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HOME RULE—ITS HISTORY AND EFFECT

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ILLINOIS MUNICIPAL LEAGUE

92nd Annual Conference

September 22-25 2005

Hilton Chicago Hotel

Chicago, Illinois

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HOME RULE—ITS HISTORY AND EFFECT

I. DILLON'S RULE

- A. Prior to the adoption of the 1970 Illinois Constitution, the powers of municipalities were circumscribed by "Dillon's Rule," which states:

It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers and not others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation.

1 John F. Dillon, MUNICIPAL CORPORATIONS §237, pp. 448-449 (5th ed. 1911). *People ex rel. Ryan v. Village of Hanover Park*, 311 Ill.App.3d 515, 742 N.E.2d 132, 243 Ill.Dec. 823 (1999).

- B. Non-home rule units still operate under the restrictions of Dillon's Rule. Without statutory authority to act, the municipality is foreclosed from acting at all.
- C. Governmental powers are narrowly construed under Dillon's Rule, with any doubt being resolved against the exercise of such power. *Ives v. City of Chicago*, 30 Ill.2d 582, 198 N.E.2d 518 (1964).

- D. Dillon's Rule is rooted in the popular belief that local governmental legislators are prone to abuse their power to tax. Prior to the 1970 constitution, property tax limitations had reached a point at which they were so overlapping and confusing that they were barely capable of judicial interpretation, sometimes leading to implementation in an arbitrary and capricious fashion. Indeed, Illinois students of local government routinely attribute Illinois' unusually large number of local governments to the need to evade statutory restrictions on municipal taxing powers so that services demanded by the public could be provided. Banovetz, "Illinois Home Rule: A Case Study in Fiscal Responsibility," *Journal of Regional Analysis and Policy*, 32, p. 79 (2002).
- E. Despite the state's history of local government distrust, especially fears of unbridled property tax increases, home rule efforts ultimately proved successful when voters approved the 1970 Illinois Constitution. That constitution provided Illinois cities and villages with an optional home rule system that William N. Cassella of the National Civic League has called "the most advanced form [of government] as far as a flexible power system is concerned." *Banovetz, supra*.

II. CONSTITUTIONAL HOME RULE POWERS

- A. Article VII, §6(a) of the 1970 Illinois Constitution provides as follows:

(a) A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

- B. This is the basic grant of constitutional home rule powers. It expressly states that a home rule unit may exercise any power pertaining to its government and affairs.

Moreover, Section 6(m) states that, "Powers and functions of home rule units shall be liberally construed." This language was intended to reduce the likelihood of narrow judicial interpretations of home rule powers, which were intended by the drafters to be very expansive.

- C. Indeed, the drafters of Article VII, '6, of the Illinois constitution clearly expressed their intent to reverse the traditional application of Dillon's Rule. During the course of the 1970 constitutional convention, John Parkhurst, one of the drafters, stated, "So we did come to grips with Dillon's Rule and we did try to turn it around 180 degrees [with respect to home rule units.]" See RECORD OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION, p. 3024 (1972).
- D. In general, the courts have adhered to the principle that home rule legislative power is to be interpreted expansively. See *City of Evanston v. Create, Inc.*, 85 Ill.2d 101, 421 N.E.2d 196, 51 Ill.Dec. 688 (1981). The reversal of Dillon's Rule, as applied to home rule units, has been substantiated by a significant body of case law. *Id.*; *Webster v. City of Chicago*, 132 Ill.App.3d 666, 478 N.E.2d 446, 88 Ill.Dec. 131 (1st Dist. 1985). See also *People ex rel. Bernardi v. City of Highland Park*, 121 Ill.2d 1, 520 N.E.2d 316, 117 Ill.Dec. 155 (1988), which reaffirmed the abrogation of Dillon's Rule with respect to home rule units.

III. HOME RULE LEGISLATIVE AUTHORITY.

With the advent of home rule, the legal analysis regarding the breadth of corporate authorities' legislative authority must be revised completely. The appropriate inquiry with respect to home rule legislation is (a) whether the ordinance relates to the municipality's local government and

affairs and (b) whether the exercise of home rule powers has been superseded by other constitutional provisions or by appropriate action of the General Assembly. Unless some type of positive prohibition exists, the corporate authorities of a home rule unit have broad, discretionary powers to enact legislation.

