

## ARIZONA

### CONSTITUTIONAL AND STATUTORY PROVISIONS

Arizona's constitution establishes home rule for cities, but not for counties. Counties have no home rule in Arizona.

#### **Arizona Constitution**

- Art. XIII, Section 2. Charter.

Any city containing, now or hereafter, a population of more than three thousand five hundred may frame a charter for its own government consistent with, and subject to, the Constitution and laws of the state . . . . [The Charter] will become the organic law of such city. . . .

- Art XIII, Section 5. Right of municipal corporation to engage in business or enterprise.

Every municipal corporation within this state shall have the right to engage in any business or enterprise which may be engaged in by a person, form or corporation by virtue of a franchise from said corporation.

- Art. II Section 34. Industrial pursuits by state and municipal corporations

The state of Arizona and each municipal corporation within the state of Arizona shall have the right to engage in industrial pursuits.

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### HOME RULE STRUCTURE, INCLUDING IMMUNITY FROM STATE PREEMPTION

The constitutional home rule provision delegates to cities the power to regulate subjects of municipal concern,<sup>1</sup> so long as consistent with the city's charter.<sup>2</sup> The Arizona Supreme Court has consistently stated that in matters of solely local concern, a charter city's ordinance supersedes a conflicting state statute.<sup>3</sup> In matters of both local and statewide concern, a charter

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<sup>1</sup> City of Tucson v. Walker, 135 P.2d 223 (Ariz. 1943).

<sup>2</sup> Gardenhire v. State, 221 P. 228, 231 (Ariz. 1923); Union Transportes de Nogales v. City of Nogales, 985 P.2d 1025 (Ariz. 1999).

<sup>3</sup> Price v. State, 3 P.2d 1114 (Ariz. 1931); Clayton v. State, 297 P. 1037 (Ariz. 1931); Strode v. Sullivan, 236 P.2d 48, 51 (Ariz. 1951) City of Tucson v. Consumers For Retail Choice Sponsored by Wal-Mart, 5 P.3d 934 (Ariz. Ct. App. 2000).

city's ordinance is invalid if it conflicts with a valid state statute.<sup>4</sup> When a statewide concern is implicated, the Arizona courts recognize the possibility of field preemption.<sup>5</sup>

Although separating areas “subject to local versus state control often involves specific-line drawing,”<sup>6</sup> the Arizona courts have been most clear that structural areas — particularly those involving local elections — enjoy heightened protection from preemption.<sup>7</sup> In addition, as part of their home rule power, municipalities have sole control over “the sale or disposition of property.”<sup>8</sup> For example, Tucson was able to require instant background checks during gun shows held in its convention center despite a state law explicitly preventing a municipality from enacting “any ordinance, rule or tax relating to the transportation, possession, carrying, sale or use of firearms.”<sup>9</sup> In sum, Arizona cities appear to enjoy immunity most in the structural and proprietary realms.

#### PUNITIVE PREEMPTION

In 2016 the Arizona legislature enacted Senate Bill 1487, which threatens to cut off payments of shared state money to cities acting beyond their authority.<sup>10</sup> The law requires, at the request of a member of the state legislature, the Attorney General to investigate an alleged violation by a county, city or town of constitutional or state law.<sup>11</sup> If the Attorney General finds that the local action is a violation, the locality has 30 days to resolve it, otherwise its portion of shared state funds will be denied.<sup>12</sup> If the Attorney General finds the action may be a violation, the he or she shall file a special action in the state supreme court, which must give the issue precedence over all other cases.<sup>13</sup> The locality must then post a bond equal to the shared revenue paid to it in the preceding six months.<sup>14</sup>

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<sup>4</sup> *City of Tucson v. Walker*, 135 P.2d 223 (Ariz. 1943); *City of Tucson v. Consumers For Retail Choice Sponsored by Wal-Mart*, 5 P.3d 934 (Ariz. Ct. App. 2000); *City of Casa Grande v. Arizona Water Company*, 20 P.3d 590 (Ariz. Ct. App. 2001).

<sup>5</sup> *Jett v. City of Tucson*, 882 P.2d 426, 432-33 (Ariz. 1994).

<sup>6</sup> *City of Tucson v. State*, 273 P.3d 624 (Ariz. 2012) (upholding Tucson's unique district-based primary system despite contrary state law).

<sup>7</sup> *Id.* (“clear that charter city governments enjoy autonomy with respect to structuring their own governments”).

<sup>8</sup> *City of Tucson v. Arizona Alpha of Sigma Alpha Epsilon*, 195 P.2d 562 (Ariz. 1948).

<sup>9</sup> *McMann v. City of Tucson*, 47 P.3d 672 (Ariz. Ct. App. 2002); *but see City of Scottsdale v. State*, 352 P.3d 936 (Ariz. Ct. App. 2015) (striking down a local ordinance banning “sign walkers” on public sidewalks because the legislature expressly modified cities' police power to regulate sign walkers).

<sup>10</sup> 2016 Ariz. Sess. Laws ch. 35, available at <http://www.azleg.gov/legtext/52leg/2r/laws/0035.htm>. In Arizona, the state shares income tax, highway user fund revenues, vehicle license taxes, and other revenues with cities and counties. See Ariz. State Senate, Issue Brief, State Shared Revenues, Oct. 5, 2006, available at <http://www.azleg.gov/briefs/senate//state%20shared%20revenues.pdf>.

<sup>11</sup> ARIZ. REV. STAT. § 41-194.01(A) (2017).

<sup>12</sup> *Id.* § 41-194.01(B).

<sup>13</sup> *Id.* § 41-194.01(B)(2).

<sup>14</sup> *Id.*

Recently, the Arizona Attorney General filed a petition for special action against the city of Tucson. Petition for Special Action.<sup>15</sup> The city's 2005 ordinance requiring its police department to destroy seized firearms is seemingly contradictory to state laws, including one forbidding localities from regulating firearms and another requiring law enforcement agencies to resell the firearms.<sup>16</sup> The Attorney General found the city's ordinance may run afoul of state law, triggering the law's requirement that the Arizona Supreme Court hear the issue.<sup>17</sup> Tucson requested that the court set aside the bond posting requirement, calling it "an unconstitutional filing fee."<sup>18</sup> The court will defer deciding on whether it will accept jurisdiction until after oral argument.<sup>19</sup>

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<sup>15</sup> State v. City of Tucson, No. CV-16-0301-SA (Ariz. Sup. Ct. Dec. 6, 2016).

<sup>16</sup> *Id.* at 13-14.

<sup>17</sup> *Id.* at 15.

<sup>18</sup> Howard Fischer, *Tucson to Court: Keeping State Funds in Gun Dispute Illegal*, Tucson.com, Dec. 13, 2016, [http://tucson.com/news/local/tucson-to-court-keeping-state-funds-in-gun-dispute-illegal/article\\_5d20afaa-fc17-51ab-9927-8c501eb9a978.html](http://tucson.com/news/local/tucson-to-court-keeping-state-funds-in-gun-dispute-illegal/article_5d20afaa-fc17-51ab-9927-8c501eb9a978.html).

<sup>19</sup> State v. City of Tucson, No. CV-16-0301-SA (Ariz. Sup. Ct. Jan. 18, 2017) (order determining oral argument date of Feb. 15, 2017).