

## MISSISSIPPI

### STATUTORY PROVISIONS

#### **Mississippi Statutes**

Title 21. Municipalities. Chapter 19. Health, Safety, and Welfare.

- MISS. CODE ANN. § 21-17-5 (2017). Governing authorities.

The governing authorities of every municipality of this state shall have the care, management and control of the municipal affairs ... In addition to those powers granted by specific provisions of general law, ... municipalities shall have the power to adopt any ... ordinances with respect to such municipal affairs ... which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi ... [T]he powers granted to ... municipalities in this section are complete without the existence of or reference to any specific authority granted in any other statute or law of the State of Mississippi.

(1) The governing authorities of every municipality of this state shall have the care, management and control of the municipal affairs and its property and finances. In addition to those powers granted by specific provisions of general law, the governing authorities of municipalities shall have the power to adopt any orders, resolutions or ordinances with respect to such municipal affairs, property and finances which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi, and shall likewise have the power to alter, modify and repeal such orders, resolutions or ordinances. Except as otherwise provided in subsection (2) of this section, the powers granted to governing authorities of municipalities in this section are complete without the existence of or reference to any specific authority granted in any other statute or law of the State of Mississippi. Unless otherwise provided by law, before entering upon the duties of their respective offices, the aldermen or councilmen of every municipality of this state shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to five percent (5%) of the sum of all the municipal taxes shown by the assessment rolls and the levies to have been collectible in the municipality for the year immediately preceding the commencement of the term of office of said alderman or councilman; however, such bond shall not exceed the amount of One Hundred Thousand Dollars (\$100,000.00). Any taxpayer of the municipality may sue on such bond for the use of the municipality, and such taxpayer shall be liable for all costs in case his suit shall fail. No member of the city council or board of aldermen shall be surety for any other such member.

(2) Unless such actions are specifically authorized by another statute or law of the State of Mississippi, this section shall not authorize the governing authorities of a municipality to (a) levy taxes of any kind or increase the levy of any authorized tax, (b) issue bonds of any kind, (c) change the requirements, practices or procedures for municipal elections or establish any new elective office, (d) change the procedure for annexation of additional territory into the municipal

boundaries, (e) change the structure or form of the municipal government, (f) permit the sale, manufacture, distribution, possession or transportation of alcoholic beverages, (g) grant any donation, or (h) without prior legislative approval, regulate, directly or indirectly, the amount of rent charged for leasing private residential property in which the municipality does not have a property interest.

(3) Nothing in this or any other section shall be construed so as to prevent any municipal governing authority from paying any municipal employee not to exceed double his ordinary rate of pay or awarding any municipal employee not to exceed double his ordinary rate of compensatory time for work performed in his capacity as a municipal employee on legal holidays.

(4) The governing authorities of any municipality, in their discretion, may expend funds to provide for training and education of newly elected or appointed municipal officials before the beginning of the term of office or employment of such officials. Any expenses incurred for such purposes may be allowed only upon prior approval of the governing authorities. Any payments or reimbursements made under the provisions of this subsection may be paid only after presentation to and approval by the governing authorities of the municipality.

- MISS. CODE ANN. § 21-19-15. Preserving good order and peace.

The governing authorities of municipalities shall have power to make all needful police regulations necessary for the preservation of good order and peace of the municipality and to prevent injury to, destruction of, or interference with public or private property. Said authorities shall have the power to regulate or prohibit any mill, laundry or manufacturing plant from so operating whereby the soot, cinders or smoke therefrom, or the unnecessary noises thereof, may do damage to or interfere with the use or occupation of public or private property. Said authorities shall have the power to prohibit or regulate the sale or use of firecrackers, roman candles, torpedoes, sky rockets, and any and all explosives commonly known and referred to as fireworks; the term "fireworks" shall not include toy pistols, toy canes, toy guns, other devices in which paper caps manufactured in accordance with United States Interstate Commerce Commission regulations for packing and shipping of toy paper caps are used, or toy pistol paper caps manufactured as provided herein, the sale and use of which shall be permitted at all times.

## Title 19. Counties and County Officers

- MISS. CODE ANN. § 19-3-40. Powers; orders, resolutions or ordinances.

(1) The board of supervisors of any county shall have the power to adopt any orders, resolutions or ordinances with respect to county affairs, property and finances, for which no specific provision has been made by general law and which are not inconsistent with the Mississippi Constitution, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi

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

Home rule in Mississippi is purely a statutory affair. The home-rule statute gives municipalities discretion in managing “municipal affairs.”<sup>1</sup> Municipalities may adopt ordinances with regard to their “municipal affairs” but only if said ordinances are not inconsistent with state legislation or the Mississippi Constitution.<sup>2</sup> There is no requirement that preemptive legislation be “general” or “uniform.” By granting municipalities something like the police power, the home-rule statute has been understood to abrogate Dillon’s Rule within the state.<sup>3</sup>

The Mississippi Supreme Court has explained on several occasions that an ordinance is “inconsistent” with a state statute only if the two are in direct conflict, as determined by reference to the facts of the case at hand.<sup>4</sup> Ordinances that supplement or address a different subject matter than a state statute are not inconsistent with the statute unless the state has explicitly provided that localities cannot further regulate a given area.<sup>5</sup> Silence on the part of the state does not give rise to an inference that the state has prohibited localities from enacting ordinances further regulating an area.<sup>6</sup> It appears that the Mississippi courts do not employ field preemption when analyzing claims against local power.<sup>7</sup>

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<sup>1</sup> Nichols v. Patterson, 678 So.2d 673 (Miss. 1996).

<sup>2</sup> Maynard v. City of Tupelo, 691 So.2d 385, 387 (Miss. 1997); *see also* Ryals v. Bd. of Supervisors of Pike Cty., 48 So.3d 444, 448 (Miss. 2010) (“If a county or municipality passes an ordinance which stands in opposition to the law as pronounced by the legislature, the ordinance, to the extent that it contradicts state law, will be found void by this Court, as the laws of this state supersede any and all local ordinances which contradict legislative enactments.”); Collins v. City of Hazlehurst, 709 So.2d 408, 411 (Miss. 1997) (observing that a statute will prevail over conflicting ordinance).

<sup>3</sup> Op. Miss. Att’y Gen., 1986 WL 81753 (Apr. 30) (observing that the home-rule statute overrode the “Dillon Rule” with respect to municipalities).

<sup>4</sup> See *Maynard*, 691 So.2d at 388; *Delphi Oil, Inc. v. Forrest Cty. Bd. of Supervisors*, 114 So.3d 719, 723 (Miss. 2013) (noting that a preemption determination is made “by considering the express language of a statute to determine whether there is a direct conflict between the state statute and the local ordinance.”)

<sup>5</sup> *City of Jackson v. Lee*, 252 So.2d 897, 897 (Miss. 1971).

<sup>6</sup> *Maynard*, 691 So.2d at 388.

<sup>7</sup> *Delphi Oil*, 114 So.3d at 724 (referring to field preemption as a “federal doctrine” and finding no support in case law for its application in the case).