CHAPTER 2
HOME RULE AND INTERGOVERNMENTAL COOPERATION

I. WHAT DOES "HOME RULE" MEAN?

"Home rule" gives local governments power to act autonomously. These grants are made either through state constitutions or state legislation. Most states have provisions for some form of home rule. Very simply stated, a non-home rule municipality must show a specific grant of legal authority in order to exercise a power while a home rule municipality may usually take an action unless it is specifically prohibited or "preempted."

II. LIFE BEFORE HOME RULE POWERS

The 1870 Illinois Constitution made no provision for home rule. Thus, prior to the 1970 Illinois Constitution, municipalities could not exercise any powers except those granted by the General Assembly. This concept, known as "Dillon's Rule," was first expressed in an opinion by Iowa Supreme Court Judge John Forrest Dillon in 1868. Under the rule, local governmental bodies could exercise only those powers that were specifically granted to them by statute or necessarily implied from statutes or other grants of power. This was quite limiting since it rendered communities powerless to deal with new problems or regional concerns. Before municipalities could solve a particular problem, they needed to first decide whether they even had any authority to deal with the matter.

III. THE BEGINNING OF HOME RULE POWERS

Around 1900, as local governments became more complex, and as urbanization steadily transformed hamlets into metropolises, many states began giving "home rule" powers to their cities and villages. In Illinois, municipalities fought for home rule for more than 50 years before they succeeded. In the beginning of the struggle, smaller communities fought home rule because they

feared it would be used by larger municipalities to achieve even greater power. Eventually, both small towns and the largest municipalities began to realize that the legislature could not meet each of their individual needs. Thus, the concept of home rule powers was drafted into the 1970 Illinois Constitution.

On July 1, 1971, approximately 60 Illinois municipalities automatically achieved home rule. The 1970 Constitution freed home rule municipalities from having to hunt for authority for their each and every act. Instead, subject to certain limitations and restrictions, the municipal legislative body may act without relying on the General Assembly. This power pertaining to local affairs allows solutions to local problems to be fashioned by those closest to the problems rather than those sitting in Springfield. Hence, home rule may be thought of as the power to act without statutory authority.

Since 1971, many municipalities have become home rule units, either through population growth or referendum. There are currently more than 200 home rule municipalities in Illinois. Many municipalities with populations under 5,000 have even become home rule units, including some with populations under 500.

IV. HOW CAN A MUNICIPALITY OBTAIN HOME RULE STATUS?

Municipalities with a population of at least 25,000 automatically have home rule powers. Smaller municipalities can achieve home rule status by the majority vote of their citizens at a local referendum.[1] Cook County automatically achieved home rule upon the effective date of the constitution. No other county, to date, has by referendum voted to become a home rule unit. The referendum may be called or initiated either by a resolution of the governing body or by a petition signed by 10% of the number of registered voters in the governmental unit. If the referendum fails, a new vote may not be taken for 23 months.[2]

[1] ILL. CONST. 1970 ART. VII, §6(a); 10 ILCS 5/28-7.
[2] 10 ILCS 5/28-7.

V. DOES EACH MUNICIPALITY THAT AUTOMATICALLY BECOMES HOME RULE THROUGH POPULATION GROWTH HAVE TO ACCEPT IT?

Yes, but the municipality may still decide by referendum not to be a home rule municipality.[3] An election to change from a home rule municipality to a non-home rule municipality may only be held once in every 47-month period.[4] A municipality that becomes a home rule unit may decide to go very slowly on asserting its new powers or it may aggressively move to solve problems as they occur. Very few municipalities that have become home rule have rejected it.

VI. WHAT ARE THE SPECIFIC HOME RULE POWERS GRANTED BY THE 1970 CONSTITUTION?

Article VII, Section 6(a) provides, in part, that:

> 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.

This provision unshackles home rule municipalities from being required to find legislative authorization for their every act. Further, every law that is enacted may not deny or limit home rule powers or functions unless there is specific language limiting or denying the power or function.[5] If a home rule municipality is considering a matter involving its government and affairs, its officials will have the broadest power to deal with it, limited only by constitutional due process and equal protection requirements and preemption by the General Assembly. In addition, the General Assembly has provided that

[3] ILL. CONST. 1970 ART. VII, §6(b).
[4] 10 ILCS 5/28-7.
[5] 5 ILCS 70/7.

this power may be exercised notwithstanding the effects on competition, which lessens the exposure of municipalities to antitrust suits.[6]

The issue, therefore, becomes whether, in any given situation, the exercise of the power or the performance of the function pertains to the individual municipality's government and affairs. Many powers and functions obviously relate to the government and affairs of the municipality alone. And, just as clearly, others do not. For instance, municipal actions that impact how other governmental entities are to function or attempt to modify the judicial system do not relate to that municipality alone. Thus, a home rule county could not pass an ordinance relating to the frequency of tax payments to all governments within the county[7] and a city could not control the manner in which objections to the enforcement of its ordinances would be judicially reviewed,[8] or affect the law on garnishments.[9] A municipality could not pass an ordinance requiring courts to order a losing party in an ordinance enforcement case to pay the municipality's legal fees.[10]

For situations in the gray area at the edge, the courts have established criteria to be used to determine the proper assignment of the power between the municipality and the state. Specifically, courts look to: (1) the nature and extent of the concern being addressed; (2) which units of government have the most vital interest in the solution of the concern addressed; and (3) the role traditionally played by local and statewide authorities in dealing with the concern.[11]

The court has applied these factors to uphold a municipality's regulation of handgun registration and possession within its boundaries.[12] On the other hand, a home rule unit may not

---

[6] 65 ILCS 5/1-1-10.
[7] *Bridgeman v. Korzen*, 54 Ill. 2d 74 (1972).
[8] *Paper Supply Co. v. City of Chicago*, 57 Ill. 2d 553 (1974).
[9] *McLorn v. East St. Louis*, 105 Ill. App. 3d 148 (5th Dist. 1982).
[10] *Village of Glenview v. Zwick*, 356 Ill. App. 3d 630 (1st Dist. 2005).
[11] *Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483 (1984).
[12] *Id*.

