

## MISSISSIPPI

### I. Summary of Home Rule in Mississippi<sup>1</sup>

- Home rule in Mississippi is a statutory affair, meaning that municipalities do not have a constitutional guarantee of home rule.
- Under the state's Home Rule statute, which essentially abrogated Dillon's Rule in the state, cities have broad authority to legislate regarding their municipal affairs and exercise the traditional police power to protect the health, welfare, and safety of their residents.
- Municipalities do not have immunity from state preemptive legislation, and state legislation does not have to be general or uniform.
- Mississippi courts recognize two kinds of preemption: express and conflict. Mississippi courts do not appear to recognize field preemption.

### II. Source of Municipal Home Rule Authority

The Mississippi Constitution authorizes the legislature to establish municipal home rule by creating a mechanism for cities and towns to adopt and amend charters, but the Constitution itself does not guarantee home rule for municipalities.<sup>2</sup>

Home rule in Mississippi is thus a statutory affair, and municipal home rule powers stem from the state's Home Rule statute.<sup>3</sup>

### III. Scope of Municipal Home Rule Authority

Mississippi's Home Rule statute states that "every municipality of this state shall have the care, management and control of the municipal affairs and its property and finances . . . [and] the power to adopt any orders, resolutions or ordinances with respect to such municipal affairs, property and finances which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi."<sup>4</sup> Cities, towns, and villages all fall under the category of "municipalities" that can exercise those powers.<sup>5</sup> The Home Rule statute essentially replaced the previous doctrine of "Dillon's Rule," under which cities could only enact legislation if the state legislature explicitly granted them the power to do

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<sup>1</sup> The information provided in this document does not, and is not intended to, constitute legal advice. Individuals and organizations should contact an attorney licensed to practice in their state to obtain advice with respect to a particular legal matter.

<sup>2</sup> Miss. Const. art. 4, § 88.

<sup>3</sup> Miss. Code Ann. § 21-17-5.

<sup>4</sup> Miss. Code Ann. §§ 21-17-5(1); 21-19-15.

<sup>5</sup> Miss. Code Ann. § 21-1-1.

so.<sup>6</sup> There have been few state court decisions describing the extent of municipal authority, but several Attorney General opinions have indicated that the Home Rule Law has essentially granted municipalities “police power” to protect the health, welfare, and safety of their residents.<sup>7</sup>

#### **a. County Home Rule**

Counties can exercise the same powers described above,<sup>8</sup> except that county ordinances do not apply in a municipality located within the county if the municipality has adopted another regulation on the same general topic.<sup>9</sup> For the purposes of this memo, the term “municipalities” will include counties as well as cities, towns, and villages.

#### **b. The 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.”<sup>10</sup> 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.<sup>11</sup>

This memo has not identified any evidence that Mississippi prohibits municipalities from enacting private law or creating private rights of action.<sup>12</sup>

### **IV. Preemption**

Local legislation cannot be inconsistent with state law or the state Constitution.<sup>13</sup> This means that the state legislature has broad authority to preempt local lawmaking. Courts in Mississippi find preemption when a statute explicitly states that it preempts local authority on a matter or when a state law and local ordinance are in direct conflict.<sup>14</sup> Mississippi courts do not appear to

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<sup>6</sup> Op. Miss. Att’y Gen., 1986 WL 81753 (Apr. 30, 1986) (noting that the Home Rule Law overrode the “Dillon Rule” with respect to municipalities and granted them the authority to “adopt orders, resolutions, or ordinances which are not inconsistent” with the state’s Constitution and its laws); Op. Miss. Att’y Gen. 1997 WL 805206 (Dec. 5, 1997) (noting that under the Home Rule Law, “municipalities may adopt *any* ordinance which is not inconsistent with state law or the Mississippi Constitution”) (emphasis added).

<sup>7</sup> Op. Miss. Att’y Gen., 1990 WL 547874 (June 27, 1990) (noting that under the Home Rule Law, municipalities “have the authority to pass ordinances to protect the safety and welfare of the city”).

<sup>8</sup> Miss. Code Ann. § 19-3-40(1); *see also* Miss. Op. Gen. 2008-00355, 2008 WL 3166167 (July 18, 2008) (describing Miss. Code Ann. § 19-3-40 as granting counties police powers).

<sup>9</sup> Miss. Code Ann. § 19-3-40(1).

<sup>10</sup> Gary T. Schwartz, *The Logic of Home Rule and the Private Law Exception*, 20 UCLA L. Rev. 671, 688 (1973).

<sup>11</sup> *See* Paul A. Diller, *The City and the Private Right of Action*, 64 Stan. L. Rev. 1109 (2012).

<sup>12</sup> *See also id.* at 1132, 1168.

<sup>13</sup> Miss. Code Ann. § 21-17-5 (concerning municipalities); Miss. Code Ann. § 19-3-40(1) (concerning counties).

