

INDIANA

CONSTITUTIONAL AND STATUTORY PROVISIONS

Home rule in Indiana is purely a statutory matter.

Indiana Code Annotated

- 36-1-3: Title 36, Article 1, Chapter 3. Home Rule.

Sec. 1. Applicability of chapter.

This chapter applies to all units.

Sec. 2. Policy of the State.

The policy of the state is to grant units all the powers that they need for the effective operation of government as to local affairs.

Sec. 3. Rule of law; resolution of doubt as to existence of power of a unit.

(a) The rule of law that any doubt as to the existence of a power of a unit shall be resolved against its existence is abrogated.

(b) Any doubt as to the existence of a power of a unit shall be resolved in favor of its existence. This rule applies even though a statute granting the power has been repealed.

Sec. 4. Rule of law; powers of unit.

(a) The rule of law that a unit has only:

(1) powers expressly granted by statute;

(2) powers necessarily or fairly implied in or incident to powers expressly granted; and

(3) powers indispensable to the declared purposes of the unit;

is abrogated.

(b) A unit has:

(1) all powers granted it by statute; and

(2) all other powers necessary or desirable in the conduct of its affairs, even though not granted by statute.

(c) The powers that units have under subsection (b)(1) are listed in various statutes. However, these statutes do not list the powers that units have under subsection (b)(2); therefore, the omission of a power from such a list does not imply that units lack that power.

Sec. 5. Powers of unit; exercise; township exception.

(a) Except as provided in subsection (b), a unit may exercise any power it has to the extent that the power:

(1) is not expressly denied by the Indiana Constitution or by statute; and

(2) is not expressly granted to another entity.

(b) A township may not exercise power the township has if another unit in which all or part of the township is located exercises that same power. . . .

Sec. 8. Powers specifically withheld.

(a) Subject to subsection (b), a unit does not have the following:

- (1) The power to condition or limit its civil liability, except as expressly granted by statute.
 - (2) The power to prescribe the law governing civil actions between private persons.
 - (3) The power to impose duties on another political subdivision, except as expressly granted by statute.
 - (4) The power to impose a tax, except as expressly granted by statute.
 - (5) The power to impose a license fee greater than that reasonably related to the administrative cost of exercising a regulatory power.
 - (6) The power to impose a service charge or user fee greater than that reasonably related to reasonable and just rates and charges for services.
 - (7) The power to regulate conduct that is regulated by a state agency, except as expressly granted by statute.
 - (8) The power to prescribe a penalty for conduct constituting a crime or infraction under statute.
 - (9) The power to prescribe a penalty of imprisonment for an ordinance violation.
 - (10) The power to prescribe a penalty of a fine as follows:
 - (A) More than ten thousand dollars (\$10,000) for the violation of an ordinance or a regulation concerning air emissions adopted by a county that has received approval to establish an air program under IC 13-17-12-6.
 - (B) For a violation of any other ordinance:
 - (i) more than two thousand five hundred dollars (\$2,500) for a first violation of the ordinance; and
 - (ii) except as provided in subsection (c), more than seven thousand five hundred dollars (\$7,500) for a second or subsequent violation of the ordinance.
 - (11) The power to invest money, except as expressly granted by statute.
 - (12) The power to order or conduct an election, except as expressly granted by statute.
 - (b) A township does not have the following, except as expressly granted by statute:
 - (1) The power to require a license or impose a license fee.
 - (2) The power to impose a service charge or user fee.
 - (3) The power to prescribe a penalty.
 - (c) Subsection (a)(10)(B)(ii) does not apply to the violation of an ordinance that regulates traffic or parking.
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HOME RULE STRUCTURE, INCLUDING LACK OF IMMUNITY FROM STATE PREEMPTION

By its express language, the Indiana Home Rule Act, passed in 1980, abrogated the traditional rule (“Dillon’s Rule”) that local governments possessed only those powers expressly authorized by statute, and declared that a local governments possess all other powers necessary or desirable in the conduct of its affairs. The Act grants local units “all the powers that they need for the effective operation of government as to local affairs,” which includes all powers granted to a unit by statute and “necessary or desirable in the conduct of its affairs, even though not granted by statute.”

The broad grant of authority notwithstanding, the Home Rule Act also specifically withheld certain powers from local governments and reserved them to the State, as listed in IND. CODE §36- 1-3-8. Thus, while the Indiana Home Rule Act was intended to provide counties, municipalities, and townships with expansive and broad-ranging authority to conduct their affairs, this authority is not without limitations. Indeed, despite the Act’s abolition of Dillon’s Rule, the courts have indicated that the presumption in favor of local power applies only when local units act in the local realm, not “where affairs of statewide concern are involved.”¹ Hence, local governments’ initiative powers outside of the “local” realm are potentially limited.

The Indiana legislature’s power to preempt local law appears absolute, and the courts recognize implied preemption in situations such as where the breadth and comprehensiveness of the state regulatory scheme leaves no room for additional local regulation.²

In conclusion, Indiana is a weak home-rule state.

¹ *Mance v. Bd. of Dirs. of Pub. Employees' Ret. Fund*, 652 N.E.2d 532, 536-37 (Ind. Ct. App. 1995).

² *E.g.*, *City of Fort Wayne v. Kotsopoulos*, 704 N.E.2d 1069, (Ind. Ct. App. 1999) (holding that state statutes governing sale of alcohol trump city’s transient merchant ordinance).