disregard the Prevailing Wage Act in awarding a contract because it is considered a matter of statewide interest rather than local concern.[13] In addition, branch banking is a matter of statewide, and not local, concern.[14]

A home rule unit may frequently exercise powers concurrently with the state.[15] A home rule government's power to regulate for the protection of public safety includes the authority to enact ordinances which address matters already covered by state law as long as the legislature does not limit the power.[16] Even comprehensive state regulation, when there is no express language of exclusive state control, will not be enough to deny home rule powers.[17] An example of an area of concurrent authority is the area of liquor control, except that home rule municipalities may not lower the minimum drinking age.[18] In the event of concurrent legislation, the court must enforce home rule ordinances, even if they are more stringent than state law.[19]

VII. IN WHICH AREAS MAY HOME RULE MUNICIPALITIES EXERCISE THEIR POWERS?

A. Public Health, Safety, Morals and Welfare

Unless specifically restricted by state law (for example, in the area of the age for consumption of alcoholic beverages)[20] or other provisions of the constitution, a home rule municipality may pass ordinances regulating the areas of building, zoning, sanitation, nuisance, civil disturbance and all other matters of

---

[13] *People ex rel. Bernardi v. City of Highland Park*, 121 Ill. 2d 1 (1988).
[14] *People ex rel. Lignoul v. City of Chicago*, 67 Ill. 2d 480 (1977).
[15] *Carlson v. Briceland*, 61 Ill. App. 3d 247 (1st Dist. 1978).
[16] *City of Chicago v. Powell*, 315 Ill. App. 3d 1136 (1st Dist. 2000).
[17] *Village of Bolingbrook v. Citizens Utilities Co.*, 158 Ill. 2d 133 (1994).
[18] 235 ILCS 5/6 18; *Sip and Save Liquors, Inc. v. Daley*, 275 Ill. App. 3d 1009 (1st Dist. 1995).
[19] *People v. Jaudon*, 307 Ill. App. 3d 427 (1st Dist. 1999).
[20] 235 ILCS 5/6-18

public health, safety, morals and welfare.[21] A home rule municipality may regulate the differential in price between self-service and full-service gasoline.[22] A home rule unit may adopt regulations relating to contracts between landlord and tenant.[23] Even in areas where partial preemption has taken place, home rule communities still have the power to supplement state law so long as the local ordinance does not seek to reduce state minimum standards or provides for a lesser penalty than state law imposes.[24] Chicago was allowed to use its home rule powers to confiscate and destroy a firearm owned by a non-resident because this non-registered weapon had no protection under state law.[25]

B. Zoning and Subdivision

In matters of zoning, subdivision control and planning, home rule municipalities may make procedural changes, as long as they meet the tests of due process, equal protection of the law and other constitutional guarantees.[26] Municipalities possess broad basic zoning authority, which is only expanded by home rule powers. Home rule units may zone landfill sites as long as standards similar to those in state environmental law are utilized.[27] Any extraterritorial jurisdiction for zoning still depends upon the grant of the powers contained in Division 13 of Article 11 of the Illinois Municipal Code. Extraterritorial subdivision control and planning is still subject to Division 12 of Article 11 of the Illinois Municipal Code.[28]

---

[21] ILL. CONST. 1970 ART. 7, §6(a)
[22] *Midwest Petroleum Marketers Ass'n v. City of Chicago*, 82 Ill. App. 3d 494 (1st Dist. 1980).
[23] *City of Evanston v. Create*, 85 Ill. 2d 101 (1981).
[24] *City of Chicago v. Pollution Control Board*, 59 Ill. 2d 484 (1974); *Village of Park Forest v. Thomason*, 145 Ill. App. 3d 327 (1st Dist. 1986).
[25] *City of Chicago v. Taylor*, 332 Ill. App. 3d (1st Dist. 2002).
[26] *Cain v. American National Bank and Trust Co.*, 26 Ill. App. 3d 574 (1st Dist. 1975).
[27] *County of Cook v. Sexton*, 86 Ill. App. 3d 673 (1st Dist. 1980).
[28] *City of Carbondale v. Van Natta*, 61 Ill. 2d 483 (1975).

C. Personnel

A home rule municipality may extend the period of probation for employees to achieve full or limited tenure rights otherwise provided by the statute.[29] A home rule community may elect to combine its police and fire departments,[30] or to grant its police chief the power to discharge a probationary police officer,[31] and may require its police officers to participate in the police pension fund as a condition of employment.[32] It may also adopt procedures different from those established in the state statutes for the discipline, discharge or promotion of personnel.[33] It may, for example, pass an ordinance granting to the police chief, rather than the board of fire and police commissioners, the power to make temporary appointments.[34]

D. Enforcement of Zoning, Building and Related Codes on Other Governmental Bodies

Other public bodies are not exempt from a home rule municipality's zoning ordinances or codes relating to subdivision drainage and parking requirements.[35] A governmental body, the territory of which is located within a municipality, must also comply with a home rule unit's applicable building codes.[36]

---

[29] *Scott v. City of Rockford*, 66 Ill. App. 3d 338 (1978).
[30] *Village of Rosemont v. Mathias*, 109 Ill. App. 3d 894 (1st Dist. 1982).
[31] *Cheek v. Dye*, 108 Ill. App. 3d 711 (4th Dist. 1982).
[32] *Sanders v. City of Springfield*, 130 Ill. App. 3d 490 (4th Dist. 1985).
[33] *Messina v. City of Chicago*, 145 Ill. App. 3d 549 (1st Dist. 1986); *Mandarino v. Village of Lombard*, 92 Ill. App. 3d 78 (2d Dist. 1980); *Resman v. Personnel Board of the City of Chicago*, 96 Ill. App. 3d 919 (1st Dist. 1981); *Hoffman v. Board of Fire and Police Commissioners of the City of Peoria*, 86 Ill. App. 3d 505 (3d Dist. 1980); *Kadzielawski v. Board of Fire and Police Commissioners of Skokie*, 194 Ill. App. 3d 676 (1st Dist. 1990).
[34] *Kotte v. Normal Board of Fire and Police Commissioners*, 269 Ill. App. 3d 517 (4th Dist. 1995).
[35] *Wilmette Park District v. Village of Wilmette*, 112 Ill. 2d 6 (1986).
[36] *Village of Swansea v. County of St. Clair*, 45 Ill. App. 3d 184 (5th Dist. 1977); *Lake County Public Building Commission v. City of Waukegan*, 273 Ill. App. 3d 15 (2d Dist. 1995).