- A. Home rule units have all the powers of a sovereign, limited only by the constitution or by the General Assembly in the manner provided by the constitution. Courts can invalidate home rule legislation only on the grounds that the enactment violates the Federal or State Constitution or violates a mandate imposed by state or federal statute. *City of Elgin v. County of Cook*, 169 Ill.2d 53, 660 N.E.2d 875, 214 Ill.Dec. 168 (1995); *Stahl v. Village of Hoffman Estates*, 296 Ill.App.3d 550, 694 N.E.2d 1102, 230 Ill.Dec. 824 (1st Dist 1998).
- B. It should be noted, however, that the acquisition of home rule authority does not automatically validate preexisting ordinances. If an ordinance was enacted before the acquisition of home rule powers, the ordinance's validity is tested under the municipality's prior, non-home rule status. *Bank of Elk Grove v. City of Joliet*, 171 Ill.App.3d 321, 525 N.E.2d 569, 121 Ill.Dec. 511 (3d Dist. 1988); *Application of County Collector of Kane County*, 132 Ill.2d 64, 547 N.E.2d 107, 138 Ill.Dec. 138 (1989) (pre-home rule ordinance regarding ordinance publication requirement was binding). A municipality need not enact an ordinance to execute its home rule powers. *Beneficial Development Corp. v. City of Highland Park*, 161 Ill.2d 321, 641 N.E.2d 435 , 204 Ill.Dec. 211 (1994).
- C. There are express constitutional limitations under Article VII, Section 6 that preclude home rule units from:

1. Incurring debt in excess of 40 years
2. Adopting ordinances for the punishment of felonies
3. Providing for imprisonment of over 6 months
4. Licensing for revenue
5. Imposing taxes measured by income or earnings or upon occupations
6. Providing for its officers, their manner of selection and terms of office except as approved by referendum of otherwise authorized by law.

IV. HOME RULE AND LOCAL AFFAIRS

Home rule authority is very broad, but there are limitations to its exercise. One such limitation is that the home rule unit cannot legislate with regard to matters that are not of local concern.

- A. A home rule unit's legislation must relate to its local affairs or government. A home rule unit's legislation can relate only to its own legitimate concerns, not to those of the state or nation. *City of Des Plaines v. Chicago & North Western Ry.*, 65 Ill.2d 1, 357 N.E.2d 433, 2 Ill.Dec. 266 (1976) (railroad noise regulation a matter of statewide, not local, concern); *see also Oak Park Trust & Savings Bank v. Village of Mt. Prospect*, 181 Ill.App.3d 10, 536 N.E.2d 763, 129 Ill.Dec. 713 (1st Dist. 1989) (licensing of multifamily dwelling units is local concern); *Crain Enterprises, Inc. v. Mound City*, 189 Ill.App.3d 130, 544 N.E.2d 1329, 136 Ill.Dec. 554 (5th Dist. 1989) (vacation of streets and alleys is matter of local concern); *Kadzielawski v. Board of Fire & Police Commissioners*, 194 Ill.App.3d 676, 551 N.E.2d 331, 141 Ill.Dec. 338 (1st Dist. 1990) (ordinance creating imposition of fines to discipline police and fire employees); *Trettenero v. Civil Service Commission of City of Aurora*, 221 Ill.App.3d 326, 581 N.E.2d 857, 163 Ill.Dec. 703 (2nd Dist. 1991) (ordinance determines when hearing

before civil service commission is warranted); *Page v. City of Chicago*, 29 Ill.App.3d 450, 701 N.E.2d 218, 233 Ill.Dec. 575 (1998) (city=s human rights ordinance). Property tax levies are matters of local concern and within the scope of home rule powers. *Trust No. 115 v. People ex rel. Little*, 328 Ill.App.3d 1033, 767 N.E.2d 933, 263 Ill.Dec. 207 (2002); *Alpha Gamma Rho Alumni v. People ex rel. Botlaw*, 322 Ill.App.3d 310, 750 N.E.2d 282, 255 Ill.Dec. 701 (2001).

B. In *Kalodimos v. Village of Morton Grove*, 103 Ill.2d 483, 470 N.E.2d 266, 83 Ill.Dec. 308 (1984), the Supreme Court addressed the issue of whether a home rule unit had the power to bar the possession of handguns. The court's analysis of the issue began with a discussion of whether the ban related to the village's local problems. The court framed the applicable legal test as follows:

Whether a particular problem is of statewide rather than local dimension must be decided not on the basis of a specific formula or listing set forth in the Constitution but with regard for the nature and extent of the problem, the units of government which have the most vital interest in its solution, and the role traditionally played by local and statewide authorities in dealing with it. 470 N.E.2d at 274.

While recognizing that weapons control and crime prevention were to some extent matters of statewide concern, the court found that the village had its own obvious interest in reducing the possibility of violent crime and domestic violence. Having determined that the village had legislated within an area of local concern, the court held that the ordinance was within the scope of its home rule powers. *Accord, City of Chicago v. Roman*, 184 Ill.2d 504, 705 N.E.2d 81, 235 Ill.Dec. 468 (1998) (home rule ordinance mandating a minimum sentence of 90 days= imprisonment was valid); *City of Champaign v. Sides*, 349 Ill.App.3d 293, 810 N.E.2d 287, 284 Ill.Dec. 634 (2004) (local public indecency ordinance upheld).

