



UTAH

I. Summary of Home Rule in Utah

- The Utah constitution grants broad powers to cities, and state law further grants the police power to cities and counties. State statutes contain additional details on local governments' home rule and other powers.
- While the initiative power of local governments may be broad, Utah is essentially a legislative home-rule state. If it speaks with sufficient clarity, the state legislature may preempt local governments on any subject.
- An ordinance conflicts with a statute if it permits what the statute prohibits, or vice versa.

II. Source of Municipal Home Rule Authority

- *Constitutional sources of home rule:*

- Cities:

- **UTAH CONST. art. XI, § 5**

The Legislature may not create cities or towns by special laws.

The Legislature by statute shall provide for the incorporation, organization, and dissolution of cities and towns and for their classification in proportion to population. Any incorporated city or town may frame and adopt a charter for its own government in the following manner:

...

Each city forming its charter under this section shall have, and is hereby granted, the authority to exercise all powers relating to municipal affairs, and to adopt and enforce within its limits, local police, sanitary and similar regulations not in conflict with the general law, and no enumeration of powers in this constitution or any law shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not include the power to regulate public utilities, not municipally owned, if any such regulation of public utilities is provided for by general law, nor be deemed to limit or restrict the power of the Legislature in

matters relating to State affairs, to enact general laws applicable alike to all cities of the State.

The power to be conferred upon the cities by this section shall include the following:

(a) To levy, assess and collect taxes and borrow money, within the limits prescribed by general law, and to levy and collect special assessments for benefits conferred.

(b) To furnish all local public services, to purchase, hire, construct, own, maintain and operate, or lease, public utilities local in extent and use; to acquire by condemnation, or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and within its powers regulate the exercise thereof.

(c) To make local public improvements and to acquire by condemnation, or otherwise, property within its corporate limits necessary for such improvements; and also to acquire an excess over than¹ needed for any such improvement and to sell or lease such excess property with restrictions, in order to protect and preserve the improvement.

(d) To issue and sell bonds on the security of any such excess property, or of any public utility owned by the city, or of the revenues thereof, or both, including, in the case of public utility, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility.

○ **Counties:** N/A

• ***Statutory sources of home rule:***

○ **Cities:**

▪ **Utah Code Ann. § 10-1-103 (West 2019)**

The powers herein delegated to any municipality shall be liberally construed to permit the municipality to exercise the powers granted by this act¹ except in cases clearly contrary to the intent of the law.

▪ **Utah Code Ann. § 10-8-84 (West 2019)**

(1) The municipal legislative body may pass all ordinances and rules, and make all regulations, not repugnant to law, necessary for carrying into effect or discharging all powers and duties conferred by this chapter, and as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants, and for the protection of property in the city.

(2) The municipal legislative body may enforce obedience to the ordinances with fines or penalties in accordance with Section 10-3-703.

○ **Counties:**

▪ **Utah Code Ann. § 17-50-302 (West 2019)**

(1)(a) Except as provided in Subsection (1)(b), a county may:

(i) as prescribed by statute:

(A) levy a tax;

(B) perform an assessment;

(C) collect a tax;

(D) borrow money; or

(E) levy and collect a special assessment for a conferred benefit; or

(ii) provide a service, exercise a power, or perform a function that is reasonably related to the safety, health, morals, and welfare of county inhabitants, except as limited or prohibited by statute.

(b) A county or a governmental instrumentality of a county may not perform an action described in Subsection (1)(a)(i) or provide a service, exercise a power, or perform a function described in Subsection (1)(a)(ii) in another county or a municipality within the other county without first entering into an agreement under Title 11, Chapter 13, Interlocal Cooperation Act, or other contract with the other county to perform the action, provide the service, exercise the power, or perform the function.

.....

▪ **Utah Code Ann. § 17-53-223 (West 2019)**

(1) A county legislative body may:

(a) pass all ordinances and rules and make all regulations, not repugnant to law, necessary for carrying into effect or discharging the powers and duties conferred by this title, and as are necessary and proper to provide for the safety, and preserve the health, promote the prosperity, improve the morals, peace, and good order, comfort, and convenience of the county and its inhabitants, and for the protection of property in the county;

(b) enforce obedience to ordinances with fines or penalties as the county legislative body considers proper; and

(c) pass ordinances to control air pollution.