Thus, building and related codes would apply to park districts, sanitary districts, counties and other public bodies. These public bodies (except for school districts which are covered by a statewide code) would be required to obtain building permits at the established fees and to build in compliance with the codes. However, it is unclear as to whether a home rule municipality may use its ordinances to prevent construction of facilities by a governmental body where the structure to be built is central to the operation of the task given by statute to the other governmental body. Home rule units may also not block the operation of the facilities of regional governments.[37] The appellate court held that a home rule unit may not subject the Board of Trustees of University of Illinois, an arm and instrumentality of the state, to its building, health and safety ordinances.[38]

A home rule unit may exercise the power of eminent domain in an area not established by the legislature, but the enactment may be overturned if it is vague or overbroad.[39]

E. Taxation

Home rule municipalities have a broad general power to tax. Except where restricted by statute (to date, the tax cap does not apply to the tax levy of home rule communities), a home rule municipality may impose any kind of taxes it wishes—property taxes, certain sales and use taxes, inheritance taxes, motor vehicle taxes, tobacco products taxes, hotel/motel taxes, per capita head taxes, leasing taxes, admission taxes, wheel taxes, gasoline taxes and amusement taxes, provided that such taxes are not based on or measured by income, earnings, or occupations, or pre-empted by state legislation. The Illinois Constitution, at Article VII, Section 6, gives to home rule units of government the power to impose taxes measured by income or earnings or upon occupations only as granted by state statute.

---

[37] *City of Evanston v. Regional Transportation Authority*, 202 Ill. App. 3d 265 (1st Dist. 1990).
[38] *Board of Trustees of University of Illinois, v. City of Chicago*, 317 Ill. App. 3d 569 (1st Dist. 2000).
[39] *City of Wheaton v. Sandberg*, 215 Ill. App. 3d 220 (2d Dist. 1991).

However, the Chicago service tax ordinance was declared invalid.[40] In addition, a home rule tax on utility services was an improper tax on services rather than a tax on tangible goods.[41] Moreover, successful home rule taxes will place the incident of the tax on the purchaser, but require the seller-business owner to account for the collection and turnover of the tax proceeds to the municipality.[42] However, when a court finds that too many legal responsibilities and obligations have been placed on a person providing a service, a home rule tax ordinance may be found unconstitutional even if it contains a declaration that the tax is on the purchaser of the service.[43]

If taxes are levied carefully and precisely on the incidence of the activity or transaction rather than on the seller, they will likely be declared valid. A motel tax, for example, is proper if it is paid by the guest on the privilege or incidence of renting the room rather than on the gross receipts or activity of the motel owner.[44] The Illinois Supreme Court also upheld a tax on the sale of packaged alcoholic beverages by a home rule county,[45] a municipal employee head tax payable by the employer,[46] a municipal admissions tax as applied to horse racing events,[47] and a municipal amusement tax even when collected against a park district.[48] Similarly, the Court upheld a City of Chicago tax on boats moored in harbors operated by the Chicago Park District.[49]

---

[40] *Commercial National Bank of Chicago v. Chicago*, 89 Ill. 2d 45 (1983).
[41] *Waukegan Community Unit School District No. 60 v. City of Waukegan*, 95 Ill. 2d 244 (1982).
[42] *Bloom v. Korshak*, 52 Ill. 2d 56 (1972).
[43] *Commercial National Bank v. City of Chicago*, 89 Ill. 2d 45 (1981).
[44] *Marcus Corp. v. Village of South Holland*, 120 Ill. App. 3d 300 (1st Dist. 1983).
[45] *Mulligan v. Dunne*, 61 Ill. 2d 544 (1975).
[46] *Paper Supply Co. v. City of Chicago*, 57 Ill. 2d 553 (1974).
[47] *Town of Cicero v. Fox Valley Trotting Club*, 65 Ill. 2d 10 (1976).
[48] *Board of Education, School District 150 v. City of Peoria*, 76 Ill. 2d 469 (1979).
[49] *Chicago Park District v. City of Chicago*, 111 Ill. 2d 7 (1986).

This broad taxing power may be limited or denied only by a three-fifths vote of each House of the General Assembly.[50] An example of this expanded power is that home rule municipalities may levy a tax for library purposes different in amount from that recommended by the library board or in an amount greater than permitted by statute.[51] The courts will not review whether the tax levy of a home rule municipality is justified because the power to limit such taxes resides in the General Assembly, which in this case had not acted to limit the taxing power. The cases which limited the power of a government to tax when it had a surplus of funds do not apply in home rule units. The issue is political, not legal.[52]

The power to impose an income tax is treated separately in the local government article of the Illinois Constitution, which makes it clear that the General Assembly may authorize a municipal income tax.[53] However, until the General Assembly authorizes such a tax, home rule municipalities have no power to levy an income tax.