- C. The courts have held that home rule units may enact eminent domain ordinances to eradicate blight and to stimulate economic development in business districts. *City of Wheaton v. Sandberg*, 215 Ill.App.3d 220, 574 N.E.2d. 697, 158 Ill.Dec. 584 (2d Dist 1991); *City of Carbondale v. Yehling*, 96 Ill.2d 495, 451 N.E.2d 837, 71 Ill.Dec. 683 (1983).
- D. However, disconnection of territory from a municipality is primarily a matter of statewide concern and therefore not within the scope of home rule powers as a matter pertaining to "local government and affairs." *LaSalle National Trust, N.A. v. Village of Mettawa*, 249 Ill.App.3d 550, 616 N.E.2d 1297, 186 Ill.Dec. 665 (2d Dist 1993); *JLR Investments, Inc. v. Village of Barrington Hills*, 355 Ill.App.3d 661, 828 N.E.2d 1193, 293 Ill.Dec. 695 (2005); *City of Chicago v. Village of Elk Grove Village*, 314 Ill.App.3d 423, 820 N.E.2d 1158, 290 Ill.Dec. 91 (2004).

V. LIMITATION ON HOME RULE POWER/EXTRATERRITORIAL EFFECT

- A. When a home rule unit has attempted to exercise its sovereignty in a manner that has a clear extraterritorial impact, the action usually has been struck down by the courts. *City of DesPlaines v. Chicago & North Western Ry.*, 65 Ill.2d 1, 357 N.E.2d 433, 2 Ill.Dec. 266 (1976) (city's noise abatement ordinance had extraterritorial effect); *Commercial National Bank v. City of Chicago*, 89 Ill.2d 45, 432 N.E.2d 227, 59 Ill.Dec. 643 (1982) (City of Chicago's service tax ordinance held to be incompatible with territorial limitations placed on home rule units).
- B. Obviously, if a state statute authorizes extraterritorial legislation, a home rule unit can use that statutory grant of power. *City of Carbondale v. Van Natta*, 61 Ill.2d 483, 338 N.E.2d. 19 (1975) (extraterritorial zoning authority). In addition, a home rule unit can

perform extraterritorial acts that are proprietary, as distinguished from governmental, in character. *People ex rel. City of Salem v. McMackin*, 53 Ill.2d 347, 291 N.E.2d 807 (1972); *Marshall Field & Co. v. Village of South Barrington*, 92 Ill.App.3d 360, 415 N.E.2d 1277, 47 Ill.Dec. 964 (1st Dist. 1981) (issuance of industrial revenue bonds to finance development outside municipal boundaries).

VI. LIMITATIONS ON HOME RULE POWER; CO-EQUAL BRANCH OF GOVERNMENT

A home rule unit may not enact legislation that would frustrate or inhibit the exercise of authority by other coequal branches of government within the municipal boundaries. This limitation is another variation of the "local government and affairs" constitutional restriction.

A One of the first cases to deal with this issue was *Ampersand, Inc. v. Finley*, 61 Ill.2d 537, 338 N.E.2d 15 (1975). Although the case involved an ordinance of a home rule county, its teachings are equally applicable to home rule municipalities. The county had passed an ordinance that imposed a filing fee on both plaintiffs and defendants in all civil cases. The fee was to be contributed to the law library fund. The court struck down the ordinance, finding that it interfered with traditional access of litigants to the state's courts and was therefore beyond the powers of a home rule unit.

B. With respect to matters of judicial review and procedure in particular, home rule units have no authority to regulate or control these essential court processes. *See Paper Supply Co. v. City of Chicago*, 57 Ill.2d 553, 317 N.E.2d 3 (1974) (city had no authority to require that review of municipal administrative decisions be made under Administrative Review Act); *City of Carbondale v. Yehling*, 96 Ill.2d 495, 451 N.E.2d 837, 71 Ill.Dec. 683 (1983) (ordinance attempting to regulate eminent domain procedure). A home rule unit may not require a court to order the payment of the

municipality's attorney's fees, even where the municipality is the prevailing party in the litigation. *Village of Glenview v. Zwick*, 356 Ill.App.3d 630, 826 N.E.2d 1171, 292 Ill.Dec. 735 (2005).

