



OHIO

I. Summary of Home Rule in Ohio

- Ohio municipalities derive their home rule powers from a self-executing constitutional home rule provision.
- Home rule municipalities and counties have two separate grants of power: (1) the power to exercise powers of local self-government, and (2) the power to enact local police, sanitary, and other similar regulations.
- Local ordinances related solely to the government and administration of the municipality's local affairs are immune from state preemption. Additionally, the State may only preempt local ordinances by general law.
- Counties may adopt home rule charters, but charter counties may not overrule the ordinances of municipalities within them.

II. Source of Municipal Home Rule Authority

Ohio Const. art. XVIII, § 3 states that “[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.”

III. Scope of Municipal Home Rule Authority

The “authority to exercise all powers of local self-government” includes that which “relate[s] ‘solely to the government and administration of the internal affairs of the municipality,’”¹ as well as the power to impose a municipal income tax.²

The authority to adopt “local police, sanitary, and other similar regulations” is a broad grant of power, which “was intended to clothe municipalities with power to prescribe rules of conduct in all matters relating to local police, sanitary, and other similar regulations, where no rules had been prescribed by the General Assembly.”³

¹ *Marich v. Bob Bennett Constr. Co.*, 880 N.E.2d 906, 914 (Ohio 2008) (quoting *Beachwood v. Cuyahoga Cty. Bd. of Elections*, 148 N.E.2d 921, 923 (Ohio 1958)). See also *id.* at 923 (“[L]egislation . . . falls within the area of local self-government [i]f the result affects only the municipality itself, with no extra-territorial effects . . .”).

² *Gesler v. City of Worthington Income Tax Bd. of Appeals*, 3 N.E.3d 1177, 1179 (Ohio 2013).

³ *Village of West Jefferson v. Robinson*, 205 N.E.2d 382, 386 (Ohio 1965).

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There is no clear limitation on local authority to establish private rights of action for violations of local ordinances.⁴

IV. Preemption

Preemption of Acts of Local Self-Government

Local enactments related to “the power of local self-government” are generally immune from preemption by state law.⁵ They are, however, limited “by other provisions of the Constitution” or statutory limitations authorized by the Constitution.⁶ For example, the Ohio Constitution grants the Legislature the power to pass laws “regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees, and no other provision of the constitution shall impair or limit this power.”⁷ The Ohio Supreme Court has held that since a state law governing collective bargaining among public employees was concerned with the “general welfare” of employees, it superseded any local regulation of the matter, even though the determination of wages and benefits of public employees could be considered an exercise of the power of local self-government.⁸ That is, while the exercise of local self-government by a home rule municipality is generally immune from state preemption, it is still subject to limitations based in the State Constitution.

Preemption of Ordinances Premised on Police Power

On the other hand, local “police, sanitary, and other similar regulations” can be preempted if in conflict with “general laws.” Put another way, a state statute takes precedence over a local ordinance when (1) the ordinance conflicts with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law.⁹

The Ohio Supreme Court uses a four-part test to determine whether a statute is a general law: A statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.¹⁰

With respect to factor (1), the courts analyze the potentially preemptive statute in the context of

⁴ Paul Diller, *The City and the Private Right of Action*, 64 Stan. L. Rev. 1109, 1132; 1168 (2012).

⁵ *Dies Elec. Co. v. City of Akron*, 405 N.E.2d 1026, 1028-9 (Ohio 1980) (quoting *Froelich v. Cleveland*, 124 N.E. 212 (Ohio 1919)) (upholding the validity of a contract allowing the City of Akron to retain a portion of funds to guarantee work on a public project, noting that the retainage agreement was a matter of local self-government and that a state law requiring a different retainage agreement did not control).

⁶ *Id.*

⁷ Ohio Const. art. II, § 34.

⁸ *City of Rocky River v. State Employment Relations Bd.*, 539 N.E.2d 103, 114 (Ohio 1989)

⁹ *Mendenhall v. Akron*, 881 N.E.2d 255, 260 (Ohio 2008).

¹⁰ *Canton v. State*, 766 N.E.2d 963, 968 (Ohio 2002).

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other supplemental and complementary statutes and regulations.¹¹ A comprehensive enactment “need not regulate every aspect of disputed conduct” nor must it be “exhaustive.”¹² At the same time, the lack of any statewide regulation of an issue may be a reason why a law fails this prong of the general test.¹³

With respect to factor (2), “[t]here is no requirement that a statute must be devoid of exceptions to remain statewide and comprehensive in effect.”¹⁴ Additionally, “mere differences in the [local] interpretation and application of the statutory language are not enough to prevent a statute from applying to all parts of the state and operating uniformly throughout it.”¹⁵

The Ohio courts have been somewhat inconsistent in applying factor (3). In some cases, the courts have held that the statutory withdrawal of all local regulatory authority over a certain subject violates this provision.¹⁶ In others, such as when the state preempted local firearms regulation, the court has been more forgiving of aggressive state preemption of a field.¹⁷ In that case, the court noted while applying the first factor that “[t]here are a host of state and federal laws regulating firearms,” so perhaps the court did not view the preemptive law as creating a regulatory vacuum.¹⁸

Finally, with respect to factor (4), the rulings are also inconsistent. In an appellate opinion invalidating the state preemption of Cleveland’s ban of trans fats, the court held that the state law did not meet this criterion because it imposed no rules regarding food nutrition and content.¹⁹ In the firearms case, by contrast, the court again took a more forgiving approach to this factor.²⁰

V. County Home Rule

Ohio Const. art. X, § 3 establishes home rule for counties that adopt charters. Only two counties (Cuyahoga & Summit) have adopted charters. Charter counties may *not* overrule the ordinances of municipalities within them.