(2)(a) Punishment imposed under Subsection (1)(b) shall be by fine, not to exceed the maximum fine for a class B misdemeanor under Section 76-3-301, imprisonment, or both fine and imprisonment.

(b) When a penalty for a violation of an ordinance includes any possibility of imprisonment, the county legislative body shall include in the ordinance a statement that the county is required, under Section 78B-22-301, to provide for indigent defense services, as that term is defined in Section 78B-22-102.

(3)(a) Except as specifically authorized by statute, the county legislative body may not impose a civil penalty for the violation of a county traffic ordinance.

(b) Subsection (3)(a) does not apply to an ordinance regulating the parking of vehicles on a highway.

III. Scope of Municipal and County Home Rule Authority

The Utah constitution grants broad powers to cities, and state law further grants the police power to cities and counties. *See* Part II, *supra*. In a seminal 1980 case, *State v. Hutchinson*, the Utah Supreme Court concluded that Dillon’s Rule, as a canon of construction, was no longer reconcilable with a grant of the police power to local governments.¹ Although the case concerned counties, the rationale of the decision extended to all local governments.² *Hutchinson* solidified the broad initiative power of both cities and counties in the state. As the Utah Supreme Court has more recently stated, “Utah municipalities have the right to legislate on the same subject as a state statute where the general welfare power is at issue.”³

While the initiative power of local governments may be broad, Utah is essentially a legislative home-rule state. If it speaks with sufficient clarity, the state legislature may preempt local governments on any subject. The Utah Supreme Court has stated: “[W]here a city ordinance is in conflict with a state statute, the ordinance is invalid at its inception.”⁴

IV. Preemption

An ordinance conflicts with a statute if it permits what the statute prohibits, or vice versa.⁵ “[I]n the absence of express conflict,” an ordinance will be upheld “unless there is some indication of incompatibility with the state statutory scheme.”⁶ Under this reasoning, it is permissible for local ordinances to go further, but not counter, to a prohibition under state statute.⁷ In the criminal context, the Utah Supreme Court has shied away from finding implied preemption merely because the state has already acted in the field.⁸

¹ *State v. Hutchinson*, 624 P.2d 1116 (Utah 1980) (upholding local election-related ordinances, explaining that the “rule which [the court] adopt[e]d in this case” is that “[w]hen the State has granted general welfare power to local governments, those governments have independent authority apart from, and in addition to, specific grants of authority to pass ordinances which are reasonably and appropriately related to the objectives of that power, i.e., providing for the public safety, health, morals, and welfare” such that “the courts will not interfere with the legislative choice of the means selected unless it is arbitrary, or is directly prohibited by, or is inconsistent with the policy of, the state or federal laws or the constitution of this State or of the United States”).

² *Id.* at 1121 (“In short, we simply do not accept the proposition that local governments are not to be trusted with the full scope of legislatively granted powers to meet the needs of their local constituents.”); *see also Dairy Prod. Servs., Inc. v. City of Wellsville*, 13 P.3d 581, 589 (Utah 2000) (citing *Hutchinson* in explaining that “pursuant to the section 10–8–84 general welfare clause, cities have independent authority, apart from the specific grants of authority, to pass ordinances reasonably related to the objectives of the granted authority”).

³ *Am. Bush v. City of S. Salt Lake*, 140 P.3d 1235, 1253 (Utah 2006).

⁴ *Hansen v. Eyre*, 116 P.3d 290, 293 (Utah 2005).

⁵ *Hansen*, 116 P.3d at 293 (citing *Salt Lake City v. Kusse*, 93 P.2d 671, 674 (Utah 1938)).

⁶ *Salt Lake City v. Newman*, 148 P.3d 931, 934 (Utah 2006). The Utah Supreme Court rejected the “doctrine of implied conflict,” explaining “that an ordinance is not unconstitutional merely because it implicitly conflicts with a state statute.” *Id.* Impermissible conflict arises only when “provisions are contradictory in the sense that they cannot coexist.” *Id.* (quotations and citation omitted).

