

TAXES AND TRUST: LESSONS FOR LEADERS AS ILLINOIS' CONSTITUTIONAL HOME RULE AUTHORITY APPROACHES ITS FIFTIETH YEAR

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This briefing offers a summary of major political, policy and legal landmarks related to Home Rule in Illinois. It shows that the state's 1970 constitution automatically conferred what are regarded as some of the broadest and strongest powers in the nation upon municipalities of more than 25,000 residents. As the 50th anniversary of Home Rule approaches, there has been appreciable scholarship on the topic. Most notably, though, are efforts – both successful and not – by communities lacking the population necessary for the automatic conferral of power to seek implementation of home rule through referenda. A few communities have even held successful referenda to opt out of home rule.

MICHIGAN - A CASE FOR HOME RULE

The City of Detroit, MI has become a national lightning rod in recent years as debate rages over its troubled public finances, management practices, and the prospect of municipal bankruptcy (Sheckford, 2016). The debates are often boiled down to bite-sized nuggets palatable to those on both sides of a policy issue. In a given week, some might cite Detroit as an example of mismanagement by public officials. Others might use it as a warning about what will happen in city “x” in state “y” if revenues and expenses are not brought into balance. In the midst of such declarations, it is not uncommon for observers to claim that a municipality is “on the road to Detroit” if expenditures are not decisively reduced. The media has been largely complicit in these representations, perhaps because, particularly in the age of the Internet, a dire headline linking a local town to Detroit's name along with a stark photo of crumbling industrial infrastructure is bound to engender “clicks” (Dvorkin, 2016).

However, missing from these debates is a critical piece of the story: home rule, or, more accurately, a lack thereof in Michigan's case. Michigan was one of the earliest adopters of home rule authority for its municipalities (Faulhauber,

2000). However, in the late 1970s, when many municipalities in Illinois were beginning to enjoy their own strong home rule powers granted through the 1970 Illinois Constitution, Michiganders headed to the polls to severely limit the authority of their municipalities through a constitutional amendment (Kearney, 2014; Faulhauber, 2000). The Michigan amendment prohibited local governments from adding new (or increasing existing) taxes without voter approval and also required voter approval of any new debt (Faulhauber, 2000). Thus, while Michigan municipalities in theory retained constitutional home rule, they were denied some of the most important powers generally associated with home rule in many states throughout the country.

Arguments could be made that such a system encourages municipal leaders to “sell” to the populace every project that would require funding, either via bond or tax. In some respects, this is, of course, “democracy in action,” directly involving citizens in government business. For instance, resolving to develop a new city park, political leaders and administrators might hold a series of “town hall” meetings at which citizens could voice concerns ahead of a subsequent referendum where funding would be requested. However, parks and more discretionary expenditures aside, what if tax revenues were to dwindle to the point where residents have to choose, for instance, between funding the police department and funding the fire department? Or, purchasing needed fire trucks versus authorizing garbage pickup? Michigan cities like Detroit faced these types of conundrums in the wake of the 1978 vote that stripped its municipalities of the two arguably most important home rule powers (Kearney, 2014). Absent political will to raise taxes or otherwise generate revenue in the face of declining resources and tax base, Michigan municipalities have desperately turned to other means.

However, the Michigan Supreme Court has not sided with municipalities seeking to creatively raise funds through other mechanisms. For instance, that court has held that “usage fees” can be raised to a certain extent by Michigan municipalities without running afoul of their limited home rule authority (*Bolt v. City of Lansing*, 1998). The definition of a usage fee, however, can be narrow. In the *Bolt* case, the City of Lansing determined that the city’s stormwater infrastructure was not sufficient to meet the needs of residents and businesses and required both maintenance and upgrades (*Bolt v. City of Lansing*, 1998). Popular support at the time was insufficient to either raise taxes or float a bond to perform these tasks (*Bolt v. City of Lansing*, 1998). Convinced the work was necessary and likely familiar with home rule case law, city leaders levied what they termed a “stormwater usage fee” upon businesses that benefited from the

existing stormwater infrastructure (*Bolt v. City of Lansing*, 1998). A lawsuit was filed and the court ultimately held in the plaintiff's favor, characterizing the funds collected by the City of Lansing through the usage fee program as taxes in disguise (*Bolt v. City of Lansing*, 1998).

THE RELATIONSHIP TO ILLINOIS

Why is any of this relevant for communities in Illinois? Many elected officials and staff in the state regard home rule as a good thing, because home rule cities, villages and towns face fewer obstacles to achieving progress than their non-home rule equivalents. However, in a fashion not dissimilar from Michigan and as will be discussed in detail later, voters in Illinois have, on a few occasions, voted to approve referenda that strips their local governments of home rule authority entirely. Likewise, a significant number of referenda have been held by communities not included within the initial constitutional grant. Some have been successful, but most have not.