- C. If regulatory authority has been given to another branch of the state or federal government, it is more likely that the regulated activity will be found to be non-local in character. *People ex rel. Lignoul v. City of Chicago*, 67 Ill.2d 480, 368 N.E.2d 100, 10 Ill.Dec. 614 (1977) (city's ordinance that effectively allowed branch banking within city's boundaries held invalid); *Metropolitan Sanitary District v. City of Des Plaines*, 63 Ill.2d 256, 347 N.E.2d 716 (1976) (ordinance that attempted to regulate construction of wastewater treatment plant located in city held invalid); *Bridgman v. Korzen*, 54 Ill.2d 74, 295 N.E.2d 9 (1972) (tax collection ordinance held invalid); *City of Chicago v. Board of Trustees of the University of Illinois*, 293 Ill.App.3d 897, 689 N.E.2d 125, 228 Ill.Dec. 253 (1st Dist. 1997) (university could not be required to collect and remit parking and amusement taxes to city under home rule ordinance).
- D. Where state agencies are actively involved in performing statutory or regulatory duties that could be impacted by the home rule ordinance, courts have not been hesitant to strike down the ordinance.
1. In *People ex rel. Bernardi v. City of Highland Park*, 121 Ill.2d 1, 520 N.E.2d 316, 117 Ill.Dec. 155 (1988), the Supreme Court held that prevailing wages for municipal construction projects were a matter of statewide concern subject to regulation by the Department of Labor, and the municipality's actions were beyond its home rule authority.

2. In *Kirwin v. Peoples Gas Light & Coke Co.*, 173 Ill.App.3d 699, 528 N.E.2d 201, 123 Ill.Dec. 656 (1st Dist. 1988) the court held that home rule municipalities lack authority to regulate public utilities that are under jurisdiction of Illinois Commerce Commission. *But see Village of Bolingbrook v. Citizens Utilities Company of Illinois*, 158 Ill.2d 133, 632 N.E.2d 1000, 198 Ill.Dec. 389 (1994) (home rule unit's antipollution ordinances were enforceable against utility regulated by Illinois Commerce Commission).
3. In *Hutchcraft Van Service, Inc. v. Urbana Human Relations Commission*, 104 Ill.App.3d 817, 433 N.E.2d 329, 60 Ill.Dec. 532 (4th Dist. 1982), the City enacted an ordinance prohibiting discrimination against persons for a broad variety of reasons. The ordinance was challenged as being beyond the scope of the City's home rule powers. In particular, the plaintiff pointed to the extensive body of state and federal law prohibiting discrimination and the powers of regulatory agencies to enforce those laws. The existence of an independent state agency to enforce the laws regarding discrimination was found to be very persuasive by the court. 433 N.E.2d at 333-334. The court therefore held that the City's ordinance was "preempted" by state law. *Compare Page v. City of Chicago*, 299 Ill.App.3d 450, 701 N.E.2d 218, 233 Ill.Dec. 575 (1st Dist. 1998); *see also Village of Dolton ex rel. Winter v. CFX Transportation, Inc.*, 196 Ill.App.3d 564, 554 N.E.2d 440, 143 Ill.Dec. 505 (1st Dist. 1990).
4. In *City of Joliet v. Snyder*, 317 Ill.App.3d 940, 741 N.E.2d 1051, 251 Ill.Dec. 873 (2000), the court held that the housing of sexually dangerous persons by a state agency was not a matter of local concern.

5. These cases are examples of the test, as articulated by the Supreme Court in *Kalodimos v. Village of Morton Grove*, 103 Ill.2d 483, 470 N.E.2d 266, 83 Ill.Dec. 308 (1984), that requires the court to determine if a home rule ordinance has ventured too far into areas traditionally reserved to other units of local, state, or federal government. In short, it appears from a review of current precedent that a home rule unit's legislative authority may be curtailed when it interferes with essential functions or duties that have been delegated to other governmental bodies.

VII. LIMITATION ON HOME RULE AUTHORITY/STATUTORY PREEMPTION

- A. The mere existence of a state statutory scheme does not restrict a home rule unit's authority to adopt ordinances that concurrently regulate or even conflict with state law. In *City of Evanston v. Create, Inc.*, 85 Ill.2d 101, 421 N.E.2d 196, 51 Ill.Dec. 688 (1981), the Supreme Court thoroughly examined a home rule unit's authority to regulate landlord-tenant relations in light of the preexisting state statute that also dealt with this area (see 765 ILCS 730/0.01, *et seq.*, and 735 ILCS 5/9-101, *et seq.*). The court's analysis in *Create, Inc.* is highly significant because it sets forth in a clear and concise manner the circumstances under which preemption will occur.
- B. There are two prongs of the constitutional preemption doctrine. *Create, Inc.*, *supra*, 421 N.E.2d at 199. First, under ' 6(g) of Article VII of the Illinois constitution, the General Assembly, by a three-fifths majority vote, may deny or limit home rule powers. Second, under ' 6(h) of Article VII, the General Assembly may specifically provide for the exclusive exercise by the state of any power or function of a home rule unit.