⁷ *Id.* at 934 (upholding the local battery ordinance at issue even though it added an injury element not found in the corresponding state statute, and citing to *Kusse* as a case where the court “upheld the ordinance, observing that it merely went further ‘in its prohibition—but not counter to the prohibition under the statute’”) (quoting *Kusse*, 93 P.2d at 673).

⁸ *E.g., id.* Nevertheless, at least one Utah Supreme Court opinion has considered whether a state law preempts an entire field of regulation as part of its preemption analysis. *See Price Dev. Co., L.P. v. Orem City*, 995 P.2d 1237, 1243 (Utah 2000).

V. Local Legislative Immunity

The Utah Constitution includes a Speech or Debate Clause. Utah Const. art. VI, § 8. It is not clear whether Utah courts have applied this type of immunity to local officials.

The Governmental Immunity Act of Utah provides local officials with broad immunity. The Act makes “each governmental entity and each employee of a governmental entity . . . immune from suit for any injury that results from the exercise of a government function” unless the Act waives such immunity. Utah Code Ann. § 63G-7-201 (West 2019). The term “governmental function” is defined as “each activity, undertaking, or operation of a governmental entity” and includes “each activity, undertaking, or operation performed by a department, agency, employee, or officer of a governmental entity.” Utah Code Ann. § 63G-7-102(5)(a)&(b) (West 2019). No part of the Act expressly waives immunity for legislative acts such as enacting or debating an ordinance.

VI. Other Relevant Issues

The Utah constitution includes a provision concerning water rights that is currently pending voter approval. If it is approved by voters in 2020, it will become effective on January 1, 2021. It reads:

No municipal corporation, shall directly or indirectly, lease, sell, alien or dispose of any waterworks, water rights, or sources of water supply now, or hereafter to be owned or controlled by it; but all such waterworks, water rights and sources of water supply now owned or hereafter to be acquired by any municipal corporation, shall be preserved, maintained and operated by it for supplying its inhabitants with water at reasonable charges: Provided, That nothing herein contained shall be construed to prevent any such municipal corporation from exchanging water-rights, or sources of water supply, for other water-rights or sources of water supply of equal value, and to be devoted in like manner to the public supply of its inhabitants.

Utah Const. art. XI, § 6.

The Utah Constitution includes a provision expressly protecting local authority from state efforts to construct and operate certain types of facilities within a city or town. Section 9 of Article XI reads:

The Legislature may not grant the right to construct and operate a street railroad, telegraph, telephone, or electric light plant within a city or town without the consent of the local authorities who have control of the street or highway proposed to be occupied for such purposes.

Utah Const. art. XI, § 9.

The Utah Constitution includes provisions limiting the power of local governments to raise revenue, including:

- (1) No debt issued by a county, city, town, school district, or other political subdivision of the State and directly payable from and secured by ad valorem property taxes levied by the issuer of the debt may be created in excess of the taxes for the current year unless the proposition to create the debt has been submitted to a vote of qualified voters at the time and in the manner provided by statute, and a majority of those voting thereon has voted in favor of incurring the debt.
(2) No part of the indebtedness allowed in this section may be incurred for other than strictly county, city, town, school district, or other political subdivision purposes respectively.

Utah Const. art. XIV, § 3.

- (1)(a) If authorized to create indebtedness as provided in Section 3 of this Article, no county may become indebted to an amount, including existing indebtedness, exceeding two per centum of the value of taxable property in the county.
(b) No city, town, school district, or other municipal corporation, may become indebted to an amount, including existing indebtedness, exceeding four per centum of the value of the taxable property therein.
(2) For purposes of Subsection (1), the value of taxable property shall be ascertained by the last assessment for State and County purposes previous to the incurring of the indebtedness, except that in incorporated cities the assessment shall be taken from the last assessment for city purposes.
(3) A city of the first or second class, if authorized as provided in Section 3 of this Article, may be allowed to incur a larger indebtedness, not to exceed four per centum, and any other city or town, not to exceed eight per centum additional, for supplying such city or town with water, artificial lights or sewers, if the works for supplying the water, light, and sewers are owned and controlled by the municipality.

Utah Const. art. XIV, § 4.