

Iowa County

Home Rule

Michael Bennett

Assistant Iowa Attorney
General



Keokuk County



Answers the question

Can we do that?



**Pre 1978 answer-
Only what legislature
gave permission to do.**

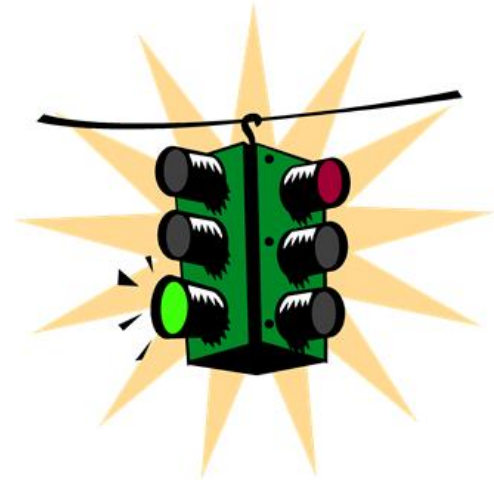
Dillions Rule

Millions Rule

County can exercise the following powers **and no others**

- those granted in express words
- those necessarily implied and incident to the powers expressly granted
- those indispensable to accomplishment of the purposes of the corporation

County Home Rule
Amendment
Art. II, §39-1978



The proposition or rule of law that a county... government possesses and can exercise only those powers granted in express words is not a part of the law of this state.

Iowa Code §331.301

- Statutory enactment of home rule
- Vests county home rule powers in Board of Supervisors.
- If statute:
 - gives power
 - does not give power,
 - repeals power
 - **Only limits** home rule if expressly limited.



Adair County

Exercising Power

- Motion/Resolution
Statement of policy/ order for action
- Ordinance/Amendment
General/permanent county law





Answer after 1978- probably can, but...

- Only on local affairs
- Use code procedures
- Can't levy a tax
- Can't lower state standard
- Can set higher standard- unless state says no.
- If conflict city- then city prevails
- Must be consistent with state law

Local Affairs

- Protect/preserve
 - Rights, privileges, property of county and residents
- Preserve/improve
 - Peace, safety, health, welfare, comfort, convenience of residents.



Muscatine County

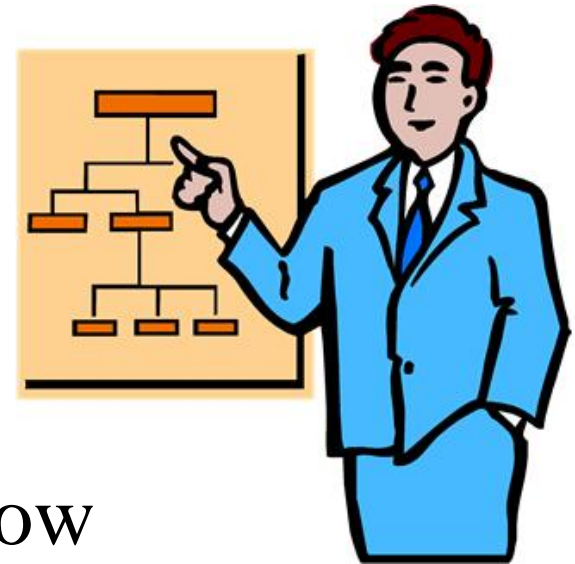
Police Power

Civil law governing civil relationships

- Limitation under Home Rule
- No reported cases.
- County/City minimum wage?



Procedures



- Code set procedure - must follow unless law provides otherwise.
- If not- can create own procedure.
- Ex. §331.361- selling county land
 - Resolution
 - Publish
 - Public hearing

Local Taxes



- Only tax if expressly authorized
- Cannot collect a tax by calling it a fee
- Must relate “fee” to cost of conferring “special benefit”
- Not exact but must justify
- Ex. Can charge for ambulance call, Can’t for ambulance coverage.

Lower Standards



- Can't lower standard set by state law.
- Example
 - Can pass ordinances creating simple misdemeanor crimes
 - Can adopt state simple misdemeanor
 - Can't make higher state offense a simple misdemeanor

Higher standards

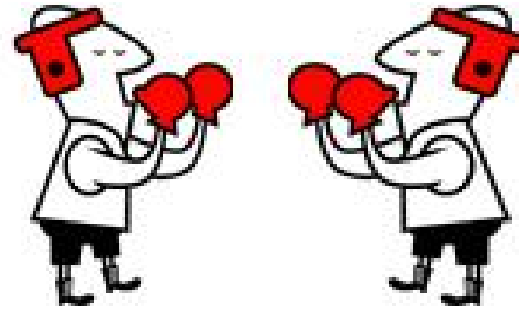
- Can set higher standard than state law **but**
- **Not if state law says can't**





Davis County

Conflict with City



- May regulate in city but...
- If conflict with city- then city prevails
- May be wise to consult with cities
- Ex. Keg ordinances



Consistent with state law ?

PREEMPTION

- Express preemption: legislature has reserved an area of regulation to the state.
- Implied preemption: county action is inconsistent with statute or area is completely occupied by state regulation.



Express Preemption

The provisions of this chapter regarding the licensing of plumbing, HVAC, refrigeration, and hydronic professionals and contractors shall supersede and preempt all plumbing, HVAC,

County Zoning- 335.2 Farms exempt.

1 ...no ordinance adopted under this chapter applies to land, farm houses, farm barns, farm outbuildings or other buildings or structures which are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used.