Even with broad home rule tax powers, a community may take an action which requires other governments to carry out its goal. The courts may find this to be overreaching. So, the courts found an attempt by a home rule community to extend the time for the passage of the annual appropriation ordinance to be invalid because this act could cause serious problems for the county clerk in the timely determination of rates and for the county collector in the orderly collection of taxes.[54]

Home rule cities and counties may each tax the same event or transaction. The Illinois Supreme Court has held that a Cook County tax upon the sale of motor vehicles was valid within a

[50] ILL. CONST. 1970 ART. VII, §6(g).
[51] *City of Rockford v. Gill*, 75 Ill. 2d 334 (1979).
[52] *Trust No. 1105 v. People ex rel. Little*, 328 Ill. App. 3d (4th Dist. 2002).
[53] ILL. CONST. 1970 ART. VII, §6(e)(2).
[54] *In re Application of Anderson*, 194 Ill. App. 3d 414 (2d Dist. 1990).

home rule municipality which imposed its own tax on such a sale.[55]

F. Elections

Court decisions have indicated that home rule communities may have certain powers regarding elections governing purely local issues. For example, a home rule municipality may choose, by referendum, to have nonpartisan elections,[56] to change the clerk from an appointive to elective office or to change the number of trustees and terms of office.[57] A home rule municipality may enact an ordinance providing for the recall of elected officials, but neither home rule nor non-home rule units may use referenda to adopt recall procedures under Article VII of the Illinois Constitution.[58] A home rule unit may also hold a referendum to provide for runoff elections, but the proposition must clarify the procedure and include the dates for the runoffs and the number of candidates to participate.[59] In 2005, the Attorney General opined that a home rule municipality may by referendum choose to elect its officers via cumulative voting or by instant run-off voting.[60]

G. Finance

In financial matters relating to the expenditure of its funds, a home rule municipality need not be bound by state law requiring prior appropriation.[61]

---

[55] *City of Evanston v. County of Cook*, 53 Ill. 2d 312 (1972).
[56] *Boytor v. City of Aurora*, 81 Ill. 2d 308 (1980).
[57] *Clarke v. Village of Arlington Heights*, 57 Ill. 2d 50 (1974); *Brown v. Perkins*, 706 F.Supp. 633 (N.D. Ill. 1989).
[58] *Williamson v. Doyle*, 103 Ill. App. 3d 770 (1st Dist. 1981).
[59] *Leck v. Michaelson*, 111 Ill. 2d 523 (1986).
[60] ILL. ATT'Y GEN. OP. NO. 05-007.
[61] *City of Burbank v. Illinois State Labor Relations Bd.*, 185 Ill. App. 3d 997 (1st Dist. 1989).

H. Special Assessments

Home rule municipalities have full power to levy special assessments in order to make local improvements. The General Assembly never may take away this power, except by constitutional amendment.[62] Under the 1870 Constitution, a municipality could levy special assessments only as authorized by the General Assembly. Moreover, under the 1970 Constitution, home rule municipalities may exercise their special assessment power jointly with other local governments.

I. Special Service Area Tax

The 1970 Constitution grants all municipalities, home rule and non-home rule, the power to levy or impose additional taxes and to incur debt to finance special services, such as street lights, paving and sewers, in certain areas within the municipality.[63] In the past, by reason of the tax uniformity requirement, all the taxpayers of a municipality were required to pay for a new project financed by general taxation, even if it served only a limited area of the municipality. The Illinois Supreme Court has held, however, that no property taxes may be levied to support such projects without specific enabling legislation.[64] Such legislation was then passed and is in effect.[65] A home rule community may also elect to exempt certain property within a special service area from tax otherwise payable.[66] A home rule unit may extend a special service area tax based on a standard other than assessed value but it may not force a county to collect this tax and must do so itself.[67]

---

[62] ILL. CONST. 1970 ART. VII, §6(l).
[63] *Coryn v. City of Moline*, 71 Ill. 2d 194 (1978); *Sweis v. City of Chicago*, 142 Ill. App. 3d 643 (1st Dist. 1986).
[64] *Oak Park Federal Sav. and Loan Ass'n v. Village of Oak Park*, 54 Ill.2d 200 (1973); *See also*, ILL. ATT'Y GEN. OP. NO. S-951 (1975).
[65] 35 ILCS 200/27-5, *et seq*.
[66] *Elgin National Bank v. Rowcliff*, 109 Ill. App. 3d 719 (2d Dist. 1982).
[67] *County of Will v. Village of Rockdale*, 226 Ill. App. 3d 634 (3d Dist. 1992).

J. Debt

The 1970 Constitution vastly liberalized local debt provisions. The 1870 Constitution had a rigid debt incurring limit of 5% of the assessed valuation of local property. Revenue bonds were not subject to that limit.

The constitution establishes separate rules for debt payable from property taxes and debt payable from other sources, such as revenue from a utility, corporate funds, and taxes other than property taxes. A home rule municipality begins with the unlimited power to incur debt payable from property taxes. The General Assembly may limit this power by establishing statutory debt limits and referendum requirements for bonded debt payable from *ad valorem* (imposed at a percentage rate against the value of the item taxed) property taxes. However, the General Assembly may never set limits lower than:

(1) 3% of the assessed property valuation if the municipality has 500,000 people or more;

(2) 1% of the assessed property valuation if the municipality has more than 25,000 people but less than 500,000;

(3) ½% of the assessed property valuation if the municipality has 25,000 people or fewer.[68]

The sale of such non-referendum debt may be authorized by the passage of an ordinance enacted by the corporate authorities. Since the passage of the constitution, no statutory limits have been imposed upon the debt incurring powers of home rule units. Laws presently in force which allow the establishment of tax caps throughout the state do not limit home rule debt.

The Illinois Supreme Court has approved the sale of general obligation bonds payable from property taxes by a home rule

[68] ILL. CONST. 1970 ART. VII, §6(k).

unit without the necessity of referendum approval.[69] The court also has authorized the use of general obligation bonds to fund land acquisition and other costs in a municipally created commercial urban development program.[70]

The only restriction on home rule debt is the requirement that debt payable from property taxes must mature within 40 years.[71] This is a distinct improvement over the 20-year limit contained in the 1870 Constitution.

