

DELAWARE

CONSTITUTIONAL AND STATUTORY PROVISIONS

Home rule in Delaware is purely a statutory matter, and provided only to cities.

Delaware Code Annotated

- 22 DEL. C. § 802. Applicability of chapter; grant of power.

Every municipal corporation in this State containing a population of at least 1,000 persons as shown by the last official federal decennial census may proceed as set forth in this chapter to amend its municipal charter and may, subject to the conditions and limitations imposed by this chapter, amend its charter so as to have and assume all powers which, under the Constitution of this State, it would be competent for the General Assembly to grant by specific enumeration and which are not denied by statute. This grant of power does not include the power to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power, nor does it include power to define and provide for the punishment of a felony.

- 22 DEL. C. § 835(a). Amendments Prohibited

(a) This chapter shall not permit the amending of a municipal charter so as to:

- (1) Permit the changing of any term of any elected official until the incumbent has completed the term to which the incumbent was elected;
- (2) Permit any charter amendment in contravention of any general statute of this State;
- (3) Change the qualifications of those entitled to vote at municipal elections;
- (4) Change the date for holding of municipal elections;
- (5) Enlarge or otherwise alter the power or procedure whereby a municipal corporation may enlarge its boundaries;
- (6) Prohibit, restrict or license ownership, transfer, possession or transportation of firearms or components of firearms or ammunition, except that the discharge of a firearm may be regulated; provided that any regulation or ordinance incorporates the justification defenses as found in Title 11. Nothing contained herein shall be construed to invalidate existing municipal ordinances.

HOME RULE STRUCTURE, INCLUDING A SCINTILLA OF IMMUNITY FROM STATE PREEMPTION

Delaware law enables municipalities to exercise the powers of the sovereign except as limited by either the state Constitution or state statute.¹ Note that Delaware also excepts the power to enact private or civil law from the grant of power to cities.

¹ NAACP v. Wilmington Med. Ctr., Inc., 426 F. Supp. 919, 927 (D. Del. 1977), *remanded on other grounds* by NAACP v. Med. Ctr., Inc., 599 F.2d 1247 (3d Cir. 1979).

Where a conflict exists between a general state statute and a municipal ordinance, the statute must always prevail.² In order for a local ordinance to be inconsistent with a state statute by implication for preemption purposes, the local ordinance must hinder the objectives of the state statute.³

By implication, the home rule statute exempts from preemption charter provisions that conflict with local or special statutes that predate the home rule statute (passed in 1953).⁴ This is the only kind of immunity available in Delaware. Any charter provisions that conflict with *general* law from before or after 1953, by contrast, would be considered preempted.

² State v. Putman, 552 A.2d 1247, 1249 (Del. Super. Ct. 1988).

³ Cantinca v. Fontana, 884 A.2d 468, 474 (Del. 2005).

⁴ Yacuci v. Tenhoopen, 550 A.2d 327, 328 (Del. Super. Ct. 1988).