



1966

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R. Cletus Maricle
University of Kentucky

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Recommended Citation

Maricle, R. Cletus (1966) "Municipal Home Rule for Kentucky?," *Kentucky Law Journal*: Vol. 54 : Iss. 4 , Article 8.
Available at: <https://uknowledge.uky.edu/klj/vol54/iss4/8>

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MUNICIPAL HOME RULE FOR KENTUCKY?

THE ORIGIN OF MUNICIPAL GOVERNMENT

The origin of municipal corporations "is to be found in the grant to certain sections of the country in which were to be found comparatively large aggregations of people, of a series of privileges."¹ Originally there was no such thing as a municipal corporation in the Teutonic world; the inhabitants of the populous areas stood on the same ground as did the inhabitants of the rural areas.² The peculiar economic and social conditions of thickly populated districts soon brought about changes in the law by which cities were to be governed. This change was in the form of the granting of a charter.³

The first charter of incorporation appears to have been granted to the city of Kingston-upon-Hull, in 1429, but the incorporation of municipal boroughs does not assume such proportions as to be capable of being styled a movement until the accession of the Tudors to the throne in England. The purpose of these charters of incorporation was to make the boroughs, after the example of the canon law, artificial subjects of private law, so as to permit them more easily to own property and to sue and be sued. Their effect was merely to emphasize the private side of municipal life, and they had little or no immediate and direct influence upon the governmental position of the boroughs.⁴

The concept of a limited sphere of municipal activity was carried over into the United States, where the municipality assumed a managerial role for local needs; one of the results of such being "that the city council had no power to levy taxes in order to provide for the expenses of the local services."⁵ But in disregard of this and in disregard of the idea that a municipality was not a sufficiently governmental authority to be endowed with the attribute of sovereignty, the legislatures delegated to municipal corporations the duties of central government, giving them the dual purpose of satisfying local needs and acting as agents of the central government.⁶

THE BACKGROUND OF HOME RULE, ITS PURPOSE, AND A DEFINITION

Judge John F. Dillon has stated that it must now be conceded that without special constitutional provisions "the great weight of authority denies *in toto* the existence . . . of *any* inherent right of

¹ Goodnow, *Municipal Home Rule* 11 (1895).

² *Ibid.*

³ *Id.* at 12.

⁴ *Id.* at 12-13.

⁵ *Id.* at 16.

⁶ *Id.* at 18.

local self-government which is beyond legislative control."⁷ Judge Dillon formulated what is now commonly known as Dillon's Rule:

It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in *express words*; second, those necessarily or fairly implied in or incident to the powers granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation, not simply convenient, but indispensable.⁸

It has been pointed out that there is a minority line of cases to the effect that "local government is a matter of absolute right, and the State cannot take it away."⁹ Such decisions as this have never been very widely accepted in the legal world, and one authority says that Judge Cooley's argument to this effect was possibly just dictum in the case in question, *People ex rel. LeRoy v. Hurlbut*,^{9a} and that it is not "absolutely clear that any Michigan case was ever decided solely upon the application of this rule."¹⁰

With this background, municipal corporations or municipal governments began their fight for what is now known as home rule. The basis of the fight for home rule is the need for greater latitude within the municipal unit's powers of government, in order to enable the municipality to meet its increasing needs more rapidly and with more flexibility. "Before the close of the Civil War it was suggested that municipal charters should be home-made, instead of coming as a gift from the legislature; but this proposal did not bear fruit until 1875."¹¹ It was in that year that municipal home rule was first recognized. Missouri's new constitution "contained an epoch-making clause: 'Any city having a population of more than one hundred thousand inhabitants may frame a charter for its own government . . .'"¹² but even before this:

There were several instances of very early state constitutional recognition of local autonomy in connection with the election of local officers. Section XXIX of the New York Constitution of 1777 expressly preserved to the 'people' the authority to elect town clerks, supervisors, assessors, constables, collectors and all other officers theretofore elected by them. The Louisiana Constitution of 1812 contained a provision (Article V, Section 23) preserving to the citizens of New Or-

⁷ 1 Dillon, *Municipal Corporations* 154 (5th ed. 1911).

⁸ *Id.* at 448-449.

⁹ Rusco, *Municipal Home Rule* 1 (2d ed. 1961) citing *People ex rel. LeRoy v. Hurlbut*, 24 Mich. 44 (1871).

^{9a} 24 Mich. 44 (1871).

¹⁰ *Id.* citing McBain, *The Law and the Practice of Municipal Home Rule* 13 (1916).

¹¹ McDonald, *American State Government and Administration* 63 (1960).