At the same time, a home rule municipality possesses the unlimited power to incur debt payable from sources other than property taxes. This means that, if a home rule municipality wants to secure its debt by sales tax receipts, revenue bond receipts, corporate fund payments, or from any source other than property tax receipts, there is no constitutional limit on the amount of debt the municipality may incur. The General Assembly, by three-fifths vote of each House, may limit the amount of such debt. This special majority requirement for preemption gives to home rule municipalities substantial protection against interference by the General Assembly. On the other hand, the General Assembly intended this as a check against possible abuse of power by municipalities. Of course, the ability to sell bonds in an unlimited amount is not the same thing as having the money in hand. Market forces will determine whether a municipality will be able to raise money through the sale of bonds.

K. Internal Organization

All municipalities have the power, subject to approval by a referendum, to adopt, alter or repeal those forms of government provided by law. All municipalities, by referendum approval or as established by statute, may provide for their officers, their manner of selection, and their terms.[72] This later provision will

[69] *Kanellos v. County of Cook*, 53 Ill. 2d 161 (1972).
[70] *People ex rel. City of Urbana v. Paley*, 68 Ill. 2d 62 (1977).
[71] ILL. CONST. 1970 ART. VII, §6(d).
[72] ILL. CONST. 1970 ART. VII, §6(f).

allow experimentation, with voter approval, in the basic rules by which elective officers are chosen.

In the case of *Clarke v. Village of Arlington Heights*,[73] the Illinois Supreme Court upheld the actions taken by Arlington Heights in increasing the size of its legislative body and providing for the office of the clerk to be appointive.[74] The village took these actions only after a proposition authorizing such changes had been approved by the electors. While, in the *Clarke* case, a referendum was required, it is now clear that, with regard to all officers whose positions are not an integral part of the form or structure of government, a home rule municipality may alter such positions merely by ordinance.[75]

In the absence of a successful referendum, home rule powers may not be used to diminish the power of elected officials in such a direct manner as to shift the checks and balances written into each form of government authorized by statute. Thus, the legislative body in a home rule municipality may not take the power of appointing officers away from the mayor by seeking to convert these offices into employments which would be filled by the legislative body.[76] A commission form municipality, though home rule, may not deprive a commissioner of the power to hire and fire departmental employees and transfer that power to others without referendum approval.[77] For the same reasons, an attempt to adopt an ordinance to change the vote necessary to override a veto by the president of the county board in a home rule county was found to be an attempt to alter the form of government without the required referendum.[78] The court also

---

[73] *Clarke v. Village of Arlington Heights*, 57 Ill. 2d 50 (1974).
[74] *See also*, *Brown v. Perkins*, 706 F.Supp. 633 (N.D. Ill. 1989) (reduced terms of Trustees by referendum).
[75] *See e.g.*, *Paglini v. Police Board of City of Chicago*, 61 Ill. 2d 233 (1975) (change in disciplinary hearing procedures for police); *Peters v. City of Springfield*, 57 Ill. 2d 142 (1974) (changing mandatory retirement age); *Stryker v. Oak Park*, 62 Ill. 2d 523 (1976) (changes in composition of board of fire and police commissioners).
[76] *Pechous v. Slawko*, 64 Ill. 2d 576 (1976).
[77] *Marshall v. City of Chicago Heights*, 59 Ill. App. 3d 986 (1st Dist. 1978).
[78] *Dunne v. County of Cook*, 123 Ill. App. 3d 468 (1st Dist. 1984).

found that an ordinance which attempted to add a third commissioner to the county board of tax appeals, stagger terms, and change the manner of election was an illegal attempt to alter the board without the required referendum.[79] However, a home rule municipality may change its rules of order to require a different vote to pass a particular matter than that required by state law.[80]

VIII. HOME RULE REFERENDA

Home rule referenda generally succeed when: (1) the officials can point to some specific reason why the increased powers would be beneficial to the community; (2) the public trusts its government; and (3) the residents have been educated and informed about the reasons why their leaders seek home rule powers. In one municipality which achieved home rule by referendum, the issue was the ability to sell long-term bonds in order to buy a large park site. In other communities, the issue has been the ability to regulate and tax a local amusement. Where the community has no central goal in mind, critics have often convinced voters that home rule is synonymous with higher taxes. Actually, real estate taxes tend to decrease or grow at a slower pace in home rule communities because home rule communities can tap other sources of governmental funding besides real estate taxation. Often the funding source is one which directs new taxes to businesses or industries which are major users of municipal services.

IX. HOW DO MUNICIPALITIES EXERCISE THEIR HOME RULE POWERS?

Home rule municipalities retain the powers subject to the limitations of existing Illinois law. To exercise home rule powers, a municipality must take some affirmative action. Thus, while a home rule municipality may license general contractors, that power will only spring to life if it passes a local ordinance so

[79] *Chicago Bar Association v. County of Cook*, 124 Ill. App. 3d 355 (1st Dist. 1984).
[80] *Allen v. County of Cook*, 65 Ill. 2d 281 (1976).

providing. On the other hand, even if a home rule municipality took no new action, its licensing of restaurants authorized by existing state law would still be valid.