Rhetoric such as “blank checks” and “trust” inevitably emerges in these referenda, with citizens sometimes questioning the motives of their elected government. Given the lack of political will in the state legislature at present, it is likely that subsequent efforts to gain—or maintain—home rule will be strictly local. Indeed, efforts this year to expand home rule to smaller communities have appeared to stall in Springfield as a joint resolution to that effect appears to have been placed in the Rules Committee (Illinois General Assembly, 2016).

HOME RULE IN ILLINOIS

The remainder of this briefing offers four findings supported by legal and policy research that can provide elected officials and managers with a brief overview of the development of home rule in Illinois, including some legal challenges to that power. The analysis below also provides readers with a review of ballot efforts to both strip and grant home rule authority in Illinois.

FINDING 1

Through a grant in the state constitution, Illinois home rule communities enjoy some of the strongest powers in the nation, as set forth by the constitution's framers and largely upheld in the courts since 1970. However, municipal leaders and staff in communities that are currently not home rule must decide for themselves if pursuing home rule is an important goal.

Students of the history of home rule will certainly remember that, absent contrary legislation or constitutional provisions, municipalities are political subdivisions of the state and, as such, can only exercise the authority the state expressly grants to them. This came to be known in the United States as “Dillon’s Rule,” named after an Iowa Supreme Court justice known for taking a hard line against local units of government attempting to exercise authority in the 1800s (Eisenman and Friedman, 2004). Such onerous constraints were posed by Dillon’s Rule that the City of Chicago required an act of the legislature to enable its first zoning ordinance in 1923 (Schwieterman, 2006). The rule was so stringent that representatives of the City of Chicago were forced to travel to Springfield to lobby the legislature to allow the City to issue permits to peanut vendors on Navy Pier (LePawsky, 1935). A floor debate during the 1970 Constitutional Convention also referenced a similar “colorful” example of Chicago later having to approach the legislature to approve the shade of emergency lights to be procured for police squad cars (Lousin, 2010).

Dillon’s Rule applied to all Illinois municipalities until the drafters of the 1970 Illinois Constitution included broad and strong home rule provisions that applied immediately to communities of over 25,000 residents, and others by future referenda (Kearney, 2014). Dillon’s Rule continues to apply today to non-home rule communities, and even seemingly minor ordinance drafting can cause such a community to exceed its authority (Kearney, 2014). One of the most important sections of the home rule provision in the 1970 constitution reads,

“[a] home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt., (Ill. Const. of 1970, art. VII § 6(a)).

The provision is remarkably blunt and brief, given the significant power it transfers to municipalities. However, since the constitution’s ratification, the home rule powers granted in the constitution have been roundly litigated, with courts interpreting everything from “pertaining to [a municipality’s] affairs” to whether a municipal enactment was legally a “tax” or not (and, conversely if a tax was “legal” or not). In the vast majority of these cases, the courts, including the Illinois Supreme Court, have been clear: the framers of the Illinois Constitution intended home rule powers to be broad and strong (*Scadron v. City of Des Plaines*, 1992).

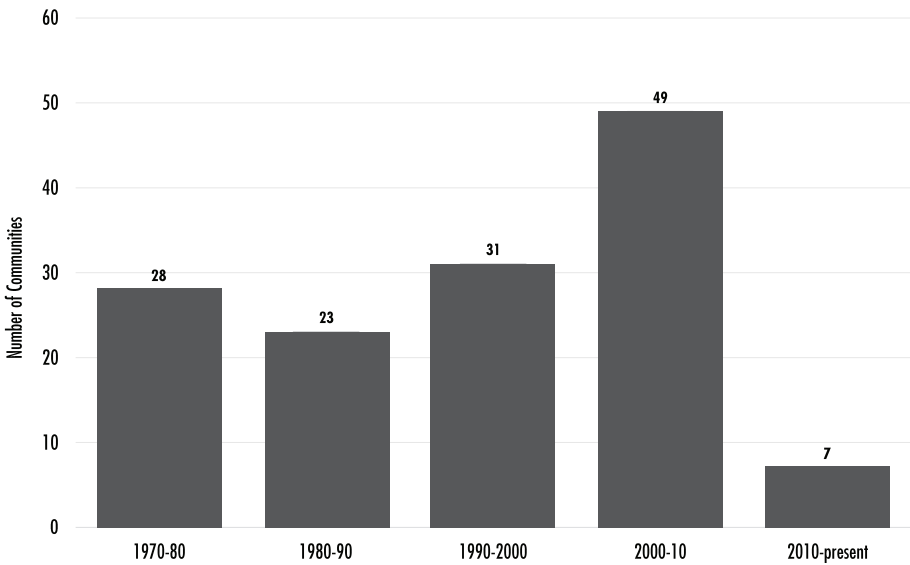
Yet, it is important to note that powers granted to municipalities are not without limitation. The constitution also provides that the state may at any time preempt a municipality's reach on any issue, provided that this preemption is express and clear in the legislation itself (*City of Chicago v. Stubbhub!, Inc.*, 2011). That said, the constitution also provides that preemption of a municipal tax must pass with a supermajority of three-fifths of the legislature (Ill. Const. art. VII. § 6). Given the political deadlock today, it is safe to assume that most municipal taxes remain safe for the near future.

