

RHODE ISLAND

CONSTITUTIONAL AND STATUTORY PROVISIONS

Rhode Island Constitution

- R.I. CONST. art. 13, § 1. Intent of article.

It is the intention of this article to grant and confirm to the people of every city and town in this state the right of self government in all local matters.

- R.I. CONST. art. 13, § 2. Local legislative powers.

Every city and town shall have the power at any time to adopt a charter, amend its charter, enact and amend local laws relating to its property, affairs and government not inconsistent with this Constitution and laws enacted by the general assembly in conformity with the powers reserved to the general assembly.

- R.I. CONST. art. 13, § 4. Powers of general assembly over cities and towns.

The general assembly shall have the power to act in relation to the property, affairs and government of any city or town by general laws which shall apply alike to all cities and towns, but which shall not affect the form of government of any city or town. The general assembly shall also have the power to act in relation to the property, affairs and government of a particular city or town provided that such legislative action shall become effective only upon approval by a majority of the qualified electors of the said city or town voting at a general or special election, except that in the case of acts involving the imposition of a tax or the expenditure of money by a town the same shall provide for the submission thereof to those electors in said town qualified to vote upon a proposition to impose a tax or for the expenditure of money.

HOME RULE STRUCTURE

Constitutional home rule began in Rhode Island in 1951, when the voters of the State ratified the 28th Amendment to the Rhode Island Constitution (now the 13th Amendment). The amendment states that “It is the intention of this article to grant and confirm to the people of every city and town in this state the right of self government in all local matters.” In order for a municipality to obtain home rule, however, it must adopt a charter. As of 2013, 7 of the state’s 8 cities and 29 of its 31 towns have done so.¹ Those cities or towns that do not adopt a charter remain subject to Dillon’s Rule. Providence, for instance, did not adopt a charter until 1980.² In cases prior to its

¹ Rhode Island Dep’t of Revenue, *Municipal Charters in Rhode Island*, at 4 (2013), *available at* http://www.municipalfinance.ri.gov/documents/resources/Home_Rule_Charter_Publication.pdf.

² *Id.* at 61.

adoption of a charter, the state supreme court narrowly construed the powers granted by the state legislature to Providence.³

Rhode Island courts have declared that, as a fundamental principle, municipal ordinances are inferior in status and subordinate to the law of the state. As such, ordinances inconsistent with state law of general character and statewide application are invalid.⁴ Analysis of the effect of the ordinance is proper to determine if preemption is appropriate.⁵ The ordinance will be found invalid if it inhibits the enforcement of state laws, threatens to disrupt the state's overall scheme of regulation, or provides an alternative regulatory scheme.⁶ Generally, state laws of statewide application preempt municipal ordinances on the same subject if the legislature intended that such laws thoroughly occupy the field.⁷ For example, in finding that the Public Utility Commission (PUC) had preempted the field of utility regulation, the Rhode Island Supreme Court pointed to the fact that the PUC's enabling legislation granted the PUC “the exclusive power and authority to supervise, regulate and make orders governing the conduct of public utilities.”⁸

IMMUNITY FROM STATE PREEMPTION FOR FORM OF GOVERNMENT

There are two constitutional barriers to preemption in Rhode Island – one firm and one procedural. The firm barrier is that the constitution prohibits the legislature from interfering with the form of government of any city or town.⁹ The other barrier is that the legislature may only legislate with respect to local matters either 1) by general law or 2) by a special law that is also approved by the voters of the city it targets.¹⁰ As a preface to enforcing the procedural barrier, the state courts must distinguish between what is a “local” or “statewide” matter.¹¹ In a prominent case considering the issue, the supreme court held that a statute setting up a state-appointed budget review commission for a fiscally insolvent town was a statewide matter.¹²

³ See *Early Estates, Inc. v. Hous. Bd. of Review of the City of Providence*, 174 A.2d 117 (R.I. 1961) (holding that grant of power to enforce minimum dwelling standards did not include the power to require that dwellings include hot water).

⁴ *Wood v. Peckham*, 98 A.2d 669, 670 (R.I. 1953).

⁵ *R.I. Cogeneration v. City of E. Providence*, 728 F. Supp. 828, 834 (D.R.I. 1990).

⁶ *Id.*

⁷ *Id.*

⁸ *Town of E. Greenwich v. O’Neil*, 617 A.2d 104, 110 (R.I. 1992) (citation omitted).

⁹ R.I. CONST. art. 13, § 4; *Opinion to House of Representatives*, 87 A.2d 693, 696 (1952) (advisory opinion noting that “the general assembly no longer would have the right to legislate, even by a general act, if it would change the *form* of government under a home rule charter adopted by the qualified electors of such a city or town”); see also *City of Cranston v. Hall*, 354 A.2d 415, 417 (R.I. 1976) (holding that state legislation mandating collective bargaining did not infringe on “form” of local government).

¹⁰ R.I. CONST. art. 13, § 4.

¹¹ See *O’Neil*, 617 A.2d at 111 (listing need for uniformity, traditional sphere of regulation, and extraterritorial effect as three criteria to be considered in the “statewide” versus “local” inquiry).

¹² *Marran v. Baird*, 635 A.2d 1174 (R.I. 1994).