

MISSOURI

CONSTITUTIONAL AND STATUTORY PROVISIONS

Missouri Constitution

- MO. CONST. art. VI, § 18(a). County government by special charter--limitations.

Any county having more than 85,000 inhabitants, according to the census of the United States, may frame and adopt and amend a charter for its own government as provided in this article, and upon such adoption shall be a body corporate and politic. In addition and as an alternative to the foregoing, any county which attains first class county status and maintains such status for at least two years shall be authorized to frame and adopt and amend a charter for its own government as provided by this article, and upon such adoption by a vote of the qualified electors of such county shall be a body corporate and politic. Counties which adopt or which have adopted a charter or constitutional form of government shall be a separate class of counties outside of the classification system established under section 8 of this article.

- MO. CONST. art. VI, § 19. Certain cities may adopt charter form of government--procedure to frame and adopt--notice required--effect of.

Any city having more than five thousand inhabitants or any other incorporated city as may be provided by law may frame and adopt a charter for its own government

- MO. CONST. art. VI, § 19(a). Power of charter cities, how limited.

Any city which adopts or has adopted a charter for its own government, shall have all powers which the general assembly of the state of Missouri has authority to confer upon any city, provided such powers are consistent with the constitution of this state and are not limited or denied either by the charter so adopted or by statute. Such a city shall, in addition to its home rule powers, have all powers conferred by law.

Missouri Statutes

- MO. REV. STAT. § 71.010 (2017). Ordinances to conform to state law

Any municipal corporation in this state, whether under general or special charter, and having authority to pass ordinances regulating subjects, matters and things upon which there is a general law of the state, unless otherwise prescribed or authorized by some special provision of its charter, shall confine and restrict its jurisdiction and the passage of its ordinances to and in conformity with the state law upon the same subject.

HOME RULE STRUCTURE, INCLUDING THE POSSIBILITY OF IMMUNITY FROM STATE PREEMPTION

Missouri was the pioneer state in adopting a home-rule charter provision with St. Louis as the nation's first home rule city.¹ Although that provision was famously described by the United States Supreme Court as creating an empire with an empire, or “imperium in imperio,”² through judicial interpretations Missouri’s home-rule system essentially evolved into a more legislative system.³ Home-rule cities and counties were largely permitted to legislate in any area they saw fit in the absence of conflicting state law, so long as consistent with their charters.⁴

A 2014 decision of the Missouri Supreme Court, however, appears to turn back the clock on home rule in Missouri. In a case concerning St. Louis County’s efforts to impose a foreclosure mediation program, the court held that the county had exceeded its initiative authority by addressing a matter of statewide rather than local concern.⁵ Citing older cases concerning home-rule cities, the court noted that a charter county “can only control ‘[m]atters of purely municipal, corporate concern ...’”⁶ and that “*the power of the municipality to legislate shall be confined to municipal affairs.*”⁷ Also noting that “[r]egardless of its charter, the County remains a legal subdivision of the state,” the court determined that the county’s efforts to regulate the national problem of foreclosure exceeded the county’s powers and was thus void ab initio.⁸ It is unclear whether the court’s decision marks a wholesale retreat from recognizing strong municipal initiative power or whether the decision might instead be explained by the state’s pre-existing regulation of foreclosure.⁹ In other words, the case might be an instance of “super” field preemption when the court deems the local interest lacking and the state has regulated in the field. Either way, it does not augur well for home rule authority in Missouri.

¹ See James E. Westbrook, *Municipal Home Rule: An Evaluation of the Missouri Experience*, 33 MO. L. REV. 45, 48-51 (1968).

² *St. Louis v. W. Union Tel. Co.*, 149 U.S. 465, 468 (1893).

³ Westbrook, *supra* note 1, at 54-55 (reviewing the case law and noting a “reformulat[ion]” of the doctrine in the early twentieth century whereby “[c]ities were not helpless in the absence of legislative authorization in areas of activity labeled . . . of state-wide concern”).

⁴ See *Coop. Home Care, Inc. v. City of St. Louis*, No. SC 95401, 2017 WL 770971, at *3 (Mo. banc. Feb. 28, 2017) (“[I]f a charter city’s power to adopt an ordinance is challenged, the Court will uphold the ordinance upon finding: (1) the ordinance is not preempted by statute, and (2) the locality acted within the constitutional parameters of the authority delegated to it in its charter.”); *Hardy v. Fire Standards Comm’n of St. Louis County*, 992 S.W.2d 330, 334 (Mo. 1999) (“[T]he municipality possesses all powers which are not limited or denied by the constitution, by statute, or by the charter itself.”) (quoting *State ex inf. Hannah v. City of St. Charles*, 676 S.W.2d 508, 512 (Mo. banc 1984)).