1. With respect to statutes enacted after the effective date of the 1970 Constitution, there must be an *express* statement that the General Assembly intends to divest home rule units of their powers in a specified area. *Create, Inc., supra*, 421 N.E.2d at 199; *Lech v. Michaelson*, 129 Ill.App.3d 593, 472 N.E.2d 1166, 84 Ill.Dec. 770 (1st Dist. 1984), *aff=d in part, rev=d in part on other grounds*, 111 Ill.2d 523 (1986); *Stryker v. Village of Oak Park*, 62 Ill.2d 523, 343 N.E.2d 919 (1976); *City of Chicago v. Haworth*, 303 Ill.App.3d 451, 708 N.E.2d 425, 236 Ill.Dec. 839 (1st Dist. 1999) (City=s regulation of private detectives had been preempted) Due to the confusion surrounding the evolution of the home rule preemption doctrine, the General Assembly added a new provision to the Statute on Statutes (5 ILCS 70/7) to require express preemptive language. That section provides:

No law enacted after January 12, 1977, denies or limits any power or function of a home rule unit, pursuant to paragraphs (g), (h), (i), (j), or (k) of Section 6 of Article VII of the Illinois Constitution, unless there is specific language limiting or denying the power or function and the language specifically sets forth in what manner and to what extent it is a limitation on or denial of the power or function of a home rule unit.

2. With respect to statutes that were in existence before the effective date of the Constitution, an ordinance of a home rule unit supersedes any such conflicting state statute. *Create, Inc., supra*, 421 N.E.2d at 199. *See also County of Cook v. John Sexton Contractors Co.*, 75 Ill.2d 494, 389 N.E.2d 553, 559, 27 Ill.Dec. 489 (1979); *Town of Cicero v. Fox Valley Trotting Club, Inc.*, 65 Ill.2d 10, 357 N.E.2d 1118, 1121, 2 Ill.Dec. 675 (1976); *Stryker v. Village of Oak Park, supra*, 343 N.E.2d at 922; *Paglioni v. Police Board of Chicago*, 61 Ill.2d 233, 335

N.E.2d 480, 482 (1975); *Mulligan v. Dunne*, 61 Ill.2d 544, 338 N.E.2d 6, 10 - 11 (1975); *Peters v. City of Springfield*, 57 Ill.2d 142, 311 N.E.2d 107, 109 (1974); *Clarke v. Village of Arlington Heights*, 57 Ill.2d 50, 309 N.E.2d 576, 579 (1974); *People ex rel. Hanrahan v. Beck*, 54 Ill.2d 561, 301 N.E.2d 281, 283 (1973); *Kanellos v. County of Cook*, 53 Ill.2d 161, 290 N.E.2d 240, 243 - 244 (1972); *Kotte v. Normal Board of Fire and Police*, 269 Ill.App.3d 517, 646 N.E.2d 292, 206 Ill.Dec. 925 (4th Dist. 1995).

- C. *Create, Inc.* is significant because the City's ordinance created certain legal remedies (especially for the tenant) that did not exist under state law. 421 N.E.2d at 198. The court held that the creation of new legal remedies by home rule ordinance did not interfere with the state judiciary system or the administration of justice by the courts. *See also City of Springfield v. Ushman*, 71 Ill.App.3d 112, 388 N.E.2d 1357, 27 Ill.Dec. 308 (4th Dist. 1979) (home rule ordinance providing for fines up to \$1000).
- D. The Public Utilities Act does not impliedly preempt a home rule municipality's ordinances which authorize a fine for the unlawful discharge of waste. *Village of Bolingbrook v. Citizens Utilities Company of Illinois*, 158 Ill.2d 133, 632 N.E.2D 1000, 198 Ill.Dec. 389 (1994). *See Congress Care Center Associates v. Chicago Department of Health*, 260 Ill.App.3d 586, 632 N.E.2d 266, 198 Ill.Dec. 107 (1st Dist. 1994) (where the court held that the city's home rule authority was not preempted by the Nursing Home Care Act). *See also City of Chicago v. Krisjon Construction Co.*, 246 Ill.App.3d 950, 617 N.E.2d 21, 186 Ill.Dec. 782 (1st Dist. 1993) (open dumping of waste).
- E. Thus, absent express preemptive language in the statute, the preemption doctrine is limited in its scope and effect. The mere existence of a state statutory program dealing

with a particular issue does not work a per se preemption of home rule powers. *Village of Bolingbrook v. Citizens Utilities Co.*, 158 Ill.2d 133, 632 N.E.2d 1000, 198 Ill.Dec. 389 (1994); *City of Chicago v. Roman*, 292 Ill.App.3d 546, 685 N.E.2d 967, 226 Ill.Dec. 512 (1st Dist. 1997). This rule was applied by the Supreme Court in *Scadron v. City of Des Plaines*, 153 Ill.2d 164, 606 N.E.2d 1154, 180 Ill.Dec. 77 (1992), in which the Court held that a home rule ordinance that totally banned outdoor advertising signs viewable from limited access highways was not preempted by the Illinois Highway Advertising Control Act.

