

IOWA

CONSTITUTIONAL AND STATUTORY PROVISIONS

Iowa Constitution

- IOWA CONST. art. III, § 38A. Municipal home rule.

Municipal corporations are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the general assembly.

The rule or proposition of law that a municipal corporation possesses and can exercise only those powers granted in express words is not a part of the law of this state.

- IOWA CONST. art. III, § 39A. Counties home rule.

Counties or joint county-municipal corporation governments are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the general assembly. The general assembly may provide for the creation and dissolution of joint county-municipal corporation governments. The general assembly may provide for the establishment of charters in county or joint-municipal corporation governments.

If the power or authority of a county conflicts with the power and authority of a municipal corporation, the power and authority exercised by a municipal corporation shall prevail within its jurisdiction.

The proposition or rule of law that a county or joint county-municipal corporation government possesses and can exercise only those powers granted in express words is not a part of the law of this state.

Iowa Statutes

Home Rule Act codified in chapters 362, 364, 368, 372, 376, 380, 384, 388, and 392 as the City Code of Iowa (1995).

HOME RULE STRUCTURE, INCLUDING LACK OF IMMUNITY FROM STATE PREEMPTION

The home rule amendments of the Iowa Constitution give cities and counties authority to determine their “local affairs and government” in a manner not inconsistent with state statutes, except that cities and counties are expressly denied fiscal home rule. Detailed state statutes flesh

out the skeletal home rule provided in the constitution. The constitution clearly rejects Dillon's Rule as a canon of statutory construction.

Although the constitutional grant of power is for "local affairs and government," the category seems to be open-ended save for the taxation power denied cities. The Iowa Supreme Court has described its home rule system as the "legislative" variety wherein cities have "the authority to act unless a particular power has been denied them by statute."¹ Further, limitations on a municipality's power over local affairs are not implied; they must be imposed by the legislature.² Municipalities may enact ordinances on matters that are also the subject of state statutes, unless the ordinance invades an area of law reserved by the legislature to itself.³ Municipalities are free to set standards more stringent than those imposed by state law unless state law provides otherwise.⁴

Consistent with legislative home rule, in Iowa the legislature retains the unfettered power to prohibit a municipality from exercising police powers, even over matters traditionally thought to involve local affairs.⁵ Hence, there is no immunity to preemption for Iowa cities or counties. Questions, of course, arise regarding whether preemption has occurred. The judiciary deems local ordinances that are "inconsistent" with state law preempted.⁶ An ordinance is inconsistent with state law when it either prohibits an act permitted by statute or permits an act prohibited by statute.⁷ State law further specifies that "[a] city may not set standards and requirements which are lower and less stringent than those imposed by state law."⁸ Implied preemption may also occur when the legislature has cover[ed] a subject by statutes in such a manner as to demonstrate a legislative intention that the field is preempted by state law.⁹ An ordinance is also inconsistent

¹ *James Enterprises, Inc. v. City of Ames*, 661 N.W.2d 150, 153 (Iowa 2003) (citing *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 568 (Iowa 2000) (quoting *City of Des Moines v. Master Builders of Iowa*, 498 N.W.2d 702, 703-04 (Iowa 1993))); *City of Davenport v. Seymour*, 755 N.W.2d 533, 538 (Iowa 2007) ("The home rule amendment established what we have referred to as legislative home rule.").

² *Sioux City Police Officers' Ass'n v. City of Sioux City*, 495 N.W.2d 687, 693-94 (Iowa 1993) (citing IOWA CODE §364.3(3); *City of Des Moines v. Gruen*, 457 N.W.2d 340, 343 (Iowa 1990); *Bryan v. City of Des Moines*, 261 N.W.2d 685, 687 (Iowa 1978)).

³ *Goodenow v. City Council of Maquoketa*, Iowa, 574 N.W.2d 18, 26 (Iowa 1998) (citing *Gruen*, 457 N.W.2d at 342-43).

⁴ *Sioux City Police Officers' Ass'n*, 495 N.W.2d at 693 (citing IOWA CODE §364.3(3); *Gruen*, 457 N.W.2d at 343).

⁵ *City of Davenport v. Seymour*, 755 N.W.2d 533, 538 (Iowa 2008).

⁶ *Goodenow*, 574 N.W.2d 18, 26 (Iowa 1998); *Sioux City Police Officers' Ass'n*, 495 N.W.2d at 694.

⁷ *Goodenow*, 574 N.W.2d 18, 26; e.g., *Goodell v. Humboldt County*, 575 N.W.2d 486, 502-04 (Iowa 1998) (finding that county ordinance requiring permits for large livestock confinement facilities conflicted with state regulatory and licensing scheme).

⁸ IOWA CODE § 364.3 (2017).

⁹ *Goodell*, 575 N.W.2d at 493 (articulating standards for field preemption in Iowa, but finding it lacking in case because "the legislature has [not] expressed its desire for statewide uniformity or . . . otherwise expressed an intention to preclude local regulation of a complete field").

with and, therefore, preempted by state statute when it invades an area of law reserved by the legislature to itself.¹⁰

¹⁰ *Gruen*, 457 N.W.2d 340, 342 (citing *City of Council Bluffs v. Cain*, 342 N.W.2d 810, 812 (Iowa 1983) (discussing analysis followed under the Home Rule Amendment in terms of state law preemption of municipal regulations)).