

WEST VIRGINIA

CONSTITUTIONAL AND STATUTORY PROVISIONS

West Virginia Constitution

- W. VA. CONST. art. VI, § 39(a). Home Rule for Municipalities.

No local or special law shall hereafter be passed incorporating cities, towns or villages, or amending their charters. The legislature shall provide by general laws for the incorporation and government of cities, towns and villages and shall classify such municipal corporations, upon the basis of population, into not less than two nor more than five classes. Such general laws shall restrict the powers of such cities, towns and villages to borrow money and contract debts, and shall limit the rate of taxes for municipal purposes, in accordance with section one, article ten of the Constitution of the State of West Virginia. Under such general laws, the electors of each municipal corporation, wherein the population exceeds two thousand, shall have power and authority to frame, adopt and amend the charter of such corporation, or to amend an existing charter thereof, and through its legally constituted authority, may pass all laws and ordinances relating to its municipal affairs: Provided, that any such charter or amendment thereto, and any such law or ordinance so adopted, shall be invalid and void if inconsistent or in conflict with this Constitution or the general laws of the State then in effect, or thereafter, from time to time enacted.

West Virginia Statutes

- W. VA. CODE § 8-1-7 (2017). Construction of powers and authority granted

(a) The enumeration of powers and authority granted in this chapter shall not operate to exclude the exercise of other powers and authority fairly incidental thereto or reasonably implied and within the purposes of this chapter or in accordance with the provisions of the Municipal Home Rule Amendment to the constitution of this state, the powers and authority granted by such constitution, other provisions of this code and any existing charter. The provisions of this chapter shall be given full effect without regard to the common-law rule of strict construction and particularly when the powers and authority are exercised by charter provisions framed and adopted or adopted by revision of a charter as a whole or adopted by charter amendment under the provisions of this chapter.

- W. VA. CODE § 8-12-2 (2017). Home rule powers for all cities.

(a) In accordance with the provisions of the "Municipal Home Rule Amendment" to the Constitution of this State, and in addition to the powers and authority granted by (i) such Constitution, (ii) other provisions of this chapter, (iii) other general law, and (iv) any existing charter, any city shall have plenary power and authority by charter provision not inconsistent or in conflict with such Constitution, other provisions of this chapter or other general law, or by

ordinance not inconsistent or in conflict with such Constitution, other provisions of this chapter, other general law or any existing charter, to provide for the government, regulation and control of the city's municipal affairs, including, but not limited to the following:

- (1) The creation or discontinuance of departments of the city's government and the prescription, modification or repeal of their powers and duties;
- (2) The transaction of the city's business;
- (3) The incurring of the city's obligations;
- (4) The presentation, ascertainment, disposition and discharge of claims against the city;
- (5) The acquisition, care, management and use of the city's streets, avenues, roads, alleys, ways and property;
- (6) The levy, assessment, collection and administration of such taxes and such special assessments for benefits conferred, as have been or may be specifically authorized by the legislature;
- (7) The operation and maintenance of passenger transportation services and facilities, if authorized by the public service commission, and if so authorized, such transportation system may be operated without the corporate limits of such city, but may not be operated within the corporate limits of another municipality without the consent of the governing body thereof;
- (8) The furnishing of all local public services;
- (9) The government, protection, order, conduct, safety and health of persons or property therein;
- (10) The adoption and enforcement of local police, sanitary and other similar regulations; and
- (11) The imposition and enforcement of penalties for the violation of any of the provisions of its charter or of any of its ordinances.

HOME RULE STRUCTURE, INCLUDING LACK OF IMMUNITY FROM STATE PREEMPTION

The Municipal Home Rule Amendment, ratified in 1936, required the state legislature to provide, by general law, for the incorporation and government of all municipalities. Prior to this constitutional amendment, the legislature was empowered to exercise its absolute power over municipalities through special acts, but with restrictions.¹ In 1969, the state recodified the municipal law statutes in order to achieve uniformity in the powers granted to municipalities.² The 1969 act also sought to abrogate the judicial canon of Dillon's Rule within the state, which persisted long after the 1936 constitutional amendment.³ Nonetheless, the West Virginia Supreme Court continued to interpret local autonomy narrowly despite the clear thrust of these

¹ Matter of City of Morgantown, 226 S.E.2d 900, 903 (W. Va. 1976).