¹² *Ibid.*

leans 'the right of appointing the several public officers necessary for the administration and the police of said city. . . .'¹³

There are copious definitions of home rule. One authority says that "basically the establishment of municipal home rule implies the complete or partial transfer of a portion of government power from the state to the city."¹⁴ Another says that:

The people of an incorporated city should have the right to handle their own affairs under a constitutional grant of power from the state. Home rule would permit cities to amend their charters by action of the local electors, to choose the activities they wish to perform, and to raise their revenue as they see fit. . . . While no municipality can have complete autonomy, the cities should have the maximum local authority consistent with their position as constituent elements in a sovereign state.¹⁵

The biggest controversy over the definition of home rule has raged over the concept that it is the federal idea applied to city-state relations. Charles M. Kneier and Howard Lee McBain have espoused this idea.¹⁶ On the other hand Elmer R. Rusco has taken the basic unitary relationship of cities with the state; the courts have the view that "strictly speaking, however, home rule does not alter been careful to point out that a city cannot be an *imperium in imperio*, a state within a state."¹⁷ Rusco has gone on to point out that "the basis for its authority must still be the state."¹⁸ It is his view that home rule is an attempt to change the constitutional status of cities so that the cities may base their authority to act upon the constitution and not upon the legislature. The advantage of such a system would be that the authority of the municipality to act would be stable and not subject to change by arbitrary action of the legislature upon whim and caprice. In such a system the state would still be the source of power, but it would be "the fundamental law which grants power to the cities, not the legislature."¹⁹

It is generally concluded that no precise definition of home rule can be formulated, but the basis "behind all concepts of home rule, however, is that the powers of cities should be expanded, although the specific meaning of this idea depends on the means adopted to try to carry it into effect."²⁰

¹³ Model Constitutional Provisions for Municipal Home Rule 8 (1953).

¹⁴ McGoldrick, Law and Practice of Municipal Home Rule, 1916-1930, 2 (1933).

¹⁵ Policy statement adopted by a conference of the Association in 1948, quoted in Mott, Home Rule for America's Cities 23 (1949).

¹⁶ Rusco, *op. cit. supra* note 9, at 3.

¹⁷ *Id.* at 4.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Id.* at 5.

To be distinguished from home rule is the optional charter plan. This is merely a substitute in that it is a device whereby without an actual grant of home rule powers people are allowed to take some part in their local government.²¹ Under this type of plan the people of the city are permitted to choose what type charter they desire their city to have, but it is submitted that this is a poor substitute for home rule, if home rule is actually desirable, because it only allows each community to determine its structure of government and nothing else.²² The legislature is still in a position of determining many actions that may or may not be taken by the municipality.

THE ARGUMENT FOR HOME RULE

One of the strongest arguments for home rule is the principle of self-determination, which is based upon the idea that people in the cities "have many interests that they do not share with the people of the rural districts, and simple justice would seem to demand that they be given the right to control those interests in such manner as they may see fit."²³ "Bound in the innumerable impediments of complicated charter laws, cities have too little opportunity for constructive self-development."²⁴

Since cities have commonly been created by the interaction of economic forces, it is argued that they have become "natural" units for exercising governmental functions; consequently, the city is an important instrumentality in solving local problems and satisfying local needs, and its right to control its own affairs should be recognized.²⁵

Home rule has also proven valuable in providing for variations in the structure of local government. The growth in the number, variety and complexity of our cities has made it highly desirable to have a form of government that could adjust itself to local circumstances.²⁶

Another argument for home rule is that its enactment has helped state legislators by relieving them of the local bills that were a great burden to their predecessors.²⁷ A few years ago an analysis was

²¹ McDonald, *op. cit. supra* note 11, at 68.

²² *Id.* at 69.

²³ *Id.* at 67.

²⁴ McBain, *American City Progress and the Law* 3 (1918).

²⁵ MacDonal, *op. cit. supra* note 11, at 67.

²⁶ Schaler, *Home Rule—A Critical Appraisal*, 76 Pol. Sci. Q. 402-415 (Sept. 1961).

²⁷ *Ibid.*

made of the laws enacted by the 1953 session of the General Assembly of Indiana as part of a study to determine if that state should adopt a municipal home rule amendment to its constitution. Out of 874 bills that were introduced, 283 were enacted into law. The survey showed that 122 (over forty per cent) of these laws related to local matters.²⁸ This shows that the burden upon the state legislatures is indeed great, especially in those states where the legislative sessions are limited in duration. Kansas is an example of what home rule will do in the way of alleviating this problem. On July 1, 1961, the home rule amendment to the Kansas Constitution became effective. Since that time there has been a sharp decline in the amount of state legislative activity in the form of "city bills." There has been a corresponding increase in legislative action by the municipalites. "The 1963 legislative session enacted only 17 city bills into law, as compared to 52 in 1957, 48 in 1959 and 41 in 1961. The 1961 legislature adjourned before the amendment took effect."²⁹

It has also been pointed out that home rule helps to solve jurisdictional problems for cities with growing metropolitan areas.³⁰ But this would only be true where the home rule provisions also provided for some form of annexation specifically aimed at this problem. If home rule were followed in its strictest sense this would be one of the arguments against it. