing Black v. Young, 834 P.2d 304, 310 (Idaho 1992)).
[3] *See* Lewiston Ind. Sch. Dist. No. 1 v. City of Lewiston, 264 P.3d 907 (Idaho 2011) (upholding the invalidation of a city stormwater fee on the grounds that the city (1) did not utilize statutorily authorized powers in creation of regulatory program, and (2) fee constituted a tax which the city had not been granted power to levy).

conflict with other general laws of the state, and (3) it must not be an unreasonable or arbitrary enactment.[4]

With respect to the first restriction, Idaho courts have held that Article 12, § 2 prohibits a county from making its police regulations effective within a municipality.[5] For purposes of the determination it is irrelevant that the ordinance in question is not in conflict with any existing ordinance of a municipality because "[t]he question is one of power and not one of conflict."[6]

The second restriction enunciates the familiar rule that local ordinances may not conflict with general laws. The Idaho courts include within the category of "conflict" that which is usually referred to as field preemption. Conflict between state and local regulation may be implied where, despite lack of specific language preempting regulation by local government entities, the State has acted in an area in such a pervasive manner that it must be assumed that it intended to occupy the entire field of regulation.[7] The Idaho Supreme Court has not defined "general" in a way that might limit the preemptive scope of a state law. Thus, it appears that any matter on which the state legislature sees fit to legislate may potentially preempt a local enactment.[8]

With respect to the third condition – that a local enactment not be unreasonable or arbitrary – there is no case law.

In sum, Idaho's local government regime might be categorized as "Dillon's Rule plus." Dillon's Rule remains the conceptual framework, but the constitution and legislature grant the police power on top of this foundation.

[4] Hobbs v. Abrams, 657 P.2d 1073, 1075 (Idaho 1983) (citing State v. Clark, 399 P.2d. 955, 960 (Idaho 1965).
[5] Ben Lomond, Inc. v. City of Idaho Falls, 448 P.2d 209, 213 (Idaho 1968); Clyde Hess Distrib. Co. v. Bonneville Cty., 210 P.2d 798, 801 (Idaho 1949).
[6] *Clyde Hess Distrib. Co.,* 210 P.2d at 801.
[7] Envirosafe Servs. of Idaho, Inc. v. Owyhee Cty., 735 P.2d 998, 1000 (Idaho 1987); IDAHO CONST. art. 12, §2.
[8] Caesar v. State, 610 P.2d 517, 520 (Idaho 1980) (noting that the court has not had occasion to distinguish between "general" and "local" laws).