



South Dakota Legislative Research Council

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HOME RULE IN SOUTH DAKOTA -- AN UPDATE

Home rule, essentially the freedom for local governments to do anything not prohibited by the state rather than only those things authorized by the state, is a concept that has been around for a long time but has not been used extensively in South Dakota. Since the adoption of home rule in 1994 by the city of Sioux Falls, however, controversy over the extent of the city's home rule powers has led to attempts by the Legislature to limit certain powers of home rule local governments and to subsequent litigation challenging that legislation. While the concept of "local control" has received much attention in and out of the Legislature in recent years, the small number of home rule governments in this state and the controversy associated with attempts to establish home rule and to govern under home rule indicate that the appropriate role of local governments and the appropriate degree of control over local governments exercised by the Legislature are issues that are far from settled.

History and General Concepts

Much of the legal framework for government in the United States is based upon state sovereignty, with the United States Constitution ratified by the states and all powers not granted to the federal government reserved to the states. The Constitution does not mention local governments, and local governments have traditionally been creatures of the state, able to do only the things that are specifically authorized by state law. Known as the "Dillon Rule" after the nineteenth century Iowa judge who articulated it, this principle specified that municipalities were "the mere tenants at will of

the Legislature," and that whenever a local versus statewide concern was in doubt, the state would prevail. In South Dakota, units of local government are known as "political subdivisions of the state" and were created within this tradition of state control.

With increasing control of local affairs by state governments, the demand arose for "home rule" or some form of increased freedom for local governments in carrying out their duties and responsibilities. Home rule originated in the United States during the nineteenth century, with statutory home rule provided in Iowa in 1851 and a Missouri constitutional provision granting home rule to the city of St. Louis in 1875. Movements for the reform of urban governments and the general governmental reform efforts of the "Progressive Era" during the late nineteenth and early twentieth centuries also coincided with increased use of home rule for municipalities and counties. In 1911 California adopted a constitutional amendment authorizing home rule for counties, with three additional states authorizing home rule by 1933. Interest in home rule has grown during the twentieth century, particularly during the 1950s, 1960s, and 1970s. By 1990, 48 states authorized home rule for municipalities, by constitutional or statutory provisions or both, and 36 states authorized home rule for counties, again by constitutional or statutory provisions or a combination of both.

Constitutional or statutory authorization for home rule does not mean that all counties and municipalities in a state will operate under home rule. Generally, the county or municipal government and its voters must propose and

approve the adoption of a home rule charter before the provisions of home rule take effect for the individual local government unit. Even though most states allow city and county home rule in some form, only 63 of the nation's 3100 counties had adopted home rule by the mid-1980s. A larger number of municipalities use home rule, but as a percentage of all municipalities, those with home rule is still quite small. In South Dakota, Shannon and Todd counties and the municipalities of Sioux Falls and Springfield have adopted home rule.

Characteristics of Home Rule in South Dakota

Home rule in South Dakota was proposed by the Legislature in 1957 as a constitutional amendment, but the proposal was rejected by the voters in 1958. The 1961 Legislature proposed an identical measure, which was approved by the voters in 1962 as an amendment to the state constitution. The 1962 amendment authorized home rule for municipalities (but not counties) and specified the methods to be used in adopting a municipal home rule charter. The adoption, amendment, or repeal of a home rule charter could be proposed either by the governing body of the municipality or by a seven-member charter commission that was formed by a petition and election of the voters. The governing body or the charter commission would then submit the proposal to the voters. The constitutional provision also allowed separate or alternative portions of a charter to be submitted to the voters. The 1962 provision allowed home rule municipalities to perform any function that the Legislature would otherwise have had to grant to non-home rule municipalities unless that power was denied by the constitution or by statute. In addition, home rule municipalities were free to determine their own organizational and administrative structures and procedures so long as the governing body was chosen by popular

election and administrative proceedings were subject to judicial review. No South Dakota municipality adopted home rule under the 1962 constitutional amendment; the voters in Rapid City rejected the formation of a home rule charter commission in 1965.

South Dakota's home rule provisions were revised by the 1972 Legislature and ratified by the voters in the 1972 general election. The 1972 provision, which is still in force at the present time, rewrote the local government article of the South Dakota Constitution (Article IX), including its home rule provisions. The most important home rule change made by the 1972 amendment was to allow counties or combinations of counties and municipalities to adopt home rule charters. The 1962 provision limited home rule to municipalities. The 1972 amendment also simplified the procedures for adopting home rule charters and eliminated the provisions relating to charter commissions.