An ordinance need not specify that it is enacted pursuant to home rule powers. Any time a home rule municipality adopts an ordinance that is contrary to a non-preempted substantive statute or to a non-preempted statutory procedural rule, the action itself will be considered an exercise of home rule powers.[81] Thus, the passage of ordinances which did not receive the number of votes required by state statutes or which would have been defective for another technical reason, was still held valid.[82] Interestingly, if a home rule unit repeals an ordinance which conflicts with state law, the state law automatically and once again applies to the matter.[83]

While a home rule unit may exercise its expanded powers by actions other than ordinances,[84] it has not yet been determined whether the community must specifically pass an ordinance to override a state law which would otherwise bar the validity of its acts. In one case, a county awarded health care contracts without competitive bidding, and the court allowed the practice without any apparent local ordinance modifying the provisions of the state statutes.[85] In another case, the court found a home rule community's contract was invalid because the city had failed to pass any ordinance reversing the statutory requirement of a prior appropriation.[86] For that reason, it may be wise, though not required, to indicate that an effort is being made to change state law. Some communities do this by indicating in ordinances that

[81] *Messina v. City of Chicago*, 145 Ill. App. 3d 549 (1st Dist. 1986).
[82] *Scandroli v. City of Rockford*, 86 Ill. App. 3d 999 (2d Dist. 1980); *Thompson v. Cook County*, 96 Ill. App. 3d 561 (1st Dist. 1981); *City of Rockford v. Suski*, 90 Ill. App. 3d 681 (2d Dist. 1980).
[83] *Provenzano v. City of Des Plaines*, 256 Ill. App. 3d 458 (1st Dist. 1993).
[84] *Beneficial Development Corporation v. City of Highland Park*, 161 Ill. 2d 321 (1994).
[85] *American Health Care Providers v. County of Cook*, 265 Ill. App. 3d 919 (1st Dist. 1994).
[86] *Nielsen Massey Vanillas, Inc. v. Waukegan*, 276 Ill. App. 3d 146 (2d Dist. 1995).

the enactment is being passed by the municipality "in the exercise of its home rule powers."

Home rule municipalities may also impose fines greater than the state statutory limit. Home rule municipalities may imprison offenders for up to six months. If a municipality, however, enacts ordinances that have imprisonment as one of the penalties, the police and prosecutor will be held to higher levels of proof and constitutional safeguards than would be the case if a fine alone were involved.

X. HOW DOES THE LEGISLATURE LIMIT OR REMOVE POWERS FROM HOME RULE UNITS?

The state may limit or remove some powers by preempting them. If the state does not exercise a power which is exercised by a home rule municipality, the General Assembly may limit or eliminate (preempt) such power only by a vote of three-fifths of each House. The General Assembly may limit or deny the taxing power only by a three-fifths vote of each House.[87] In addition, the General Assembly may provide for the exclusive exercise by the state of any power of a home rule unit other than a taxing power or special service tax by a simple majority vote of each House.[88]

The state has preempted various home rule powers, including specified licensing powers, power over pensions and traffic regulations. It has made home rule units subject to the minimum standards of the Open Meetings Act and the law in relation to notices[89] and has made home rule units subject to the authority of the Regional Transit Authority, which operates in northern Illinois. Certain powers relating to human rights legislation may also have been preempted.[90] The General Assembly has further declared that the provisions of the Public Labor Relations Act[91]

[87] ILL. CONST. 1970 ART. VII, §6(g).
[88] ILL. CONST. 1970 ART. VII, §6(h).
[89] 5 ILCS 120/6; 715 ILCS 5/10.
[90] *Hutchcraft Van Service v. Urbana Human Relations Commission*, 104 Ill. App. 3d 817 (4th Dist. 1982).
[91] 5 ILCS 315/1, *et seq*.

are the exclusive exercise by the state of powers and functions which might otherwise be exercised by home rule units.[92] The Illinois Municipal League and other organizations continue to resist preemptive legislation because the concept of home rule is to allow local problems to be freely solved with local solutions.

XI. ARE THE POWERS OF A HOME RULE UNIT UNLIMITED IF THE LEGISLATURE DOES NOT PREEMPT THE POWER?

No. Home rule units are still subject to all of the restrictions contained in the federal constitution and the state constitution. In addition, in certain cases the courts have held that even without specific statutory preemption, the acts of home rule units fall outside of the "government and affairs" of a local governmental body or are areas of traditional state control. For example, the City of Chicago was not permitted to use its home rule powers to impose building, safety, and health ordinances on the Trustees of the University of Illinois.[93] But the North Shore Sanitary District was required to follow the City of Waukegan's zoning ordinance because there was no statutory preemption.[94]

XII. WHAT CAN A MUNICIPALITY DO IF IT NO LONGER WANTS TO BE A HOME RULE UNIT?

A municipality may cease to be a home rule unit through a referendum. If the municipality reverts to non-home rule status, it does not affect the validity of actions taken while it was a home rule unit. Bonds issued and contracts which were entered into under home rule remain valid for their terms and taxes may be levied to fund those obligations.[95]

---

[92] 5 ILCS 315/15(c).
[93] *Board of Trustees v. City of Chicago*, 317 Ill. App. 3d (1st Dist. 2000).
[94] *City of Waukegan v. Illinois Environmental Protection Agency*, 339 Ill. App. 3d (2d Dist. 2003).
[95] *Royal Liquor Mart, Inc. v. City of Rockford*, 133 Ill. App. 3d 868 (2d Dist. 1985).

XIII. WHAT HAPPENS IF A MUNICIPALITY'S POPULATION DECREASES BELOW 25,000?

If a municipality which is a home rule unit by reason of having a population of over 25,000 decreases in population to 25,000 or less, the municipality continues to be a home rule unit until it elects by referendum not to be one. Unless a referendum on the question has been held within two calendar years preceding the determination of the population loss, the clerk must certify the question for submission to the voters at the next general election following such a determination.[96]

XIV. LIBERAL CONSTRUCTION OF HOME RULE POWERS

Courts must construe grants of home rule powers liberally.[97] Previously, where a municipality had only those powers which were specifically granted to it by statute, such powers were narrowly construed by the courts (Dillon's Rule). Thus, if a statute allowed a municipality to license dogs, the municipality could license dogs, but could not necessarily license all other animals based only on this one statutory grant of authority. Now, home rule municipalities may license dogs, cats, monkeys, and anything else within its "government and affairs" unless the state specifically preempts or restricts this power.

