

ILLINOIS

CONSTITUTIONAL AND STATUTORY PROVISIONS

Illinois Constitution

- ILL. CONST. art. VII, § 6. Powers of Home Rule Units.

- (a) A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. Except as limited by this Section, 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.
- (b) A home rule unit by referendum may elect not to be a home rule unit.
- (c) If a home rule county ordinance conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction.
- (d) A home rule unit does not have the power (1) to incur debt payable from ad valorem property tax receipts maturing more than 40 years from the time it is incurred or (2) to define and provide for the punishment of a felony.
- (e) A home rule unit shall have only the power that the General Assembly may provide by law (1) to punish by imprisonment for more than six months or (2) to license for revenue or impose taxes upon or measured by income or earnings or upon occupations.
- (f) A home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provided by law, except that the form of government of Cook County shall be subject to the provisions of Section 3 of this Article. A home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office only as approved by referendum or as otherwise authorized by law. A home rule county shall have the power to provide for its officers, their manner of selection and terms of office in the manner set forth in Section 4 of this Article.
- (g) The General Assembly by a law approved by the vote of three-fifths of the members elected to each house may deny or limit the power to tax and any other power or function of a home rule unit not exercised or performed by the State other than a power or function specified in subsection (l) of this section.
- (h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (l) of this Section.
- (i) Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.
- (j) The General Assembly may limit by law the amount of debt which home rule counties may incur and may limit by law approved by three-fifths of the members elected to each house the amount of debt, other than debt payable from ad valorem property tax receipts, which home rule municipalities may incur.

(k) The General Assembly may limit by law the amount and require referendum approval of debt to be incurred by home rule municipalities, payable from ad valorem property tax receipts, only in excess of the following percentages of the assessed value of its taxable property: (1) if its population is 500,000 or more, an aggregate of three percent; (2) if its population is more than 25,000 and less than 500,000, an aggregate of one percent; and (3) if its population is 25,000 or less, an aggregate of one-half percent. Indebtedness which is outstanding on the effective date of this Constitution or which is thereafter approved by referendum or assumed from another unit of local government shall not be included in the foregoing percentage amounts.

(l) The General Assembly may not deny or limit the power of home rule units (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government or (2) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

(m) Powers and functions of home rule units shall be construed liberally.

- ILL. CONST. art. VII, § 7. Counties and Municipalities Other Than Home Rule Units.

Counties and municipalities which are not home rule units shall have only powers granted to them by law and the powers (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government; (2) by referendum, to adopt, alter or repeal their forms of government provided by law; (3) in the case of municipalities, to provide by referendum for their officers, manner of selection and terms of office; (4) in the case of counties, to provide for their officers, manner of selection and terms of office as provided in Section 4 of this Article; (5) to incur debt except as limited by law and except that debt payable from ad valorem property tax receipts shall mature within 40 years from the time it is incurred; and (6) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

HOME RULE STRUCTURE, INCLUDING LACK OF IMMUNITY FROM STATE PREEMPTION

Under the Illinois Constitution home rule units may exercise powers and functions to regulate public health, safety, morals and welfare, and those powers and functions are to be read liberally.¹ Home rule units include cities with more than 25,000 that do not opt out of home rule,

¹ Village of Glenview v. Ramaker, 668 N.E.2d 106, 108 (Ill. 1996); ILL. CONST. art. VII, § 6(a).

and those with under that population threshold that opt in.² Only one county — Cook, the state’s most populous (which includes Chicago) — is a home-rule county.³

The home-rule provision was included as part of Illinois’s constitutional revision in 1970. In early cases, the Illinois Supreme Court interpreted the home-rule provision’s grant of power to a city to exercise powers “pertaining to its government and affairs” as limiting a city’s power to local rather than statewide matters, reflecting a more imperio understanding of the constitution.⁴ Later cases moved toward a legislative framework, allowing cities to exercise broad powers unless and until constrained by the state legislature.⁵ A 2011 Illinois Supreme Court case shifts the doctrine back toward the middle, with the court recognizing that home-rule entities have reasonably broad powers to initiate legislation, but that there is some class of subjects that are “off-limits . . . where the state has a vital interest and a traditionally exclusive role.”⁶ Applying this test, the court declared as “off limits” to home-rule entities the imposition of a tax on internet auctioneers of event tickets.⁷ The decision provoked a strong dissent that accused the majority of “sweep[ing] away decades of this court’s home rule jurisprudence” in unduly narrowing cities’ authority.⁸

In addition to the question of a city’s initiative authority, the Illinois Supreme Court has carved out a unique home-rule jurisprudence whereby implied preemption of a local law by state law is kept to a bare minimum, requiring the legislature to expressly preempt in almost all instances.⁹

² Rockford, with a population of approximately 150,000, is the most notable city with a population greater than 25,000 that has opted out of home rule. *Our View: Home Rule a Tool Worth Bringing Back to Rockford*, ROCKFORD REG. STAR (June 21, 2013, 8:02 PM), <http://www.rrstar.com/x1629902134/Our-View-Home-rule-a-tool-worth-bringing-back-in-Rockford>; James M. Banovetz, *Illinois Home Rule: A Case Study in Fiscal Responsibility*, 32 J. REG. ANALYSIS & POL’Y 79, 95 (2002)

³ Ill. Ass’n of Cty. Bd. Members, *Forms of County Government*, available at <http://www.ilcounty.org/resources/illinois-counties/forms-of-counties>.

