

NEVADA

CONSTITUTIONAL AND STATUTORY PROVISIONS

Nevada Constitution

- Art. VIII, § 8. Municipal corporations formed under general laws.

The legislature shall provide for the organization of cities and towns by general laws and shall restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, except for procuring supplies of water; provided, however, that the legislature may, by general laws, in the manner and to the extent therein provided, permit and authorize the electors of any city or town to frame, adopt and amend a charter for its own government, or to amend any existing charter of such city or town.

Nevada Statutes

- NEV. REV. STAT. § 244.137 (2017). Legislative findings and declarations.

5. As a general rule on local governmental power, Dillon's Rule serves an important function in defining the powers of county government and remains a vital component of Nevada law. However, with regard to matters of local concern, a strict interpretation and application of Dillon's Rule unnecessarily restricts a board of county commissioners from taking appropriate actions that are necessary or proper to address matters of local concern for the effective operation of county government and thereby impedes the board from responding to and serving the needs of local citizens diligently, decisively and effectively.

6. To provide a board of county commissioners with the appropriate authority to address matters of local concern for the effective operation of county government, the provisions of NRS 244.137 to 244.146, inclusive:

(a) Expressly grant and delegate to the board of county commissioners all powers necessary or proper to address matters of local concern so that the board may adopt county ordinances and implement and carry out county programs and functions for the effective operation of county government; and

(b) Modify Dillon's Rule as applied to the board of county commissioners so that if there is any fair or reasonable doubt concerning the existence of a power of the board to address a matter of local concern, it must be presumed that the board has the power unless the presumption is rebutted by evidence of a contrary intent by the Legislature.

7. The provisions of NRS 244.137 to 244.146, inclusive, must not be interpreted to modify Dillon's Rule with regard to:

(a) Any local governing body other than a board of county commissioners; or

(b) Any powers other than those powers necessary or proper to address matters of local concern for the effective operation of county government.

- *Id.* § 244.143. "Matter of local concern" defined.

1. “Matter of local concern” means any matter that:
 - (a) Primarily affects or impacts areas located in the county, or persons who reside, work, visit or are otherwise present in areas located in the county, and does not have a significant effect or impact on areas located in other counties;
 - (b) Is not within the exclusive jurisdiction of another governmental entity; and
 - (c) Does not concern:
 - (1) A state interest that requires statewide uniformity of regulation;
 - (2) The regulation of business activities that are subject to substantial regulation by a federal or state agency; or
 - (3) Any other federal or state interest that is committed by the Constitution, statutes or regulations of the United States or this State to federal or state regulation that preempts local regulation.
2. The term includes, without limitation, any of the following matters of local concern:
 - (a) Public health, safety and welfare in the county.
 - (b) Planning, zoning, development and redevelopment in the county.
 - (c) Nuisances and graffiti in the county.
 - (d) Outdoor assemblies in the county.
 - (e) Contracts and purchasing by county government.
 - (f) Operation, management and control of county jails and prisoners by county government.
 - (g) Any public property, buildings, lands, utilities and other public works owned, leased, operated, managed or controlled by county government, including, without limitation:
 - (1) Roads, highways and bridges.
 - (2) Parks, recreational centers, cultural centers, libraries and museums.
3. The provisions of subsection 2:
 - (a) Are intended to be illustrative;
 - (b) Are not intended to be exhaustive or exclusive; and
 - (c) Must not be interpreted as either limiting or expanding the meaning of the term “matter of local concern” as provided in subsection 1.

- *Id.* § 244.146. Powers of board of county commissioners; exercise of powers; prohibitions.

1. Except as prohibited, limited or preempted by the Constitution, statutes or regulations of the United States or this State and except as otherwise provided in this section, a board of county commissioners has:
 - (a) All powers expressly granted to the board;
 - (b) All powers necessarily or fairly implied in or incident to the powers expressly granted to the board; and
 - (c) All other powers necessary or proper to address matters of local concern for the effective operation of county government, whether or not the powers are expressly granted to the board. If there is any fair or reasonable doubt concerning the existence of a power of the board to address a matter of local concern pursuant to this paragraph, it must be presumed that the board has the power unless the presumption is rebutted by evidence of a contrary intent by the Legislature.