XV. WHAT HAPPENS IF THERE IS A CONFLICT BETWEEN A HOME RULE COUNTY ORDINANCE AND A MUNICIPAL ORDINANCE?

If a conflict exists, the municipal ordinance prevails within its jurisdiction. In a case involving a tax imposed on the sale of motor vehicles, the Illinois Supreme Court has held that no conflict exists and that both taxes are valid.[98] While double

---

[96] 65 ILCS 5/1-1-9.
[97] ILL. CONST. 1970 ART. VII, §6(m).
[98] *City of Evanston v. County of Cook*, 53 Ill. 2d 312 (1972).

taxation does not cause a conflict, a true impasse (height of a fence, number of liquor licenses, etc.) would be resolved in favor of the municipality.

XVI. WHAT POWERS DO NON-HOME RULE MUNICIPALITIES HAVE?

Non-home rule municipalities will continue to be governed by authority they are given in the state statutes. Some of those powers include:

(1) The power to make local improvements by special assessment, which may be exercised jointly with other municipalities, counties and special districts authorized to make local improvements by statute. The power to enter into joint assessments may not be removed by the General Assembly.

(2) The power to adopt, alter or repeal their forms of government from among those forms provided by statute, if their citizens approve the change by referendum. Since this language is identical to that accorded to home rule communities, there are now substantial changes which could be considered by non-home rule communities. For example, such a community could approve an appointed clerk and modifications in the composition of its legislative body.[99]

(3) The power to conduct a referendum regarding officers who are central to its form of government, to set the salaries of its officers and to determine the manner of their selection and terms. A referendum may also be held to provide for nonpartisan elections.[100] The General Assembly may not remove this power.

[99] *Clarke v. Village of Arlington Heights*, 57 Ill. 2d 50 (1974).
[100] Ill. Att'y Gen. Op. No. 85-017.

(4) The power to incur debt in any amount and in any manner allowed by the legislature. However, debt limits for non-home rule municipalities are subject to statutory enactment and may be changed more easily as conditions demand. The non-home rule debt limit is 8.625% of the municipality's assessed valuation.[101]

(5) Municipalities also are able to extend debt payments for debts payable from property taxes over a 40-year period.[102]

XVII. INTERGOVERNMENTAL COOPERATION

The Illinois Constitution grants very broad powers to all local governments, including school districts, to cooperate with each other, with the State of Illinois, other states, the federal government, and private parties to provide public services.[103] Intergovernmental cooperation permits one entity, which may not possess the legal authority to do something, to exercise the powers of another public entity to accomplish the task. For example, if a non-home rule city desired to cooperate with another entity to provide services for children with special needs (special schools, teachers, buses, etc.), it could cooperate with a home rule city, another non-home rule municipality, any county, any school district, the State of Illinois or the federal government. It also could enter into an agreement with another state to share facilities and it could cooperate with a private institution for children with special needs in the area. Intergovernmental agreements may be for multi-year terms.

Public entities in Illinois are generally responsible for developing, promoting, and maintaining services and benefits for residents and the general public without adequate financial sources. Illinois municipalities have recognized that by banding together to supply essential governmental services they may

[101] 65 ILCS 5/8-5-1.
[102] ILL. CONST. 1970 ART. VII, §6(d).
[103] ILL. CONST. 1970 ART. VII, §10.

retain a high level of performance while controlling ever escalating costs. Intergovernmental cooperation is both a constitutional and statutory grant of authority and is available to all units of local government. The Illinois Constitution Article VII, Section 10 allows that:

> Units of local government and school districts may contract or otherwise associate among themselves, with the state, with other states and their units of local government and school districts and with the United States to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract as otherwise associated with individuals, associations and corporations in any manner not prohibited by law or by ordinance.[104]

The Intergovernmental Cooperation Act[105] supplements the provisions of Section 10 of Article VII. For example, while the Illinois Constitution does not authorize state agencies to engage in intergovernmental activities, the Act clearly authorizes intergovernmental activity by "any agency of the state government."[106] The Act also makes clear that it "is not a prohibition on the contractual and associational powers granted by Section 10 of Article VII of the Constitution."[107]

Sections 3 and 5 of the Intergovernmental Cooperation Act[108] allow for agreement between public agencies to perform any governmental service or activity that they are authorized to conduct. This power to enter into intergovernmental agreements endures unless it is withdrawn by statute or local ordinance.

---

[104] ILL. CONST. 1970 ART. VII, §10.
[105] 5 ILCS 220/1, *et seq*.
[106] 5 ILCS 220/2.
[107] 5 ILCS 220/7.
[108] 5 ILCS 220/3, 5 ILCS 220/5.

Intergovernmental cooperation may and should take many forms of cooperative efforts such as sharing facilities, sharing costs of equipment and forming self-insurance pools. Intergovernmental cooperation is limited only by the municipality's creativity and leadership. When used effectively, intergovernmental cooperation enables local governments to function more efficiently. It is noteworthy to emphasize that governmental agreements are not exclusively limited to engagements between local governmental units. Cooperative agreements may include, as previously noted, private individuals, associations and even for-profit entities. Many lawyers believe, however, that to bring in private partners there must be more than one government involved in the agreement. Other examples include police and fire mutual aid agreements, agreements for the joint use of recreational areas, the serving of special populations for recreational services, street maintenance agreements, intergovernmental land use plans, solid waste water and disposal, as well as the provision of Lake Michigan water to various communities locally south and west of Chicago.

Both home rule and non-home rule municipalities have used the intergovernmental cooperation section of the 1970 Constitution to overcome a lack of available and affordable insurance. Ancel Glink has worked with municipalities and other governmental bodies to produce many intergovernmental self-insurance pools. The Illinois Supreme Court commented on the efficiency of the use of this form of constitutionally authorized intergovernmental cooperation in the case of *Antiporek v. Village of Hillside*.[109] Other examples of the productive use of intergovernmental cooperation include police and fire mutual aid agreements, agreements for the joint use of recreational areas, street maintenance agreements, intergovernmental land use plans and agreements in the area of solid waste treatment and disposal.

A. Nature of Cooperation

Intergovernmental cooperation should begin with extensive discussions and negotiations among all participating parties.

[109] *Antiporek v. Village of Hillside*, 114 Ill. 2d 246 (1986).