Under South Dakota's present home rule provision (Article IX, Section 2; 1972), any municipality, county, or combination may provide for the adoption or amendment of a home rule charter. Also, a charter may be initiated by a petition of at least ten percent of the number of voters voting in the most recent gubernatorial election in the affected municipality or county. In either case, the question of adoption of the charter must be submitted to the voters of the affected municipality or county, with a majority vote needed to approve the charter.

A South Dakota county or municipality that has adopted a home rule charter may exercise "any legislative power or perform any function not denied by its charter, the Constitution, or the general laws of the state." Home rule governments may choose any form of executive, legislative, or administrative structure, subject to

the requirements that the local legislative body is chosen by popular election and that administrative proceedings be subject to judicial review. The constitution directs that the powers and functions of home rule governments are to be “construed liberally.”

In 1974, the South Dakota Legislature enacted SDCL chapter 6-12, which specifies additional procedures and requirements related to home rule and home rule charters, based on the 1972 constitutional amendment. Chapter 6-12 specifies that local governments are to pay for elections on the question of adopting or amending a home rule charter. The chapter requires that the form or structure of the proposed home rule government be spelled out in the charter. SDCL 6-12-5 prohibits a home rule local government from adopting a charter or any ordinance that establishes standards that are less stringent than standards imposed by state law, although the local standards may be more stringent than state standards unless otherwise prohibited. Chapter 6-12 also establishes various election and filing requirements related to home rule units of government. SDCL 6-12-6 imposes general limitations and restrictions on home rule governments:

“§ 6-12-6. The power of a home rule unit does not include the power to:

- (1) Enact private or civil law governing civil relationships except as incident to the exercise of an independent county or municipal power;
- (2) Define and provide for the punishment of a crime, but this limitation shall not abridge the power of a home rule unit to provide punishment for the violation of ordinances or charter provisions by a fine not exceeding five hundred dollars or by imprisonment not

exceeding six months or by both such fine and imprisonment;

(3) Abridge laws relating to elementary and secondary education;

(4) Change assessment practices and procedures relating to ad valorem taxation of property;

(5) Exempt itself from providing the necessary personnel and facilities to perform services required by general law to be performed by a like unit or units of local government;

(6) Deny referendum on ordinances or bylaws provided by chapter 9-19;

(7) Regulate rates or conditions of service of any public utility regulated by the South Dakota public utilities commission.”

The Record of Home Rule in South Dakota

Since the authorization of home rule in 1962, there has been relatively little activity in terms of local governments attempting to adopt home rule. A complete record of all attempts by local governments to study or adopt home rule is not readily available, but the issue actually came to a vote in the following counties and municipalities:

Rapid City	1965	Failed
Clay County	1974	Failed
Yankton	1975	Failed
Pennington County	1976	Failed
Shannon County	1982	Passed
Todd County	1982	Passed
Springfield	1984	Passed
Sioux Falls	1994	Passed

Given the frequently expressed desire by local

governments for more local control and freedom from state mandates, as well as the theoretical advantages that a flexible home rule government would give a locality in tailoring its government to its particular needs, the failure to make use of home rule is puzzling at first glance. Basically, home rule is not a panacea. Home rule offers additional freedom to local governments, but not complete freedom, and it cannot be expected to work miracles in solving local problems. This is especially true when local problems may have their roots in other areas, such as conflicting municipal and county jurisdictions, or cases in which local government structure or the lack of local government flexibility and freedom to innovate are not necessarily the basic cause of the problem. There are situations and communities in which home rule is an appropriate and valuable mechanism, but it is not the answer to all local government problems, and it is not in every case an improvement of sufficient value to warrant the expense and effort involved in establishing it.

Home rule charters appear to be more palatable to voters if the proponents intend to use home rule as a tool to achieve a specific goal or accomplish a specific project, rather than as a theoretical device to increase local government powers or flexibility. For example, the voters in Springfield approved their home rule charter in 1984 in the midst of the intense controversy over the proposal to convert the University of South Dakota/Springfield into a prison. Springfield's home rule charter would have allowed the municipality to acquire and operate the university rather than see it become a prison. Although Springfield's university proposal did not succeed, the voters did approve the home rule charter, and the charter remains in effect.

