

## ARKANSAS

### CONSTITUTIONAL AND STATUTORY PROVISIONS

The Arkansas constitution establishes home rule only for counties, not for cities. Arkansas statutes extend to municipalities power to control their municipal affairs.

#### **Arkansas Constitution**

- Art. XII, §4. Limitation on legislative and taxing power.

No municipal corporation shall be authorized to pass any laws contrary to the general laws of the state . . . .

- Amend. 55, § 1

(a) A county acting through its Quorum Court<sup>1</sup> may exercise local legislative authority not denied by the Constitution or by law.

(b) No county may declare any act a felony or exercise any authority not relating to county affairs.

#### **Arkansas Code**

- § 14-43-601. Municipal affairs delineated

(a) As used in this subchapter:

(1) "Municipal affairs" means all matters and affairs of government germane to, affecting, or concerning the municipality or its government except the following, which are state affairs and subject to the general laws of the State of Arkansas:

- (A) Public information and open meetings;
- (B) Uniform requirements for competitive bidding on contracts;
- (C) Claims against a municipality;
- (D) Requirements of surety bonds for financial officers;
- (E) Collective bargaining;
- (F) Pension and civil service systems;
- (G) Hours and vacations, holidays, and other fringe benefits of employees;
- (H) The definition, use, and control of surplus revenues of municipally owned utilities;
- (I) Vacation of streets and alleys;
- (J) Matters coming within the police power of the state, including minimum public health, pollution, and safety standards;
- (K) Gambling and alcoholic beverages;
- (L) Traffic on or the construction and maintenance of state highways;

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<sup>1</sup> The "quorum court" is the general legislative body for a county.

- (M) Regulations of intrastate commerce, including rates and terms of service of railroad, bus, and truck lines, cooperatives, and nonmunicipally owned utilities;
- (N) The incorporation and merger of municipalities and annexation of territory to municipalities; and
- (O) Procedure for the passage of ordinances by the governing body of the municipality

- § 14-43-602. Authority generally.

(a) A Municipality is authorized to perform any function and exercise full legislative power in any and all matters of whatsoever nature pertaining to its municipal affairs including, but not limited to, the power to tax.

(b) The rule of decision known as “Dillon's Rule” is inapplicable to the municipal affairs of municipalities.

- §§ 14-43-603 to 609 lay out further restrictions on municipalities, such as felonies, gambling, alcoholic beverages, taxation, income tax, regulation of prices, and public utilities and carriers.
- §14-43-610. Reservation of state power.

Nothing in this subchapter shall limit the power reserved to the General Assembly to specifically limit the exercise of any powers, functions, and authority granted in this subchapter.

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#### HOME RULE STRUCTURE, INCLUDING LACK OF IMMUNITY FROM STATE PREEMPTION

With respect to municipalities, Arkansas has a system of legislative home rule as established by statute. The statute seemingly presumptively delegates broad powers to cities, but at the same time, makes very clear that certain important powers, like “the police power,” are “state affairs.” By its text, therefore, there is some question whether cities would even have initiative authority in these excepted realms. Certainly, any state preemption of matters in these subject areas would trump local law. Indeed, the Arkansas Supreme Court has expressly noted that its statute “can best be characterized as a limited home rule statute.”<sup>2</sup> “True home rule,” by contrast, the court noted, “is found in state constitutions” where it establishes “a limitation of state legislative power.”<sup>3</sup> Consistent with this reasoning, there are no court cases recognizing any local immunity to state override.

Home rule for counties has a firmer foundation in the state constitution, although even here, it is still limited to “county affairs” and subject to override by the state. There is limited case law on Amendment 55’s meaning, which may indicate that counties in Arkansas have been loath to use

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<sup>2</sup> *Paragould Cablevision v. City of Paragould*, 809 S.W.2d 688, 693 (Ark. 1991).

<sup>3</sup> *Id.*

their authority outside of traditional areas like running the jails, maintaining roads, and conducting elections.<sup>4</sup>

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<sup>4</sup> Margaret F. Reid & Will Miller, *Arkansas*, in HOME RULE IN AMERICA (Dale Krane et al. eds., 2001) [hereinafter “Krane”], at 50 (noting that in Arkansas counties have traditionally functioned as “administrative branches of state government”).