Typically, these discussions emanate from problem areas or lack of funds to accomplish either mandated or targeted services to residents. If used effectively, intergovernmental cooperation enables municipalities to function even more efficiently and provide those services which they could not otherwise afford. The beginning of the process should include an identification of the problem that needs to be solved, as well as a review of those governmental entities which may assist your government or share the same types of problems or issues. Before any such agreement may go into effect, it must be approved in identical form by each participating party and is usually committed to written form.

A unit of local government generally approves the agreement or contract by passing an ordinance or resolution. The ordinance or resolution should cite that it is being passed pursuant to the constitution and statutory authority to participate in intergovernmental cooperation. The language may include the source of the government's power to participate in the cooperative agreement. Where the cooperative effort is intended to be of long standing duration and governed by a separate permanent board of directors, the participating parties should strongly consider establishing permanent governing bylaws to facilitate the effective operation of the intergovernmental agency. To minimize potential liability or future litigation costs, the contracting parties should consult with an attorney before entering into any formal written agreement or contract.

B. Examples of Intergovernmental Agreements

Examples of some intergovernmental agreements are the following:

(1) **Recreation**: Establishing joint recreational services for the disabled.

(2) **Financing**: General obligation bonds by a home rule municipality for use by a school district to purchase an obsolete library building. The library used the money to help a new library at another location which enhanced the village's plan for its downtown

area. The remaining dollars of the bond issues were used to remodel the old library as a new headquarters for the school district. The school district entered into a long-term lease under which the rent would pay all the principal and interest on the bonds. Without the help of the home rule power and the Intergovernmental Cooperation Act, neither the municipality, the library, nor the school district could have financed these improvements alone.

(3) **Property Purchases**: Various school districts, park districts and villages have cooperated in the purchase of derelict buildings or public buildings which are no longer of use or have asbestos or other environmental problems associated with the structures. The sharing of the purchase of the property may ensure additional open space for a community as well as cooperative and utilitarian use of parcels of property or structures for general purposes.

(4) **Shared Facilities**: Construction of buildings for joint or shared governmental use. Intergovernmental agreements may also be used to create cooperative construction financing and long-term maintenance and sharing of facilities. Shared facilities between park districts and school districts, and between park districts and villages, are common.

(5) **Infrastructure Need**: There are several multi-jurisdictional agreements to provide Lake Michigan water to communities to the west and north of Chicago. The Central Lake County Joint Action Water Agency, the DuPage Water Commission and the Northwest Suburban Joint Action Water Agency are examples of these types of multi-jurisdictional cooperative agreements.

(6) **Revenue Sharing**: The sharing of revenue from casino profits. Additionally, a recent appellate court opinion upheld an intergovernmental agreement where the revenues from a municipality's real estate

transfer tax were forwarded to the school district to supplement its operating revenue.[110]

(7) **Economic Development**: Joint public and private partnership in the creation of residential and commercial development in blighted areas. Many communities suffering from a lack of revenue from their downtown areas are turning to private developers to partner with their city or village and other governments to develop an economic plan for a downtown area or blighted area. For example, a city may, by its eminent domain powers, take property, raze buildings and make condemned land available to private developers for residential and commercial use. Such a project allows a larger tax base and additional taxes over the long-term for the city or village and benefits to other participating governments.

(8) **Transportation**: The Mid-American Intermodal Authority Port District is a cooperative effort of 11 Illinois counties that want to increase economic development in shipping along the Illinois and Missouri rivers.

There are virtually hundreds of intergovernmental agreements currently in effect serving the constituents and residents of the State of Illinois.

Some court decisions have addressed issues related to intergovernmental agreements. In *County of Wabash v. Partee*,[111] there was a suit brought against a county, city and various officials, which involved a case where the sewage treatment was allegedly blocked from plaintiff's land development. The city and county had the authority to enter into an intergovernmental agreement whereby the city and county exchanged jurisdiction of certain property in order that the county could proceed to complete a county highway and thus the county had authority to

[110] *Rajterowski v. City of Sycamore*, 2010 WL 4380288 (2d Dist. 2010).
[111] *County of Wabash v. Partee*, 241 Ill. App. 3d 59 (5th Dist. 1993).

proceed with condemnation. In *Village of Oak Lawn v. Commonwealth Edison Company*,[112] the court stated that the village could pass an ordinance requiring the utility to bear the necessary expense of temporary relocation of its electric transmission lines to permit construction of the relief sewer designed to prevent flooding in that village and neighboring communities. It was found that such an agreement clearly benefited the health and welfare of the citizenry.[113]
Although a majority of intergovernmental cooperation agreements have been successful, there are exceptions. In *E&E Heating, Inc. v. Pollution Control Board*,[114] the court found that the county board may not transfer its obligations to decide on landfill applications to a unit of local government pursuant to the state constitution provision nor could such a transfer be made under the Intergovernmental Cooperation Act, which appeared to limit it to joint exercises or activities and not outright transfers of power.

In *Village of Elmwood Park v. Forest Preserve Dist. Of Cook County*,[115] the court held that the Intergovernmental Cooperation Act "was intended to encourage rather than enforce cooperation...." The court reviewed legislative history and found that while the Act allowed "intergovernmental cooperation in certain circumstances," it did not compel cooperation.[116] The cooperation of governmental entities was voluntary and not obligatory.[117]

---

[112] *Village of Oak Lawn v. Commonwealth Edison Company*, 163 Ill. App. 3d 457 (1st Dist. 1987).
[113] *Id*.
[114] *E&E Heating, Inc. v. Pollution Control Board*, 116 Ill. App. 3d 586 (2nd Dist. 1983), *aff'd* 107 Ill. 2d 33 (1985).
[115] *Village of Elmwood Park v. Forest Preserve Dist. Of Cook County*, 21 Ill. App. 3d 597 (1st Dist. 1974).
[116] *Id*. 21 Ill. App. 3d at 600.
[117] *Id*.