

OKLAHOMA

CONSTITUTIONAL AND STATUTORY PROVISIONS

Oklahoma Constitution

- OKLA. CONST. art. XVIII, § 3(a). Framing and adoption of charter--Approval by Governor--Effect-- Record--Amendment.

Any city containing a population of more than two thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State

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Oklahoma Statutes

- OKLA. STAT. tit. 11, § 1-102 (2017). Definitions.

1. “Charter Municipality” Once a municipal charter has been adopted and approved, it becomes the organic law of the municipality in all matters pertaining to the local government of the municipality and prevails over state law on matters relating to purely municipal concerns

- OKLA. STAT. tit. 11, § 13-109. Charter controls over conflicting laws.

Whenever a charter is in conflict with any law relating to municipalities in force at the time of the adoption and approval of the charter, the provisions of the charter shall prevail and shall operate as a repeal or suspension of the state law or laws to the extent of any conflict.

- OKLA. STAT. tit. 11, § 14-101. Municipal ordinances – Authority.

The municipal governing body may enact ordinances, rules and regulations not inconsistent with the Constitution and laws of Oklahoma for any purpose mentioned in Title 11 of the Oklahoma Statutes or for carrying out their municipal functions.

HOME RULE STRUCTURE, INCLUDING SOME IMMUNITY FROM STATE PREEMPTION

Cities in Oklahoma may be either charter or non-charter municipalities; charter cities may frame charters for their own government consistent with the Oklahoma constitution and Oklahoma statutory law, whereas non-charter cities may exercise only those powers specifically delegated to them by state law.¹ The municipal home-rule provision was included in Oklahoma’s original constitution in 1907.² Since then, 86 of the state’s cities have adopted home-rule charters.³ The

¹ Op. Okla. Atty. Gen. No. 04-15 (Apr. 22, 2004).

² Maurice H. Merrill, *Constitutional Home Rule for Cities in Oklahoma*, 5 OKLA.L.REV. 139, 143 (1952).

purpose of the constitutional provision was to emancipate cities from the control formerly exercised over them by the territorial legislature.⁴ The courts have interpreted this section to be self-executing,⁵ although the legislature has expounded upon its meaning through subsequent legislation that recognizes charter city immunity from preemption for “matters pertaining to the local government.”

Charters, which are considered the city’s “constitution” or “fundamental law,” “supersede state law *only* when they affect a subject that is deemed to lie exclusively within municipal (or local) concern.”⁶ With respect to state functions, or mixed state-local functions, by contrast, the state’s constitution and “general laws” prevail.⁷ Hence, the judiciary plays a crucial role in defining those “municipal concerns” in which a charter provision will trump state law.

The courts have not articulated a clear test, but in the course of deciding individual cases they have held or noted in dicta that the following are matters of pure municipal concern:

- 1) “the removal or discharge of appointed officers or employees,” including police officers;⁸
- 2) the scheme for appointing a city’s library board;⁹
- 3) the modes and methods of municipal elections;¹⁰
- 4) the manner of publishing of official city notices;¹¹
- 5) tax foreclosure for street paving.¹²

From this list, one might conclude that Oklahoma charter cities enjoy immunity in structural, personnel, and perhaps even fiscal matters, at least when they relate to enforcement of local priorities like street paving. While structural home rule appears to be the most robust for charter cities, even in that realm the Oklahoma Supreme Court has noted that with respect to some

³ See Ballotpedia, Cities in Oklahoma, *available at* https://ballotpedia.org/Cities_in_Oklahoma. The 86 cities include the state’s largest—Oklahoma City and Tulsa. *See* Oklahoma City, Guide to City Government 3 (“The Charter, the “Constitution” of the City, was adopted in 1911.”), *available at* <https://www.okc.gov/home/showdocument?id=3584>; Tulsa, Okla, 1989 Amended City Charter, *available at* Municode.com:

https://www.municode.com/library/ok/tulsa/codes/code_of_ordinances?nodeId=CD_ORD_1989AMCH.

⁴ State ex rel. Short, Atty. Gen. v. Callahan, 221 P. 718, 720 (Okla. 1923).

⁵ Owen v. City of Tulsa, 111 P. 320, 323 (Okla. 1910).

⁶ Simpson v. Dixon, 853 P.2d 176, 186 (Okla. 1993).

⁷ *Id.* at 186; Lee v. Norick, 447 P.2d 1015 (Okla. 1968) (holding that the removal of a municipal court judge is both a state and local matter).

⁸ Goodwin v. Oklahoma City, 182 P.2d 762, 764 (Okla. 1947).

⁹ State ex rel. Brown v. Dunnaway, 248 P.2d 232, 234 (Okla. 1952)

¹⁰ *Simpson*, 853 P.2d at 185 (implying that charter cities have control over pre-balloting functions like “(a) what officials are to be elected, b) whether there will be a primary runoff or a partisan or nonpartisan ballot, (c) the geographical area within the city from which the selection is to be made, (d) the time for holding the election and (e) the number of elections to be held”).

¹¹ Oklahoma Journal Pub. Co. v. City of Oklahoma City, 620 P.2d 452 (Okla. 1979).

¹² Berry v. McCormick, 217 P. 392, 394 (Okla. 1923) (upholding a local tax foreclosure procedure that resulted from a resident’s failure to pay for street paving because “street paving is a municipal affair”).

election matters, particularly those that relate to the integrity of elections, state law controls.¹³ Moreover, the court has repeatedly upheld statewide collective bargaining laws for public employees, thereby cutting in to home rule in the personnel realm.¹⁴ Finally, the court has declared that certain matters, such as eminent domain, appeals from municipal court to the state court system, and the termination of municipal judges, are of statewide concern and therefore not solely within the discretion of the municipality.¹⁵ Finally, while this is more of an impression than a conclusion drawn from systematic analysis, it seems that the older Oklahoma judicial decisions are more solicitous of protecting municipal concerns than the more recent decisions.

¹³ *Simpson*, 853 P.2d at 183 (upholding state law that offered a longer period for filing a protest in a municipal election because “[t]he actual process of balloting—from its beginning through the protest and issuance of election certificate—is an exclusive state function”).

¹⁴ *City of Enid v. Public Employees Relations Bd.*, 133 P.3d 281, 289 (Okla. 2006) (holding that collective bargaining is a matter of statewide concern and, therefore, state requirement for local employees “does not contravene Art. 18, § 3”); *Midwest City v. Cravens*, 532 P.2d 829, 834 (Okla. 1975) (holding that state-mandated collective bargaining for local police and firefighters does not contravene Art. 18, § 3).

¹⁵ *City of Pryor Creek v. Pub. Serv. Co. of Okla.*, 536 P.2d 343, 346 (Okla. 1975) (“The power of eminent domain is of state-wide interest and importance [and] cannot be extended and expanded by provisions of the city charter.”); *Lee v. Norick*, 447 P.2d 1015, 1019 (Okla. 1968) (concluding that “the hearing and determination of violation of city ordinances and state laws in the municipal court . . . [is] a matter of concern to both the City and the State”); *Eisiminger v. Oklahoma City*, 69 P.2d 1046, 1048 (Okla. 1937) (“There is no doubt that in matters of appeals in criminal cases where the accused has constitutional and statutory rights, the general laws should control.”).