

UTAH

CONSTITUTIONAL AND STATUTORY PROVISIONS

Utah Constitution

- UTAH CONST. art. XI, § 5. [Cities and towns not to be created by special laws--
Legislature to provide for the incorporation, organization, dissolution, and classification
of cities and towns--Charter cities]

The Legislature may not create cities or towns by special laws.

The Legislature by statute shall provide for the incorporation, organization, and dissolution of cities and towns and for their classification in proportion to population. Any incorporated city or town may frame and adopt a charter for its own government in the following manner:

* * * *

Each city forming its charter under this section shall have, and is hereby granted, the authority to exercise all powers relating to municipal affairs, and to adopt and enforce within its limits, local police, sanitary and similar regulations not in conflict with the general law, and no enumeration of powers in this constitution or any law shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not include the power to regulate public utilities, not municipally owned, if any such regulation of public utilities is provided for by general law, nor be deemed to limit or restrict the power of the Legislature in matters relating to State affairs, to enact general laws applicable alike to all cities of the State.

The power to be conferred upon the cities by this section shall include the following:

- (a) To levy, assess and collect taxes and borrow money, within the limits prescribed by general law, and to levy and collect special assessments for benefits conferred.
- (b) To furnish all local public services, to purchase, hire, construct, own, maintain and operate, or lease, public utilities local in extent and use; to acquire by condemnation, or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and within its powers regulate the exercise thereof.
- (c) To make local public improvements and to acquire by condemnation, or otherwise, property within its corporate limits necessary for such improvements; and also to acquire an excess over than [that] needed for any such improvement and to sell or lease such excess property with restrictions, in order to protect and preserve the improvement.
- (d) To issue and sell bonds on the security of any such excess property, or of any public utility owned by the city, or of the revenues thereof, or both, including, in the case of public utility, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility.

Utah Statutes

- UTAH CODE ANN. § 10-8-84 (2017). Ordinances, rules, and regulations--Passage--Penalties.

(1) The municipal legislative body may pass all ordinances and rules, and make all regulations, not repugnant to law, necessary for carrying into effect or discharging all powers and duties conferred by this chapter, and as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants, and for the protection of property in the city.

(2) The municipal legislative body may enforce obedience to the ordinances with fines or penalties in accordance with Section 10-3-703.

- UTAH CODE ANN. § 17-50-302. General county powers

(1)(a) Except as provided in Subsection (1)(b), a county may:

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(ii) provide a service, exercise a power, or perform a function that is reasonably related to the safety, health, morals, and welfare of county inhabitants, except as limited or prohibited by statute.

HOME RULE STRUCTURE, INCLUDING LACK OF IMMUNITY FROM STATE PREEMPTION

The Utah constitution grants broad powers to cities, and state law further grants the police power to cities and counties. In a seminal 1980 case, *State v. Hutchinson*, the Utah Supreme Court concluded that Dillon’s Rule, as a canon of construction, was no longer reconcilable with a grant of the police power to local governments.¹ Although the case concerned counties, the rationale of the decision extended to all local governments.² *Hutchinson* solidified the broad initiative power of both cities and counties in the state. “Utah municipalities have the right to legislate on the same subject as a state statute where the general welfare power is at issue.”³

While the initiative power of local governments may be broad, Utah is essentially a legislative home-rule state. If it speaks with sufficient clarity, the state legislature may preempt local governments on any subject: “Where a city ordinance is in conflict with a state statute, the ordinance is invalid at its inception.”⁴ An ordinance conflicts with a statute if it permits what the

¹ 624 P.2d 1116 (Utah 1980).

² *Id.* at 1121 (“In short, we simply do not accept the proposition that local governments are not to be trusted with the full scope of legislatively granted powers to meet the needs of their local constituents.”).

³ *Am. Bush v. S. Salt Lake*, 140 P.3d 1235, 1253 (Utah 2006).

⁴ *Hansen v. Eyre*, 116 P.3d 290, 293 (Utah 2005).

statute prohibits, or vice versa.⁵ “In the absence of express conflict,” however, an ordinance will be upheld “unless there is some indication of incompatibility with the state statutory scheme.”⁶ In the criminal context, the Utah Supreme Court has shied away from finding implied preemption merely because the state has already acted in the field.⁷

⁵ *Hansen*, 116 P.3d at 293 (citing *Salt Lake City v. Kusse*, 93 P.2d 671, 674 (Utah 1938)).

⁶ *Salt Lake City v. Newman*, 148 P.3d 931, 934 (Utah 2006).

⁷ *E.g., id.*