- F. If a statute that had preempted home rule ordinances is amended to remove the preemption, then the home rule ordinance is reinstated without the necessity of express reenactment. *City of Burbank v. Czaja*, 331 Ill.App.3d 369, 769 N.E.2d 1045, 264 Ill.Dec. 208 (1st Dist.2002).
- G. A home rule preemption provision, applicable only to the Illinois Municipal Code, does not apply to a home rule unit that does not use that particular Code provision. For example, Chicago has adopted its own personnel ordinance and no longer operates under Article 10 of the Municipal Code with respect to personnel matters. Preemption of home rule authority under Article 10, therefore, does not apply to Chicago. *Dineen v. City of Chicago*, 125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52 (1988).
- H. The General Assembly has the authority to preempt home rule authority of certain home rule municipalities based on population. *Village of Schaumburg v. Doyle*, 277 Ill.App.3d 832, 661 N.E.2d 496, 214 Ill.Dec. 642 (1st Dist. 1996); *Des Plaines Firemen=s Association v. City of Des Plaines*, 267 Ill.App.3d 920, 642 N.E.2d 732, 204 Ill.Dec. 831 (1st Dist. 1994).

- I. Based on established precedent, it is clear that the exercise of legislative authority by a home rule unit is presumptively valid unless the state has expressly preempted the field. The mere existence of a concurrent state statutory scheme is not sufficient in and of itself to overcome that presumption. A listing of selected statutes that contain express preemptive language can be found at I.I.C.L.E. *Municipal Law and Practice in Illinois*, ch. 29, §29.54 (2000).

VIII. HOME RULE AUTHORITY TO ABATE REAL ESTATE TAXES AND SALES TAXES

Home rule units of government are not restricted by statutory limitations on abatements and rebates. Article 7, §6(a), of the Illinois constitution provides that "[e]xcept as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to it government and affairs including, but limited to, the power to...tax."

- A. Illinois courts have construed the taxation powers of home rule units broadly, allowing those units to "exercise these powers unless restricted by a constitutional provision or appropriate legislation." *Stahl v. Village of Hoffman Estates*, 296 Ill.App.3d 550, 694 N.E.2d 1102, 1105, 230 Ill.Dec. 824 (1st Dist. 1998) (upholding constitutionality of home rule unit's imposition of exemptions from estate transfer taxes).
- B. Home rule units have construed these and similar authorities to relieve them from the statutory restrictions on real estate tax abatements and sales tax rebates. This power provides home rule units with a distinct advantage over non-home rule units. Home rule units can abate or rebate the taxes they levy without limitation on the amount or duration of the incentive.
- C. Section 18-180 of the Property Tax Code provides home rule municipalities with additional authority to abate all real estate taxes levied against certain residential

properties located in areas of urban decay under limited circumstances. 35 ILCS 200/18-180. Section 18-180 allows the home rule municipality to extend the abatement to owner-occupied single-family or duplex residential dwelling units located within the municipality and in an area of urban decay. Conditions making an area subject to urban decay are similar to those that would qualify an area as "blighted" for tax increment financing purposes. Section 18-180 allows the home rule municipality to abate not only a percentage of the real estate taxes it levied against qualifying properties but also taxes levied against those properties by other taxing districts, subject to certain procedures.

D. Home rule units may also abate sales taxes to stimulate commercial development. The home rule unit is not limited by the restrictions placed on non-home rule municipalities by 65 ILCS 5/8-11-20.

E. Any rebate of sales or property taxes must comply with the "public purpose test" of Article 8, §1(a), of the Illinois constitution, which provides that "[p]ublic funds, property or credit shall only be used for public purposes." Courts construing this limitation have employed an "expanding concept of 'public purpose' in the area of economic welfare," upholding the provision of public funds to private entities for the purpose of encouraging development. *People ex rel. City of Salem v. McMackin*, 53 Ill.2d 347, 291 N.E.2d 807, 813 (1972).

IX. HOME RULE POWERS TO TAX

Article VII, Section 6(a) of the Illinois constitution affords home rule units broad authority to tax transactions within their boundaries. Some of the transactions that home rule units may tax are:

