

KANSAS

CONSTITUTIONAL AND STATUTORY PROVISIONS

Kansas Constitution

KAN. CONST. art. 12, §5.

(a) The legislature shall provide by general law, applicable to all cities, for the incorporation of cities and the methods by which city boundaries may be altered, cities may be merged or consolidated and cities may be dissolved: Provided, that existing laws on such subjects not applicable to all cities on the effective date of this amendment shall remain in effect until superseded by general law and such existing laws shall not be subject to charter ordinance.

(b) Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges and other exactions except when and as the levying of any tax, excise, fee, charge or other exaction is limited or prohibited by enactment of the legislature applicable uniformly to all cities of the same class: Provided, That the legislature may establish not to exceed four classes of cities for the purpose of imposing all such limitations or prohibitions. Cities shall exercise such determination by ordinance passed by the governing body with referendums only in such cases as prescribed by the legislature, subject only to enactments of the legislature of statewide concern applicable uniformly to all cities, to other enactments of the legislature applicable uniformly to all cities, to enactments of the legislature applicable uniformly to all cities of the same class limiting or prohibiting the levying of any tax, excise, fee, charge or other exaction and to enactments of the legislature prescribing limits of indebtedness. All enactments relating to cities now in effect or hereafter enacted and as later amended and until repealed shall govern cities except as cities shall exempt themselves by charter ordinances as herein provided for in subsection (c).

(c) (1) Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city.

(2) A charter ordinance is an ordinance which exempts a city from the whole or any part of any enactment of the legislature as referred to in this section and which may provide substitute and additional provisions on the same subject. Such charter ordinance shall be so titled, shall designate specifically the enactment of the legislature or part thereof made inapplicable to such city by the adoption of such ordinance and contain the substitute and additional provisions, if any, and shall require a two-thirds vote of the members-elect of the governing body of such city. Every charter ordinance shall be published once each week for two consecutive weeks in the official city newspaper or, if there is none, in a newspaper of general circulation in the city.

* * * *

(d) Powers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self-government.

(e) This amendment shall be effective on and after July 1, 1961.

Kansas Statutes

- KAN. STAT. ANN. § 19-101. County as corporation; powers generally; home rule.

That each organized county within this state shall be a body corporate and politic, and as such shall be empowered for the following purposes: First, to sue and be sued; second, to purchase and hold real and personal estate for the use of the county, and lands sold for taxes as provided by law; third, to sell and convey any real or personal estate owned by the county, and make such order respecting the same as may be deemed conducive to the interest of the inhabitants; fourth, to make all contracts and do all other acts in relation to the property and concerns of the county, necessary to the exercise of its corporate or administrative powers; fifth, to exercise the powers of home rule to determine their local affairs and government authorized under the provisions of K.S.A. 19-101a; sixth, to exercise such other and further powers as may be especially conferred by law.

- KAN. STAT. ANN. § 19-101a. Home rule powers; limitations, restrictions and prohibitions; procedure.

(a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions:

- (1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties.
- (2) Counties may not consolidate or alter county boundaries.
- (3) Counties may not affect the courts located therein.
- (4) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.
- (5) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected.
- (6) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 271--74th congress, or amendments thereof.
- (7) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.
- (8) Counties shall be subject to the limitations and prohibitions imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto, prescribing limitations upon the levy of retailers' sales taxes by counties.
- (9) Counties may not exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.

(10) No county may levy ad valorem taxes under the authority of this section upon real property located within any redevelopment project area established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the proceeds of such levy to be used to pay the principal of and interest upon bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto.

(11) Counties shall have no power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions on the same subject, unless the resolution authorizing the same specifically provides for a portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto.

(12) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

(13) Except as otherwise specifically authorized by K.S.A. 12-1,101 through 12-1,109, and amendments thereto, counties may not levy and collect taxes on incomes from whatever source derived. . . .

(b) Counties shall apply the powers of local legislation granted in subsection (a) by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all counties, such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b, and amendments thereto.

(c) Any resolution adopted by a county which conflicts with the restrictions in subsection (a) is null and void.

MUNICIPAL HOME RULE STRUCTURE, INCLUDING IMMUNITY FROM STATE PREEMPTION

Kansas provides municipal home rule through its constitution and county home rule by statute. The constitutional amendment, adopted in 1961, provides cities with the authority “to determine their local affairs and government” as well as some fiscal authority regarding taxes, fees, and charges. The provision then imposes restrictions on the state’s ability to preempt. Namely, preemption must be uniform, and with respect to preempting cities’ fiscal authority, uniform preemption may proceed “by class,” with a limit of four classes of cities.