2. If there is a constitutional or statutory provision requiring a board of county commissioners to exercise a power set forth in subsection 1 in a specific manner, the board may exercise the power only in that specific manner, but if there is no constitutional or statutory provision requiring the board to exercise the power in a specific manner, the board may adopt an ordinance prescribing a specific manner for exercising the power.

3. Except as expressly authorized by statute, a board of county commissioners shall not:

- (a) Condition or limit its civil liability unless such condition or limitation is part of a legally executed contract or agreement between the county and another governmental entity or a private person or entity.
- (b) Prescribe the law governing civil actions between private persons or entities.
- (c) Impose duties on another governmental entity unless the performance of the duties is part of a legally executed agreement between the county and another governmental entity.
- (d) Impose a tax.
- (e) Order or conduct an election.

4. Except as expressly authorized by statute or necessarily or fairly implied in or incident to powers expressly authorized by statute, a board of county commissioners shall not:

- (a) Impose a service charge or user fee; or
- (b) Regulate business activities that are subject to substantial regulation by a federal or state agency.

- *Id.* § 266.010. Home Rule Granted; Limitations.

Subject to the right of the legislature to create or alter the form of municipal organization by special act or charter, the right of home rule and self-government is hereby granted to the people of any city incorporated under the provisions of this chapter.

- *Id.* § 267.120. General powers of a city with commission form of government.

Any city adopting a charter under the provisions of N.R.S. 267.010 to 267.140, inclusive, has all of the powers which are now or may hereafter be conferred upon incorporated cities by the laws of the state, and all such powers as are usually exercised by municipal corporations of like character and degree, whether or not the powers are specifically enumerated in NRS 267.010 to 267.140, inclusive.

HOME RULE STRUCTURE, INCLUDING LACK OF IMMUNITY FROM STATE PREEMPTION

Nevada grants limited powers to its local governments. For years, Nevada was considered by commentators to be a Dillon's Rule state, in large part because it had no constitutional home rule for cities or counties.¹ Although NEV. REV. STAT. § 266.010 claims to grant home rule to cities,

¹ E.g., Louis V. Csoka, *The Dream of Greater Municipal Autonomy: Should the Legislature or the Courts Modify Dillon's Rule, a Common Law Restraint or Municipal Power?*, 29 N.C. CENT L.J. 194, 204 (2007) (noting that "legal authorities have consistently applied Dillon's Rule to all cities and counties in Nevada").

only six smaller cities have availed themselves of this provision.² Regardless, the Nevada courts, as reinforced by attorney general opinions, have consistently reined in all cities' powers by invoking the reasoning, if not the name, of Dillon's Rule.³ Local ordinances may trump state laws only if the legislature expressly authorized this preeminence.⁴ Otherwise, the Nevada courts stand ready to hold local ordinances preempted that conflict with state law or regulate a field occupied by state law.⁵

In 2015, Nevada adopted a more comprehensive system of statutory home rule for counties, as detailed above.⁶ The legislation expressly repudiates the rationale of Dillon's Rule as applied to counties, presumptively granting counties far greater initiative authority to address "matters of local concern."⁷ The legislation provides some illustrative examples of matters of local concern, including the broad category of "public health, safety, and welfare," but excludes from this list "state interest[s]" that "require statewide uniformity."⁸ Whether a county could, say, increase the minimum wage is unclear, but the police power grant would provide a good argument for this authority. The legislation also makes clear that county authority is subject to legislative preemption. There is no relevant case law regarding county home rule authority yet.

² *Id.*

³ *Id.* at 205 & n.91 (citing cases and attorney general opinions, including those applying Dillon's Rule to Mesquite, a supposed "home-rule" city under NEV. REV. STAT. § 266).

⁴ *Lamb v. Mirin*, 526 P.2d 80, 82 (Nev. 1974) ("That which is allowed by the general laws of a state cannot be prohibited by local ordinance, without an express grant on the part of the legislature.").

⁵ *Id.* at 332-33.

⁶ *See* 2015 Nev. Stat. Ch. 416 (S.B. 29).

⁷ NEV. REV. STAT. § 244.137 (2017).

⁸ *Id.* § 244.143.