⁴ *City of Des Plaines v. Chicago & N. W. Ry. Co.*, 357 N.E.2d 433, 436 (Ill. 1976) (invalidating city noise pollution ordinance because it was a problem of regional or statewide rather than “local concern”); *Metro. Sanitary Dist. v. City of Des Plaines*, 347 N.E.2d 716, 719 (Ill. 1976) (holding that the home-rule grant “cannot be read to indicate the intent of the framers that home rule municipalities have the power to regulate regional or statewide environmental problems”).

⁵ *E.g.*, *Scadron v. City of Des Plaines*, 606 N.E.2d 1154, 1158 (Ill. 1992) (“The [home-rule] provision was written with the intention that home rule units be given the broadest powers possible.”); *Kalodimos v. Vill. of Morton Grove*, 470 N.E.2d 266 (Ill. 1984) (upholding home-rule village’s ordinance prohibiting the possession of a handgun within village limits).

⁶ *City of Chicago v. StubHub, Inc.*, 979 N.E.2d 844, 852 (Ill. 2011).

⁷ *Id.* at 856 (“The City has overstepped its home rule authority.”).

⁸ *Id.* at 862 (Thomas, J., dissenting).

⁹ *Neri Bros. Const. v. Vill. of Evergreen Park*, 841 N.E.2d 148, 152 (Ill. 2005) (noting that any limitation on the power of home rule units by the General Assembly must be specific, clear, and unambiguous; absent such a limitation, the Courts will not find preemption); *Roman*, 685 N.E.2d at 971; *Town of Cicero v. LaFrancis*, 668 N.E.2d 164, 165 (Ill. 1996) (holding where legislature has not been specific, courts will not find preemption of home rule authority); *Scadron v. City of Des Plaines*, 606 N.E.2d 1154, 1163 (Ill. 1992) (“The purpose of section 6(i) ‘is to eliminate or at least reduce to a bare minimum the circumstances under which local home rule powers are preempted by judicial interpretation of unexpressed legislative intention.’”) (quoting David C. Baum, *A Tentative Survey of Illinois Home Rule (Part II): Legislative Control, Transition Problems, and Intergovernmental*

The 2011 *StubHub* decision appeared to call this approach into question by relying on the state legislature’s decision not to impose a tax as a reason for limiting a city’s authority to do so, despite the lack of any express preemption.¹⁰ A subsequent supreme court opinion, however, returns to the usual presumption that in the absence of expressly preemptive language, a city is free to act so long as the subject matter is within its appropriate scope.¹¹

Whatever the scope of a city’s initiative authority and the standards for preemption, Illinois has no judicial doctrine of immunity for local enactments, nor any doctrine prohibiting the targeting of a subset of municipalities for preemption.¹² Aside from those limitations expressly mentioned in Article VII, § 6 – e.g., § 6(g)’s requirement of a three-fifth’s legislative vote to deny taxing power – if the legislature speaks clearly enough, it may preempt any local matter.¹³

Conflict, 1972 U.Ill.L.F. 559, 571); *Scadron*, 606 N.E.2d at 1164 (“The Illinois approach places almost exclusive reliance on the legislature rather than the courts to keep home rule units in line.”) (citations omitted).

¹⁰ 979 N.E.2d at 853-55 (reviewing legislative history of state’s Ticket Sale and Resale Act); *see also id.* at 863 (Thomas, J., dissenting) (“[T]here is no language in the Ticket Sale and Resale Act (or any other statute) excluding or limiting home rule authority to collect amusement taxes on resold tickets. Consequently, the City’s power to act in this area may not be considered restricted.”).

¹¹ *Palm v. 2800 Lake Shore Drive Condo. Ass’n*, 988 N.E.2d 75, 81 (Ill. 2013) (“If the legislature intends to limit or deny the exercise of home rule powers, the statute must contain an express statement to that effect.”); *see also id.* at 90-91 (Thomas, J., concurring) (citing prior rulings that disavowed implied field preemption and required express preemption) (citing Paul Diller, *Intrastate Preemption*, 87 B.U. L. REV. 1113, 1141, 1158-59 (2007), for proposition that “Illinois is unique in that it is the only state to have no rule of implied preemption”).

¹² *Vill. of Schaumburg v. Doyle*, 661 N.E.2d 496, 504 (Ill. 1996) (“The legislature has the authority to restrict the exercise of virtually all home rule powers, and ‘we do not discern in the preemption provisions of [Ill. Const. 1970, art. XIII, § 6] any general requirement that the legislature treat all home rule units alike for purposes of preemption.’”) (quoting *Nevitt v. Langfelder*, 623 N.E.2d 281, 288 (Ill. 1996)).

¹³ *Nevitt*, 623 N.E.2d at 288.