¹¹ See *Cleveland v. State*, 942 N.E.2d 370, 375 (Ohio 2010) (holding that a statute which provided that only federal or state regulations can limit an Ohioan’s right to bear arms was “part of a comprehensive statewide legislative enactment...[because] [t]here are a host of state and federal laws regulation firearms.”).

¹² *Id.* at 376.

¹³ *E.g.*, *Canton*, 766 N.E.2d at 968 (finding state law regulating local zoning failed this prong because state lacked a comprehensive zoning scheme).

¹⁴ *Marich*, 880 N.E.2d at 913.

¹⁵ *Id.* at 914.

¹⁶ *E.g.*, *Cleveland v. State*, 5 N.E.3d 644, 649 (Ohio 2014) (holding that a state statutory provision prohibited municipal licensing, regulation, or registering of tow companies violated third prong of *Canton*’s test for general law); *Cleveland v. State*, 989 N.E.2d 1072, 1083 (Ohio Ct. App. 2013) (invalidating state law that preempted Cleveland trans fat ban in part because it “curtail[ed] the city’s police powers in this area”).

¹⁷ *Cleveland v. State*, 942 N.E.2d 370, 377 (Ohio 2010) (finding that state withdrawal of local power to regulate firearms did not violate this prong of *Canton* test).

¹⁸ *Id.* at 375.

¹⁹ *Cleveland*, 989 N.E.2d at 1083.

²⁰ *Cleveland*, 942 N.E.2d at 377.

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VI. Local Legislative Immunity

While the Ohio Constitution explicitly extends legislative immunity to state legislators for their legislative acts,²¹ it is not clear whether that doctrine applies to local elected officials.²²

VII. Other Relevant Considerations

Single Subject Rule

The Ohio Constitution does prohibit the legislature from enacting bill with more than one subject, and states that the subject must be clearly expressed in the bill's title.²³

Unfunded Mandates

The Ohio Constitution does not prohibit the State from imposing unfunded mandates on localities.

Private Law Exception

An additional consideration in assessing whether a local government has the authority to adopt a particular policy is whether state law recognizes a “private law exception.” Private law can generally be defined as law that “establishes legal rights and duties between and among private entities.”²⁴ Some states, either by constitutional provision, statute, or case law, prohibit municipalities from regulating private law. This can take the form of a “subject-based” exception prohibiting any regulation of “private law” or a narrower exception prohibiting private rights of action.²⁵

Ohio law does not appear to prohibit home rule municipalities from enacting “private law.” A review of Ohio case law did not identify court opinions adhering to a private law exception. Ohio law does not clearly prohibit a local government from creating a private right of action.²⁶

²¹ Ohio Const. art. II, § 12 (“Senators and Representatives, during the session of the General Assembly, and in going to, and returning from the same, shall be privileged from arrest, in all cases, except treason, felony, or breach of the peace; and for any speech, or debate, in either House, they shall not be questioned anywhere”).

²² See *Executone of Northwest Ohio v. Management Communication Consultants, Inc.*, No. L-83-101 (6th Dist. Ct. App., Lucas, 7-15-83) (unreported) (noting that local legislators enjoy a legislative *privilege* against liability for libel or slander during formal sessions of the municipality, but saying nothing as to local legislative *immunity*).

²³ Ohio Const. art. II, § 15(D).

²⁴ Gary T. Schwartz, *The Logic of Home Rule and the Private Law Exception*, 20 UCLA L. Rev. 671, 688 (1973).

²⁵ See Paul A. Diller, *The City and the Private Right of Action*, 64 Stan. L. Rev. 1109 (2012).

²⁶ *Id.* at 1168 (noting that violation of a local ordinance can constitute negligence per se under state law, indicating that courts may be amenable to allowing localities to create private rights of action).

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Nature of Emergency Powers

Ohio law does not grant the governor authority to suspend laws during a declared emergency.²⁷

While this memo has not identified any particular emergency authority granted to municipalities other than the authority to create local emergency planning committees,²⁸ municipal charters or codes may establish local emergency powers for individual municipalities.

²⁷ Gregory Sunshine et al., *An Assessment of State Laws Providing Gubernatorial Authority to Remove Legal Barriers to Emergency Response*, *Health Security* vol. 17, no. 2 (2019), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6476686/>.

²⁸ Ohio Stat. § 3750.03.