<sup>14</sup> *Maynard v. City of Tupelo*, 691 So.2d 385, 388 (Miss. 1997) (en banc); *Delphi Oil, Inc. v. Forrest Cty. Bd. of Supervisors*, 114 So.3d 719, 723 (Miss. 2013) (noting that a preemption determination is made “by considering the

recognize field preemption.<sup>15</sup> That is, a municipality can legislate in a given subject area even if there are existing state laws and regulations on the topic, unless the local legislation actually comes into conflict with state law.<sup>16</sup> Finally, the Mississippi Supreme Court has indicated in at least one case that when a local ordinance serves an important public policy, it will take a clear expression of state legislative intent to preempt a local ordinance.<sup>17</sup>

## **V. Local Legislative Immunity**

Mississippi's Constitution provides that "Senators and Representatives shall, in all cases, except treason, felony, theft, or breach of the peace, be privileged from arrest during the session of the Legislature."<sup>18</sup> In addition, the Court of Appeals of Mississippi has held that local elected officials have "absolute legislative immunity from civil liability for actions in furtherance of their official duties."<sup>19</sup> This includes mayors who are sued for "acts taken in their legislative capacity."<sup>20</sup>

## **VI. Substantive & Procedural Constraints on State (Preemptive) Legislation**

### **a. Clear Title Rule**

The Mississippi Constitution requires all bills to have a title, which "ought to indicate clearly the subject matter or matters of the proposed legislation."<sup>21</sup> The state supreme court has held that this rule directs, but does not mandate, that the legislature clearly title all bills.<sup>22</sup> That is, it is up to the legislature to decide whether a bill's title is sufficiently clear.<sup>23</sup>

### **b. Prohibition Against Unfunded Mandates**

Mississippi does not appear to prohibit the Legislature from imposing unfunded mandates on municipalities.

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express language of a statute to determine whether there is a direct conflict between the state statute and the local ordinance").

<sup>15</sup> *Delphi Oil*, 114 So.3d at 724 (referring to field preemption as a "federal doctrine" and finding no support in case law for its application in the case).

<sup>16</sup> *City of Jackson v. Lee*, 252 So.2d 897, 897 (Miss.1971).

<sup>17</sup> *Maynard*, *supra* note 13, at 388 (emphasizing the public policy benefits of limiting consumption of alcohol in upholding a local ban on the possession of open alcoholic containers in the face of a state law allowing the possession of alcohol, though not its consumption, in dry jurisdictions).

<sup>18</sup> Miss. Const. art. IV, § 48.

<sup>19</sup> *Brown v. City of Hazlehurst*, 741 So. 2d 975, 982 (Miss. Ct. App. 1999).

<sup>20</sup> *Id.*

<sup>21</sup> Miss. Const. art. IV, § 71.

<sup>22</sup> *Matthews v. State*, 126 So.2d 245, 247 (Miss. 1961).

<sup>23</sup> *Everett v. Williamson*, 143 So. 690, 692 (Miss. 1932).

### **c. Prohibition on Special or Local Laws**

The Mississippi Constitution prohibits special or local laws that are “enacted for the benefit of individuals or corporations,”<sup>24</sup> but the state supreme court has held that this provision does not prohibit special or local laws that affect *municipal* corporations.<sup>25</sup>

## **VII. Local Emergency Powers**

### **a. Gubernatorial Emergency Powers**

The Mississippi Legislature has granted the Governor broad powers to address man-made, technological, and natural disasters.<sup>26</sup> Among other things, the Governor can “make, amend and rescind the necessary orders, rules and regulations to carry out the provisions of [the Emergency Powers Statute].”<sup>27</sup> The Governor may also, in the event of a natural disaster, “suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business . . . if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action in coping with a disaster or emergency.”<sup>28</sup>

### **b. Municipal Emergency Powers**

Municipalities and counties during emergencies have the authority to “provide for the health and safety of persons and property, including emergency assistance to the victims of any . . . natural disaster.”<sup>29</sup> They may also, subject to the order of the mayor or Governor, “control or restrict egress, ingress and movement within the disaster area to the degree necessary to facilitate the protection of life and property.”<sup>30</sup>

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<sup>24</sup> Miss. Const. art. IV, § 87.

<sup>25</sup> *City of Greenwood v. Telfair*, 42 So.2d 120, 122 (Miss. 1949) (en banc).

<sup>26</sup> Miss. Code Ann. § 33-15-11(a).

<sup>27</sup> Miss. Code Ann. § 33-15-11(b)(1).

<sup>28</sup> Miss. Code Ann. § 33-15-11(c)(1).

<sup>29</sup> Miss. Code Ann. § 33-15-17(c)(1).

<sup>30</sup> Miss. Code Ann. § 33-14-17(c)(7).