Implied Conflict Preemption

- Local/state regulation irreconcilable
- Permits what state prohibits
- Prohibits what state permits
- Try to harmonize state and local laws
- Presume local regulation valid
- Conflict must be obvious, unavoidable, not subject to reasonable debate.
- **City ban on smoking in restaurant inconsistent with state law allowing smoking in designated areas.**

Implied Field Preemption



- Clear legislative expression

- to preempt local regulation or

Example 123.38: **The administrator [of the Iowa Alcoholic Beverages Division] may by rule *establish a uniform* transfer fee to be assessed *by all local authorities* upon licensees or permittees to cover the administrative costs of such transfers, such fee to be retained by the local authority involved.**

- **city couldn't set additional transfer fee (Iowa Grocery Industry Ass'n v. Des Moines)**



City of Davenport v. Seymour

Comprehensive review of home rule powers

Speed/red light cameras

Cite owner under city civil infraction

Upheld under home rule powers

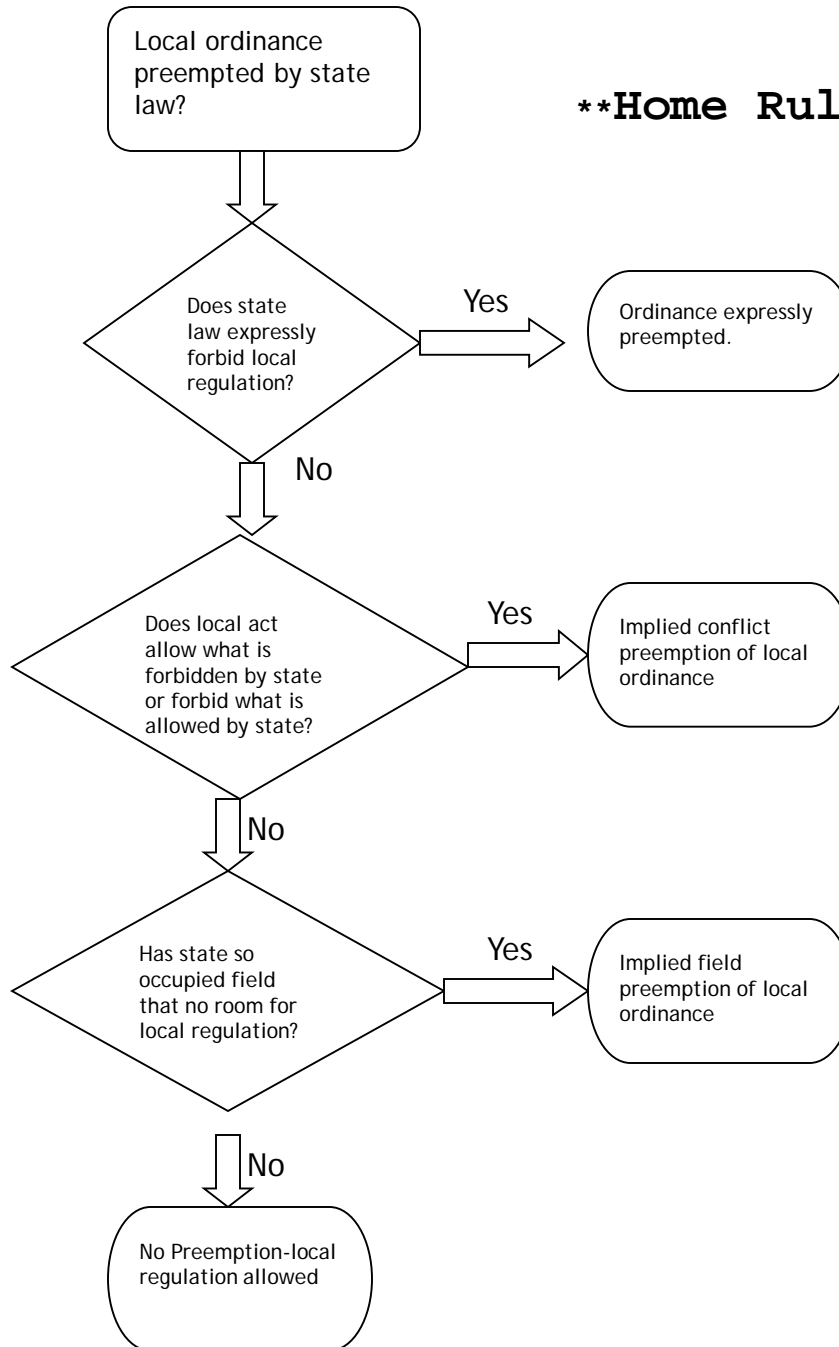
Nothing in state code spoke to civil liability for owners of cars- no conflict

Traffic laws allowed local laws not inconsistent with state code.



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**Home Rule Preemption Analysis



Implied Conflict Considerations

- ▶ must be irreconcilable with state law
- ▶ presume local action validity
- ▶ read state law in harmony with local if possible

Implied Field Considerations

- ▶ extensive regulation insufficient
- ▶ requires clear legislative intent to preempt local or have uniformity in law.



Black Hawk County

Who is not granted home rule powers?

- Schools
- Townships
- County Hospitals
- Must find authority in statute for these actor's powers.



States are the laboratories of democracy-

Justice Louis Brandeis

- Counties and cities are the research labs for states
 - Keg ordinances
 - Drug paraphernalia
 - Smoking ban
 - Camera traffic enforcement



Protecting your powers

- Iowa Supreme Court strong support for home rule powers
- Legislature may preempt locals
- Get involved!
 - ISAC
 - County Officer Associations
 - Local legislators



Resources



- **Iowa League of Cities Special Report A *Legal Review of More Than Forty Years of Home Rule Jurisprudence In Iowa: The Path Traveled and the Road Ahead*, Terrance Timmins, 2010.**
- ***County Home Rule*- by Christie Scase, 2003.**
- **For a copy-send e-mail me michael.bennett2@iowa.gov**
- **Your County Attorney**

Thanks for serving!