FINDING 2

The fear of new taxes and resident tax burden can prevent communities from gaining home rule. Historically, perception of abuse of home rule taxation power has led several communities to vote to rescind home rule, though these have been isolated cases.

As can be seen in Figure 1, below, the number of communities with home rule generally grew at an appreciable clip during the first four decades of home rule's existence in Illinois. Interestingly, a record 49 communities became home rule

FIGURE 1
Number of Communities in Illinois Gaining Home Rule by Decade



Source: *Illinois Secretary of State (2012); Swanson (2015)*

during the decade of 2000-2010. A further analysis of Illinois Secretary of State data shows that 75% of these occurred between 2000-2007, which speaks to both new municipalities exceeding 25,000 residents due to population shifts, as well as others seeking to resolve challenges related to that growth, along with land use issues and intergovernmental agreements (Illinois Secretary of State, 2012). Likewise, growth in home rule status appeared to cool during the recessionary period of 2008-2010 (Illinois Secretary of State, 2012).

During the initial burst of automatic home rule grants and subsequent referenda in the 1970s, excitement about new home rule powers greatly outweighed distrust (Banovetz, 1983). During that timeframe, in fact, 88 communities of less than 25,000 residents held home rule referenda and 60% of those resulted in home rule status (Banovetz, 1983). Illinois, however, was not immune to the undercurrent of government mistrust and dissatisfaction with taxes. During the late 1970s and early 1980s, so-called “Taxpayer Revolts” began to brew around the country (Buchanan, 1979). Citizen groups such as National Taxpayers United of Illinois (NTUI), located for many years in the Chicago suburb of Berwyn, began in the late 1970s to advocate throughout the state not only against higher taxes, but also against home rule (Gorman, 1979). Calling it “home ruin,” the founder of that organization would regularly ask citizens of both home rule and non-home rule communities whether they could “trust” elected officials with the “blank check” represented by home rule powers (Gorman, 1979).

Efforts like those of NTUI enjoyed early success in Illinois, causing citizens from four municipalities to petition, through a ballot initiative, to formally rescind home rule status—Lisle (1977), Villa Park (1980), Lombard (1981) and Rockford (1983) (Banovetz, 2002). Then the second-largest municipality in Illinois, Rockford’s home rule rescission raised perhaps the most concern out of the four in municipal circles (Banovetz, 1983). Though its population at that time was nearly 140,000, activists were only required to gather 10,800 signatures to get the measure on the ballot (Biondo, 2013). It is not hard to imagine a voter with even an average aversion to additional taxes easily voting for such a provision, particularly if it is presented in a vacuum with no warnings of what might occur in several years or decades time. Quantification of any negative externalities affiliated with Rockford’s vote to date would probably require an intensive study, as would the outcome of any policy measure. However, a foreshadowing of the challenges which lay ahead for Rockford was perhaps felt by the city’s already non-home rule school district the following year. A *Chicago Tribune* article at the time noted that Rockford schools faced

a complete shutdown of extracurricular activities, absent the passage of a tax increase referendum (Papajohn, 1984). One resident interviewed stated, “it doesn’t take much to knock down a tax around here,” (Papajohn, 1984).

In Rockford’s case, the home rule negation ballot initiative also coincided with a recent doubling of a tax that was unpopular in some circles (Little, 1984). Lisle voters, on the other hand, voted out home rule the year after the village board approved construction of a new city hall building, despite many citizens believing another city structure could be renovated for less money (Cherry, 1988). In both cases, though there certainly were national policy forces at play, the elected officials were unable to make their cases in the political arena.

The experiences of Lisle and Rockford show that voters have the capacity to punish elected officials for a prior unpopular action (particularly those involving finances) by negating home rule, under the arguably misguided principle that each citizen, and not the officials they elect, is best situated to decide every issue facing the municipality. This is in essence the “trust” idea set forth by NTUI and other like-minded organizations discussed above. In reality, as every elected official and municipal staff member knows, the average citizen has neither the time nor the inclination to participate in every decision that a home rule community makes on a day-to-day basis. Thus, a good argument can be made that a vote against home rule is a vote against efficiency and efficacy. However, there is nothing in the constitution to prohibit a municipality from regaining home rule after having voting against it (Ill. Const. art. VI, § 6).