The Kansas Supreme Court has noted that the municipal home rule amendment functionally overrode Dillon’s Rule, thus freeing municipalities from dependence upon the legislature for a

statutory grant to legislate.¹ If the legislature is silent on a matter, Art. 12, §5(b) permits cities to enact “ordinary” ordinances concerning local affairs. If the legislature has acted through uniform legislation, then the city is preempted from acting, even if there is no direct conflict. In other words, uniform legislation appears to create a strong presumption of field occupation, but there is an exception to this presumption for local regulations premised on the police power.² Police power ordinances are trumped only when in conflict with state law, whether due to express preemption or implied conflict.³

To determine whether a local ordinance conflicts with state law, the Kansas Supreme Court reviews “whether the ordinance permits or licenses that which the statute forbids or prohibits that which the statute authorizes; if so, there is conflict, but where both an ordinance and the statute are prohibitory and the only difference is that the ordinance goes further in its prohibition but not counter to the prohibition in the statute, and the city does not attempt to authorize by the ordinance that which the legislature has forbidden, or forbid that which the legislature has expressly authorized, there is no conflict.”⁴ Implied field preemption is disfavored in cases involving local police power enactments.⁵ Kansas courts have repeatedly rejected the argument that the mere enactment of the state criminal code by the legislature preempted the field of criminal law.⁶ Most of the Kansas cases involving home rule have taken place in the context of local criminal law and local liquor regulation.

As noted, cities may immunize themselves to preemption by non-uniform state laws by passing “charter ordinances.”⁷ The county home-rule statute similarly provides for protection from non-uniform state laws, but since this protection is only statutory, presumably a subsequent statute could authorize preemption of a county ordinance by non-uniform state law.

¹ *Clafin v. Walsh*, 509 P.2d 1130, 1131 (Kan. 1973) (“No longer are cities dependent upon the state legislature for their authority to determine their local affairs and government. Since home rule, cities have power granted directly from the people through the constitution without statutory authorization.”).

² *Blevins v. Hiebert*, 795 P.2d 325, 330 (Kan. 1990) (“We conclude that a municipality has the right to legislate by ordinary ordinance or resolution non-conflicting local police power laws even though there are state laws on the subject uniformly applicable to all municipalities. This is a court-imposed exception to constitutional and statutory home rule.”)

³ *Id.* at 330 (“The legislature may prohibit . . . local [police power] authority by expressly preempting the field.”).

⁴ *Junction City v. Lee*, 532 P.2d 1292, 1298 (Kan. 1975).

⁵ *See e.g.* *Moore v. City of Lawrence*, 654 P.2d 449 (Kan. 1982) (“A city ordinance should be permitted to stand unless an actual conflict exists between the ordinance and a statute, or unless the legislature has clearly preempted the field so as to preclude municipal action.”); *Lee*, 532 P.2d at 1299 (rejecting claim of field preemption); *see also* *Clafin*, 509 P.2d at 1136 (searching statutory language for express indication of uniformity).

⁶ *See e.g.* *Garten Enterprises, Inc. v. City of Kansas City*, 549 P.2d 864, 868 (Kan. 1976) (noting that state statute limiting crimes to statutory crimes intended only to prohibit common-law crimes, not locally defined crimes); *Lee*, 532 P.2d at 1299 (citing *City of Lyons v. Suttle*, 498 P.2d 9 (Kan. 1974)).

⁷ *E.g.*, *State ex. rel. Kline v. Unified Bd. of Comm’rs, of Unified Gov’t of Wyandotte Cty./Kansas City*, 85 P.3d 1237 (Kan. 2004) (holding that city’s passage of charter ordinance regarding liquor sales exempted it from non-uniform state law regulating the area). Although Kansas City has consolidated with surrounding Wyandotte County—the only city-county merger in the state—the court analyzed the ordinance under the constitutional home rule provision for municipalities. *See id.*; Eleanor Klibanoff, *How KCK and Wyandotte County Unified During Troubled Times*, KCUR.ORG, Mar. 6, 2015, <http://kcur.org/post/how-kck-and-wyandotte-county-unified-during-troubled-times#stream/0> (discussing the 1997 merger).