- A. Amusements. *See Kerasotes Rialto Theater Corp. v. City of Peoria*, 77 Ill.2d 491, 3297 NE.2d 790, 34 Ill.Dec. 118 (1979).
- B. Real estate transfers
 - 1. *See Stahl v. Village of Hoffman Estates*, 296 Ill.App.3d 550, 694 N.E.2d 1102, 230 Ill.Dec. 824 (1998).
 - 2. A home rule unit's power to enact real estate transfer taxes has been limited since January 1997 under 65 ILCS 5/8-3-19. A referendum is now required for all transfer taxes enacted after that date. However, previously enacted transfer tax ordinances remain valid, and no new referendum is required.
- C. Sales taxes
 - 1. Home rule units may impose sales taxes in excess of the rate available to non-home rule units. *See* 65 ILCS 5/8-11-1, 8-11-5 and 8-11-6.
 - 2. Under 65 ILCS 8-11-6a, home rule units are not preempted from exacting sales taxes with respect to the following transactions:
 - a. A tax on alcoholic beverages, whether based on gross receipts, volume sold, or any other measurement.
 - b. A tax based on the number of units of cigarettes or tobacco products (provided, however, that a home rule municipality that has not imposed a tax based on the number of unit of cigarettes or tobacco products before July 1, 1993, shall not impose such a tax after that date).
 - c. A tax, however measured, on the use of a hotel or motel room or similar facility.
 - d. A tax, however measured, on the sale or transfer of real property.

- e. A tax, however measured, on lease receipts.
- f. A tax on food prepared for immediate consumption and on alcoholic beverages sold by a business which provides for on premises consumption of said food or alcoholic beverages.
- g. Other taxes not based on the selling or purchase price or gross receipts from the use, sale or purchase of tangible personal property.

D. Zoning

1. Home rule units do not rely on enabling statutes (*see* 65 ILCS 5/11-13-1*et seq.*) as the source of their zoning power. Zoning is intrinsically a matter of local concern.. *Cain v. American National Bank & Trust Company of Chicago*, 26 Ill.App3d 574, 325 N.E.2d 799, 805 (1st Dist. 1975); *Thompson v. Cook County Board of Appeals*, 96 Ill.App.3d 561, 421 N.E.2d 285, 292, 51 Ill.Dec. 777 (1st Dist. 1981); *Landmarks Preservation Council of Illinois v. Chicago*, 125 Ill.2d 164, 531 N.E.2d 9, 15, 125 Ill.Dec. 830 (1988).
2. A home rule unit's power to zone is limited to the territorial boundaries of the municipality. *County of Will v. City of Naperville*, 226 Ill.App.3d 662, 589 N.E.2d 1090, 1093, 168 Ill.Dec. 690 (3d Dist 1992) (city may not zone property it owns that lies outside the city's corporate limits, and it is the prerogative of the county to zone such property); *see also City of Evanston v. Regional Transportation Authority*, 202 Ill.App.3d 265, 559 N.E.2d 899, 905, 147 Ill.Dec. 559 (1st Dist. 1990) (application of a city zoning ordinance to a regional bus facility was not within the grant of home rule power because the facility was regional).

E. Governmental employment

1. In the absence of a collective bargaining agreement, a home rule unit has broad powers to hire, fire or discipline employees. *Stryker v. Village of Oak Park*, 62 Ill.2d 523, 343 N.E.2d 919 (1976); *Kadzielawski v. Board of Fire and Police Commissioners of the Village of Skokie*, 194 Ill.App.3d 676, 551 N.E.2d 331, 141 Ill.Dec. 338 (1990).
2. A home rule unit may adopt ordinances that differ from state law with respect to police and fire personnel matters. *Kadzielawski, supra*; *Diamond v. Board of Fire and Police Com'rs of the Village of Elk Grove Village*, 115 Ill.App.3d 437, 50 N.E.2d 879, 71 Ill.Dec. 191 (1983); *Mandarino v. Village of Lombard*, 92 Ill.App.3d 78, 414 N.E.2d 508, 46 Ill.Dec. 624 (1980).

F. Human rights

1. Home rule units may enact their own ordinances regulating behavior in the workplace, notwithstanding the existence of a state statute. In *Page v. City of Chicago*, 299 Ill.App.3d 450, 701 N.E.2d 218, 233 Ill.Dec. 575 (1st Dist. 1998), the court held that a city human rights ordinance that prohibited acts of sexual harassment and discrimination by small employers that were not covered by the Illinois Human Rights Act, 775 ILCS 5/7-108(A), was a proper exercise of home rule authority.
2. In *Crawford v. City of Chicago*, 304 Ill.App.3d 818, 710 N.E.2d 91, 237 Ill.Dec. 668 (1st Dist. 1999), the court upheld an ordinance making qualified same-sex domestic partners or city employees eligible for the same benefits available to employee spouses.

G. Health and safety regulations

1. In *Village of Mundelein v. Franco*, 317 Ill.App.3d 512, 740 N.E.2d 801, 251 Ill.Dec. 515 (2d Dist. 2000), the appellate court upheld local ordinances that allowed police officers to stop vehicles solely because the occupants were not wearing seat belts.
2. In *City of Chicago v. Taylor*, 332 Ill.App.3d 583, 774 N.E.2d 22, 266 Ill.Dec. 244 (1st Dist. 2002), the appellate court held ordinances banning certain categories of firearms and requiring all firearms to be registered were permissible exercises of home rule powers.

