

“Home Rule”

Defining the Legislative Power of Local Governments in Alabama

The legislative power of the state is clearly defined in our constitution.

- Section 44: *“The legislative power of this state shall be vested in a legislature, which shall consist of a senate and a house of representatives.”*

But what about the legislative power of local governments?

- Section 89: *“The legislature shall not have power to authorize any municipal corporation to pass any laws inconsistent with the general laws of this state.”*
- Section 96: *“The legislature shall not enact any law not applicable to all the counties in the state, regulating costs and charges of courts, or fees, commissions or allowances of public officers.”*
- Section 104: *“The legislature shall not pass a special, private, or local law in any of the following [31] cases....”*

Why is this important? Maybe we can learn something from Mercedes.



Debate in the Alabama Constitutional Convention:

- Mr. Bulger: “No gentleman on this floor will contend that his Commissioners’ Court at home is more capable of legislating for the people of his county than the General Assembly of Alabama, composed of 100 select men....”
- Mr. Rogers: “Why is it that these people can select such fine representatives to the Legislature and yet it is feared that they won’t be able to select satisfactory County Boards to handle these matters?”

Dillon's Rule

- *A local government can do only that which is expressly permitted by the state,*
 - necessarily implied by an express grant of power, or*
 - indispensable to carrying out an express grant of power.*

Dillon's Rule: An Example

Any provision of law to the contrary notwithstanding, the tax assessor in all counties having a population of not less than 225,000 nor more than 400,000 inhabitants, according to the last or any subsequent federal decennial census, is hereby authorized to use a type of paper commonly known as "onion skin" in the preparation of records required to be prepared by the tax assessor in performing the official duties of his office.

Act No. 454 of 1957

Fordham's Rule

- *A local government can take action where not prohibited by the constitution or state law.*
- 1. The state's legislative power is supreme, but it may choose to delegate certain powers to local units of government.
- 2. In these areas, local governments may act on their own, as long as they do not violate the limits established by the constitution or state law.

Municipal Proposals, 1901

- From the Committee on Municipal Corporations:
 - ~~*The Legislature must divide municipalities into not more than 4 classes and legislate for each class by general act, giving all members of the class the same powers.*~~
 - ~~*Cities over 20,000 may adopt charters.*~~

A Legislative Rescue in 1907!

Municipal corporations may from time to time adopt ordinances and resolutions not inconsistent with the laws of the state to carry into effect or discharge the powers and duties conferred by ... law and to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the inhabitants of the municipality, and may enforce obedience to such ordinances.

Code of Alabama, Section 11-45-1

County Proposals, 1901

- From the Committee on Local Legislation:
 - *The Constitution will limit the subjects on which the Legislature can legislate by local act.*
 - ~~*The Legislature may authorize counties to act in areas not covered by general law.*~~

The Language Missing from Sections 104 - 110

“The General Assembly may by general law confer upon courts of County Commissioners, Boards of Revenue or other courts, such power of local legislation and administration, touching all matters and things not provided for by general law, and not inconsistent with the provisions of this Constitution as the General Assembly may from time to time deem expedient.”

Proposal by the Committee on Local Legislation
to the Constitutional Convention of 1901

Constitutional Development, 1901 to Date

- All legislative power was given to the State Legislature.
- No rules for local government decision-making were adopted in the document.
- Strict limits on local acts of the legislature were adopted, but soon local constitutional amendments began to erode them.
- The Legislature in 1907 rescued municipalities to some extent, granting them legislative power within the limits of state law.
- Hundreds of local constitutional amendments, primarily affecting counties, have resulted. In addition, the Legislature has adopted over 35,000 local legislative acts.

Creating Appropriate Balance

- Alabama has municipal and county governments. What are their legislative powers to be? Article IV is incomplete without them.
- Providing stable constitutional rules for local as well as state legislative power promotes efficiency at each level. It is a matter of balance.
- *Limiting the Legislature to general acts is a way of promoting equal treatment under the law. But there is a “one size fits all” problem; thus, some decisions should be made at home.*
- *Allowing local decisions to be made “in the courthouse” promotes accountability. But some decisions span community lines and should be made by general law.*

“The Evil of Local Legislation”

- There are over 35,000 uncodified local acts.
- ➔ *How can local officials and citizens know what the law is?*
- ➔ *Who will govern the state if legislators are focused on local affairs in their own communities?*
- ➔ *Who can taxpayers hold accountable if local officials can't act on their promises?*
- ➔ *When local decisions are made in the statehouse, it's too easy to play "Gotcha!"*
- ➔ *When the local delegation multiplies, stalemates are a frequent result.*

Considerations

1. Create an effective limit on local acts.

- The Arkansas and South Carolina constitutions prohibit the legislature from enacting local acts.
- The Tennessee constitution requires a local act to be approved by 2/3 of the local governing body or by the voters.
- The Georgia constitution allows counties to amend or repeal local acts by ordinance under some circumstances.

Considerations

2. Require the Legislature to create classes of local governments, and legislate for them by general act.

- The South Carolina constitution requires the legislature to create no more than 5 forms of county government, and calls for voters in each county to adopt one of them.
- Alabama law creates 8 classes of municipalities, and the constitution requires general laws for each class.

Considerations

3. Give legislative authority to local governments, consistent with state law.

- The Arkansas and Florida constitutions give all counties such legislative power.
- Georgia's counties can write ordinances to govern their property, affairs, and local government.
- In Louisiana, voters can authorize a local government to manage its own affairs.