FINDING 3

Communication with stakeholders is critical for communities weighing the possibility of pursuing home rule status through a voter referendum, and once secured, home rule can offer officials and administrators powerful tools to tackle large infrastructure and budget challenges.

An excellent example of this can be found in the municipality of Highwood, a northern suburb of Chicago located in Lake County. Highwood’s village manager noted recently that his municipality held two home rule referenda over the past 20 years—one in 1997 and the latter in 2006 (Coren, 2016). The first was unsuccessful because, as the mayor at the time noted, officials wrongly believed that the need for home rule was a “no-brainer” (Coren, 2016). Officials and administrators did not make this mistake the second time, holding community meetings and interviewing business owners to communicate what home rule represented for the community (Coren, 2016). Also, all of the

surrounding municipalities had home rule at the time and had sales tax rates higher than that of Highwood's, further strengthening the case (Coren, 2016). Residents were sold in part by the fact that a potential home rule sales tax would disproportionately impact visitors to the town's many noted restaurants, broadening the tax base (Coren, 2016). The village manager noted that Highwood successfully used home rule last year to fill a budget hole related to the operations of the fire department and also to issue bonds for a historic \$5 million capital project initiative to replace 100-year-old road infrastructure.

Communication also featured prominently into more recent home rule referenda. Of the three ballot initiatives to institute home rule in 2015, for instance, only one was successful, perhaps in part because it was tied to a critical issue—water (Swanson, 2015). Shorewood officials communicated to voters that underground reservoirs from which residents drew their well water were becoming depleted. The officials launched a campaign for home rule, stating that with home rule, they could generate enough tax revenue to fund a pipeline to receive Lake Michigan water from a neighboring community. The referendum passed and the community began efforts to fund the pipeline almost immediately (Swanson, 2015). The Village of McLean, however, was unsuccessful in tying its referendum to the replacement of an aging water tower (Village of McLean, 2015).

Two other referenda were pushed by officials seeking to implement a “crime free housing” ordinance to better hold landlords accountable for criminal behavior occurring on their property (Bustos, 2015). Although home rule certainly would allow a community to pass such an ordinance (provided that the state has not preempted the area, as discussed earlier), it is possible that voters were cautious about the other powers—particularly taxation—that home rule granted. Another factor may be opposition from Illinois REALTORS®, an organization which lobbies on behalf of realtors throughout the state, and which generally opposes home rule due to an opposition to the raising of transfer taxes made possible under home rule (Sievers, 2015). See Table 1, for a brief accounting of statistics behind the 2015 home rule referenda throughout the state. Truly, a “charm offensive” is required for municipalities seeking home rule status, as evidenced by the efforts of officials in Homer Glen, who were able to maintain home rule status in the face of an automatic referendum which occurred after the municipality's population dropped below 25,000 (Reilly, 2012).

TABLE 1
Results of 2015 Home Rule Referenda in Illinois

MUNICIPALITY	POPULATION (2010)	COUNTY	EXAMPLES OF REFERENDUM ISSUES	RESULT IN 2015	OPPOSED BY ILLINOIS REALTORS?
Broadview	7,937	Cook	Taxes	Fail	Y
McLean	830	McLean	New water tower; new funding sources to offset sewer and water costs	Fail	Y
New Baden	3360	Clinton	Crime free housing ordinance	Fail	Y
Shiloh	12,455	St. Clair	Crime free housing ordinance; food and beverage tax	Fail	Y
Shorewood	15,615	Will	Infrastructure for provision of Lake Michigan water	Pass	N

Sources: Illinois Board of Elections, Bustos, supra, Sievers, supra, Village of McLean

CONCLUSION

As this briefing shows, it is important for elected officials and staff at municipalities within the state to be aware of some of the forces that can conspire both for and against home rule. History reminds us that, at the end of the day, it is a highly political issue, and rightly so: home rule is one of the strongest tools a municipality can wield in the pursuit of its objectives on behalf of its residents.

Despite the severe hardship faced by many in Detroit, it is perhaps too simplistic to conclude that this city could have avoided bankruptcy if it had not been stripped years ago of certain home rule powers. However, at a time when a significant portion of the electorate feels disaffected with the state's affairs, and a legislature that has ground to a halt, it is certain that many home

rule communities shudder to think what might be if they had to bring every decision to a ballot referendum, or to Springfield for approval.

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