H. Real property taxes

1. Home rule units are not limited with respect to real property tax rates nor by claims that the municipality has accumulated surplus funds. *Alpha Gamma Rho Alumni v. People*, 322 Ill.App.3d 310, 750 N.E.2d 282, 255 Ill.Dec. 701 (2001).
2. Refusal to place a proposition on the ballot to lower maximum property tax in a home rule unit was upheld by the Illinois Supreme Court in *Sommer v. Village of Glenview*, 79 Ill.2d 383, 403 N.E.2d 258, 38 Ill.Dec. 170 (1980).

I. Bonds

Home rule units are not subject to limitations on bonding authority set forth in the Illinois Municipal Code (65 ILCS 5/1-1-1 *et seq.*). The only limitations are constitutional. *See Ill.Const.* art. 7, §6(e) (40-year limitation on certain debt).

X. HOME RULE REFERENDA

While municipalities with populations of 25,000 or more automatically have home rule status in Illinois, other municipalities may elect to become home rule by referendum. A home rule unit may also elect by referendum not to be a home rule unit.

A. Adopting home rule

1. Article 7, §6(a) of the Illinois constitution provides that municipalities "...may elect by referendum to become home rule units."
2. Article 7, §11 of the Illinois constitution sets forth the general procedures for referenda with respect to home rule status:
 - (a) Proposals for actions which are authorized by this Article or by law and which require approval by referendum may be initiated and submitted to the electors by resolution of the governing board of a unit of local government or by petition of electors in the manner provided by law.
 - (b) Referenda required by this Article shall be held at general elections, except as otherwise provided by law. Questions submitted to referendum shall be adopted if approved by a majority of those voting on the question unless a different requirement is specified in this Article.
3. There is legislation with respect to municipal home rule referenda in particular. Under 10 ILCS 5/28-7, a municipal home rule referendum may be initiated by resolution of a municipality's governing board or by filing with the municipal clerk a petition signed by qualified voters equal in number to 10 percent of the number of registered voters in the municipality. The municipal clerk then must certify the home rule adoption question to the county clerk or other election authority at least 61 days before the election. The referendum is voted on at the next "regular" election. *See* 10 ILCS 5/1-3.

4. A home rule adopting referendum (and a referendum to opt out of home rule requires the municipal clerk to make two filings with the Secretary of State). At least 20 days before the referendum, the clerk must file a certified statement indicating when the referendum will be held. Within 30 days after the referendum, the clerk must file a certified statement showing the results of the referendum and the status of the municipality as a home rule or non-home rule unit.
5. No referendum with regard to adopting home rule status may be submitted to the voters more than once in any 23-month period.

B. Opting out of home rule

Article 7, §6(b) of the Illinois constitution provides that, "A home rule unit by referendum may elect not to be a home rule unit.

1. The same procedures that govern referenda to adopt home rule status apply to referenda to opt out of home rule status. *See* 10 ILCS 5/28-7.
2. A referendum to opt out of home rule status may be held only once in any 47-month period.

C. A survey of home rule adoption referenda (Source: James M. Banovetz, "Home Rule Cities and the Voters," *Illinois Municipal Review*, December 2002).

1. As of December 2002, there had been 158 municipal referenda with respect to the question of adopting home rule status. In those elections 77 communities (or 49%) chose to adopt home rule.
2. Voters turned down home rule in 81 elections. In five communities voters rejected home rule in more than one election. In five others, voters rejected

home rule when it was first put on the ballot, then adopted home rule in a later election. In Lincolnwood and Oakbrook Terrace, voters rejected home rule twice before finally adopting it in a third election.

3. In 2004, voters in the City of Warrenville approved the adoption of home rule.

D. A survey of home rule retention elections (Source: Banovetz, *supra*)

1. There have been 31 elections in which voters were asked whether or not they wished to keep the home rule powers already provided to their community. Voters chose in 27 of these elections, or 87 percent, to retain their home rule powers.

2. Retention elections occur for either of two reasons: (a) voters dissatisfied with their community's use of home rule powers may petition the court for a retention election—this has happened 25 times; or (b) a community which gains home rule powers by population is required by law to hold a retention election if its population later falls under the 25,000 ceiling—this has happened six times.

3. Of the 25 retention elections held in response to voter petitions, home rule was retained in 21, or 84 percent, of the elections. Home rule was retained in all 6 of the retention elections held because a community's population had fallen under 25,000. In the aggregate, voters in retention elections chose, by a margin of greater than 2-1, to retain home rule powers.

4. Four communities have lost home rule status by virtue of retention elections: Lisle, Villa Park, Lombard and Rockford.