⁵ *Mo. Bankers Ass’n, Inc. v. St. Louis Cty.*, 448 S.W.3d 267 (Mo. banc 2014).

⁶ *Id.* at 273 (quoting *Kansas City v. J.I. Case Threshing Mach. Co.*, 87 S.W.2d 195, 202 (Mo. banc 1935)).

⁷ *Mo. Banker’s Ass’n*, 448 S.W.3d at 273 (quoting *Grant v. Kansas City*, 431 S.W.2d 89, 93 (Mo. banc 1968)).

⁸ *Mo. Banker’s Ass’n*, 448 S.W.3d at 274.

⁹ *Id.* at 275 (Teitelman, J., dissenting) (recognizing conflict with state law as one of the reasons for the majority’s invalidation of the ordinance).

In addition to potential limitations of “municipal concern,” at least one prominent commentator has assumed that “municipalities may not enact rules of law governing matters such as domestic relations, wills, and other areas of private law.”¹⁰

Putting aside the question of whether an ordinance is within a city or county’s scope of initiative authority, the supreme court has said that charters and ordinances enacted thereunder must submit to the primacy of general law “when not confined to exercise of municipality’s private corporate functions.”¹¹ This implies that there is some realm in which municipal law might reign supreme. In a case concerning the appointment of members to St. Louis County’s condemnation commission, a court of appeals held that the local provision could not be trumped by state law.¹² While the result of the case would seem to indicate that structural matters might be protected from legislative override, the court gave more weight to the fact that the issue related to eminent domain, an area in which “[i]t has been consistently held that the power . . . is a matter of local concern so that the procedure specified in the charter supersedes the statutes.”¹³

Within the realm of preemptible local enactments, Missouri recognizes both explicit and implicit preemption of local ordinances.¹⁴ “Implied preemption can occur in either of two ways – through ‘conflict’ preemption or through ‘field’ preemption.”¹⁵ A provision of a city charter that conflicts with general state statute is void.¹⁶ The test for determining if a conflict exists is whether the ordinance “permits what the statute prohibits” or “prohibits what the statute permits.”¹⁷ Field preemption occurs where state law occupies an area when it has created a comprehensive scheme on a particular area of the law, leaving no room for local control.¹⁸ When state law has so completely regulated a given area of the law, then it is said to be occupied, and preempts any local act.¹⁹

Finally, it should be noted that there are numerous references in case law and in the Missouri statutes to ordinances being void when they conflict with “general law.” A law targeting a particular municipality may be invalidated under Article III, § 40(30) of the state constitution, which prohibits special legislation, unless the state offers a “substantial justification” for treating

¹⁰ Westbrook, *supra* note 1, at 51.

¹¹ Stine v. Kansas City, 458 S.W.2d 601, 606 (Mo. 1970); Sch. Dist. of Kansas City v. Kansas City, 382 S.W.2d 688, 692-93 (Mo. 1964) (“In case of conflicting or inconsistent provisions, the [city] Charter must give way to the Constitution and state laws in regard to governmental functions or general policies of statewide concern.”).

¹² State ex. rel. St. Louis Cty. v. Campbell, 498 S.W.2d 833 (Mo. Ct. App. 1973).

¹³ *Id.* at 836.

¹⁴ Coop. Home Care, Inc. v. City of St. Louis, No. SC 95401, 2017 WL 770971, at *3 (Mo. banc. Feb. 28, 2017).

¹⁵ *Id.* at 4.

¹⁶ City of Springfield v. Goff, 918 S.W.2d 786, 789 (Mo. 1996).

¹⁷ Page Western, Inc. v. Community Fire Protection Dist., 636 S.W.2d 65, 67 (Mo. banc 1982); Vest v. Kansas City, 194 S.W.2d 38, 39 (Mo. 1946).

¹⁸ Union Elec. Co., 499 S.W.2d 480, 482 (Mo. 1973); City of Maryville, 216 S.W.2d 75, 77 (Mo. 1948).

¹⁹ See *Union Elec. Co.*, 499 S.W.2d at 482.

cities or counties differently.²⁰ In a recent decision concerning a state law passed to curtail what was seen as excessive traffic law enforcement by Ferguson and other cities in St. Louis County, the state supreme court held that by targeting particular cities, the statute violated this provision of the state constitution since the state presented no “substantial justification” for the special treatment.²¹ Rather than invalidate the statute, however, the court held that it must apply to all municipalities throughout the state.²²

²⁰ *E.g.*, *City of Normandy v. Greitens*, No. SC95624, 2017 WL 2119349 (May 16, 2017) (invalidating state law limiting the ability of municipalities in St. Louis County to collect traffic fines, severing invalid language, and applying state-imposed cap to all municipalities statewide).

²¹ *Id.* at *8 (noting that “the State failed to present evidence of a substantial justification for the special treatment”).

²² *Id.*