Voters seem to fear local governments acquiring too much power through home rule or using home rule to raise taxes or establish new

requirements for local citizens. Any community attempting to adopt home rule faces a difficult education and public relations task, and several South Dakota cities and counties have appointed committees to study the issue of home rule only to have the committee recommend against pursuing home rule on the grounds that the benefits would not offset the expense and effort. Again, home rule can be extremely beneficial for certain communities and somewhat beneficial for most communities, but a local government that is considering home rule should analyze its situation carefully to determine the real nature of its problems, needs, and goals.

Recent Home Rule Issues in South Dakota

As noted above, South Dakota's constitution allows home rule governments to exercise any function not prohibited by the state constitution, the general laws of the state, or the charter of the home rule government. Recently, controversy has arisen over attempts by the Legislature to prohibit certain actions by home rule jurisdictions and whether such legislation is a part of the state's body of general law or an unconstitutional special act that singles out specific municipalities without general statewide application. One complicating factor in making this determination is that most state law dealing with local governments is written in the Dillon Rule tradition. The statutes were intended for non-home rule entities and specify what local governments are allowed to do, rather than what they are prohibited from doing. However, if new legislation prohibiting an action is adopted, it has the appearance of targeting a specific home rule community and not meeting the general application requirement. Two recent legislative acts in South Dakota have been or will be challenged in court on this basis, and the distinction between special and general legislation is not clear-cut.

In 1994, Sioux Falls adopted a home rule charter, but actions by the city under its home rule charter have led to legislation in both the 1995 and 1996 legislative sessions to restrict such actions by home rule jurisdictions. In 1995, SB 125 prohibited any home rule municipality from imposing “any permit or inspection fee, beyond the actual cost of the inspection, on any property which is owned by a unit of government” SB 125 was drafted in response to a Sioux Falls ordinance that established such fees.

In April of 1996, the circuit court in the Second Judicial Circuit declared SB 125 (codified as SDCL 9-12-19) to be an unconstitutional special act that singled out the city of Sioux Falls. The court found the act to not be a part of the general laws of the state even though the act was drafted to apply to all home rule local governments. The court ruled that the act was an unconstitutional infringement on the city’s powers under the home rule provisions of the state constitution. The distinction between general laws and unconstitutional special acts is a matter of judicial interpretation and can be expected to be an issue in future disputes related to legislative limitations on home rule powers.

The 1996 Legislature enacted HB 1291, which prohibits any home rule local government from establishing or increasing “any tax or fee that is not allowed to be enacted or increased by any county, city, or combination thereof that has not adopted a home rule charter.” HB 1291 does not apply to such actions made before March 1, 1996. HB 1291 was introduced in response to an additional one cent sales tax on hotel rooms that was adopted by the city of Sioux Falls to fund a visitor and convention bureau. This “fourth penny” sales tax is not available to non-home rule municipalities and generated controversy in the Legislature because the extra tax affects people from other parts of the state who travel to Sioux Falls. It is likely that HB 1291 will also be challenged in court when it

takes effect on July 1.

The state constitution clearly contemplates the ability of the Legislature to restrict the powers of home rule governments. On the other hand, the constitution also clearly establishes the policy that home rule exists to provide more freedom and flexibility to local governments that have chosen to adopt home rule, and the constitution states that home rule powers are to be “construed liberally.” Both of these general policies are necessary for home rule to function, but the inherent conflict between the two will ensure controversy in future home rule situations.

Summary

South Dakota’s home rule provisions are not markedly different than those found in other states. South Dakota provides for home rule by both constitutional and statutory means, and South Dakota has not enacted any significant amount of legislation restricting the exercise of home rule powers. However, more than thirty years after home rule was authorized, only two municipalities and two counties in South Dakota have adopted home rule charters; and in some of these instances, special circumstances led to the decision to pursue home rule. Also, recent legislation has attempted to prohibit certain actions undertaken by home rule governments. Given the commonly expressed desire for local control and for reduction of state mandates on local governments, the lack of activity in the area of home rule raises questions as to the appropriate roles of state and local governments and the degree of local control that is genuinely desired or feasible. As is often the case, the situation is more complex than it would appear, and home rule is an option that depends primarily on individual situations and local needs.

This issue memorandum was written by Tom Magedanz, Principal Research Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.
