

Home Rule in Michigan—Then and Now

Origin of Home Rule

The modern concept of “home rule” can be traced to the 19th Century and the great waves of people that migrated from rural areas to cities looking for jobs during the industrial revolution. This migration brought with it explosive growth and the need for many new services.

As communities struggled for the best mechanisms by which to provide services in an efficient and effective manner, they found a model in the corporate world and its structure for success. There, rules of operation were set forth in the corporation’s bylaws (charter), a document that was approved by the stockholders (qualified voters) and which could be tailored to meet an individual community’s needs. The key was to develop a form of government that could best provide those services.

During the late 1800’s Michigan made use of the “special act” system of writing city charters. This meant the Legislature had to adopt local or special acts for each community. This was cumbersome and inefficient to say the least. In 1907, more than 400 such acts were written!

Finally through adoption of the 1908 constitution, Michigan became the eighth state to set forth the principles of home rule.

Sources of Municipal Authority in Michigan

The 1908 state constitution and in particular Article VIII, Section 21, gave the electors of each city and village the ability to frame and adopt a charter and “pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of this state.”

As noted by the Constitutional Convention of 1907 through its “Address to the People” the idea was to give each city or village the ability “to frame, adopt and amend

those charter provisions which have reference to their local concerns.” The convention went on to state that “each municipality is the best judge of its local needs and the best able to provide for its local necessities.”

Following adoption of the 1908 constitution, the Legislature moved forward with statutory provisions and enacted the Home Rule City Act, Public Act 279 of 1909. A similar act, the Home Rule Village Act was also adopted for villages (Public Act 278 of 1909). Both established ground rules by which municipalities could adopt and amend their own charters for the purpose of exercising municipal powers and managing their own affairs and to adopt laws and ordinances related to their particular municipality’s needs.

In 1963, Michigan citizens approved a new constitution which included many of the home rule provisions of the 1908 constitution. Article VII, Section 22 recast Article VIII, Section 21 from the 1908 document practically verbatim, while Article VII, Section 34 seems to strengthen the hand of local control by stating that “The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor.”

Much as in 1908, convention comments from the drafting of the 1963 constitution indicate the idea was to give local units of government a broad framework by which to operate. The comments describe Article VII, Section 34 as “a new section intended to direct the courts to give a liberal or broad construction to statutes and constitutional provisions concerning all local governments.” In fact, the comments noted that cities and villages already enjoyed broad powers and the intent was to extend that to counties and townships.

Despite the apparent free hand given to local control, it is clear that the constitution provides no guarantee to the right of local self government. Article VII, Section 22 of the 1963 constitution specifically states that “Each such city and village shall have power to adopt resolutions and

ordinances relating to its municipal concerns, property and government **subject to constitution and law.**" (Emphasis added). The theme is continued in Article VII, section 34—"Powers granted to counties and townships by this constitution **and by law** (emphasis added) shall include those fairly implied and not prohibited by this constitution." The end result—there is nothing to prevent the state legislature from exercising its powers of control over local government.

Erosion of Home Rule

Over the years there have been a number of changes affecting the ability of locals to rule freely without interference. Both statutory and constitutional measures have been passed.

These have included actions to mandate collective bargaining and compulsory arbitration of police and fire labor disputes and to prohibit local from adopting residency requirements or ordinances pertaining to the regulation of such items as mobile homes, firearms, obscene materials and school site plans. Constitutional changes with the adoption in 1978 of the Headlee amendment and in 1994 with Proposal A have affected finance and revenue administration while statutory changes have impacted local property tax bases.

The 2005-06 legislative session has been no different. Legislation has been introduced to exempt shooting ranges from local noise ordinances; pre-empt local regulation of seed ordinances; require statewide uniformity of rental housing inspection programs; require a grace period and maximum fines for zoning ordinance violations; eliminate local control of cable franchising; prohibit government agencies from competing against private enterprises and prevent local units from having any say on whether utilities are sited within the rights of way of limited access highways running through their jurisdictions. Two of the bills, preempting local regulation of seed ordinances and the Wolverine pipeline bill mentioned above have been passed and signed into law.

Institutional Changes and the Politics of Home Rule

What has been the impetus for challenge to home rule over the years? This erosion of local control has not occurred overnight. Michigan's local units of government have always had to protect what is theirs—the right to freely rule according to the wishes of their residents. But circumstances have seemingly made the relationship between state and local government more strained over the last several years.

Several factors have affected the relationship. Governments operate in an anti-tax climate and grapple with a general belief that many of their traditional functions can be performed more efficiently by the private sector. In addition, a declining economy with its pressure on state revenues has collided with the full impact of term limits, leaving us with many state legislators who are seem ill prepared to face tremendous pressure from many different constituencies.

Private sector influences abound as well. The proliferation of lobbying organizations representing different causes has added increased pressures on legislators. More and more there seems to be an attitude that if you have a problem, you can bring it to the Legislature where any number of members will be willing to take up your cause and find a statewide solution. The result has been a slate of legislation like those mentioned above that give local officials the impression that the notion of "home rule" or "local control" mean nothing to state decision makers, even when many of those same legislators have experience in local government. The solution is not to decide whether this indicates a lack of respect for local government or simply the need for legislators to balance the increased demands of other political interests against those of local government. Local officials and advocates must stop dwelling on that question and get on with developing a proactive strategy to counter the dynamic changes which face them.

Preservation of Home Rule— Vigilance and Action

“The see-saw between home rule power and general laws is continuous . . . the possibility of legislative erosion calls for renewed vigilance and rededication on the part of the city.”

Those words, written in the January 1967 *Michigan Municipal Review* as part of an article titled “Rededication to Municipal Home Rule,” by Dr. Arthur Bromage, are as true today as they were nearly four decades ago.

Home rule is a precious commodity that needs to be protected. Over the years it has become less of a legal or constitutional question and more of a political question. Academic observers such as Dr. Bromage have always recognized the existence of various constituent groups exerting pressure over voters and their elected representatives. One of the challenges for local officials and advocates is to recognize that state policy makers may not understand the home rule philosophy or the importance of local government.

In turn, state officials must understand the value of home rule. Home Rule is not a power play by local officials. Rather, it is about the power of local communities to govern themselves through their citizens, under the broad framework provided by Michigan’s constitutional and statutory provisions. When attracting and retaining jobs is priority number one, it is incumbent upon state policy makers to understand that home rule gives local communities the flexibility needed to creating the high quality of life that is critical to building a strong economy.