² 1969 W. Va. Acts ch. 86 (codified in relevant part at W.VA. CODE § 8-1-6 (2017)); *see also* Hogan v. City of South Charleston, 260 S.E.2d 833, 835-36 (W.Va. 1979) (“[I]n recodifying the State municipal law in 1969 in order to achieve uniformity in the powers granted to municipalities, the Legislature intended that the provisions of the State municipal law should have primacy over conflicting provisions in a municipal charter.”).

³ *See* Robert M. Bastress, Jr., *Localism and the West Virginia Constitution*, 109 W. VA. L. REV. 683, 700 (2007) (“[T]he Legislature in 1969 rewrote the municipal code and quite clearly attempted to confer on cities a substantial degree of local autonomy, subject to legislative override through general laws.”) (citing relevant statutes).

provisions.⁴ Moreover, consistent with the constitutional provision, the state supreme court has declared it a “fundamental” legal principle “that where an ordinance is in conflict with a state law the former is invalid.”⁵ Thus, the court maintains that “[w]hen a provision of a municipal ordinance is inconsistent or in conflict with a statute enacted by the Legislature the statute prevails and the municipal ordinance is of no force and effect.”⁶ Despite the constitution’s mention of “general laws,” it does not appear that the court has ever been asked to analyze whether a particular preemptive state law qualifies as “general” or not.

HOME RULE PILOT PROJECT

Perhaps due in part to the inconsistency between the laws on the books and judicial interpretations thereof, the state legislature in 2007 adopted a much-heralded “pilot project” on home rule. The project is discussed in detail in the initial LEAP Team memorandum.⁷ As discussed therein, the project includes thirty-four cities and allows those cities to pass ordinances that are inconsistent with state law, subject to certain restrictions and oversight by the state Home Rule Board. The legislature has extended the project to 2019 and there is a good chance that the legislature will make the system permanent. Hence, home rule in West Virginia is currently very much in flux. For those cities not part of the home-rule pilot project, the “old” legal regime remains. In enacting the pilot project in 2007, however, the legislature once again attempted to clarify that Dillon’s Rule is no longer in effect.⁸ It is not yet clear whether this legislative command has successfully influenced the judiciary.

⁴ *Id.* at 702 (noting that the “wide-ranging grant of legislative home rule” that the 1936 and 1969 provisions intended to confer “ha[ve] not been realized”); *id.* at 699 (“[T]he State Supreme Court’s reaction to § 39a has been, essentially, to ignore its existence”) (citing cases between 1936 and 1969 in which the supreme court applied Dillon’s Rule).

⁵ *Am. Tower Corp. v. Common Council of City of Beckley*, 557 S.E.2d 752, 756 (W. Va. 2001) (citing *Vector Co. v. Bd. of Zoning Appeals*, 184 S.E.2d 301, 304 (W. Va. 1971)).

⁶ *American Tower Corp.*, 557 S.E.2d at 756.

⁷ See LEAP Memorandum, Mar. 29, 2017, at 128-39.

⁸ See 2007 W. Va. Acts ch. 183 (codified at W. Va. Code § 8-1-7 (2017)) (noting that “[t]he enumeration of powers and authority granted in this chapter shall not operate to exclude the exercise of other powers and authority fairly incidental thereto or reasonably implied and within the purposes of this chapter or in accordance with the provisions of the Municipal Home Rule Amendment to the constitution of this state, the powers and authority granted by such constitution, other provisions of this code and any existing charter” and that “[t]he provisions of this chapter shall be given full effect without regard to the common-law rule of strict construction”).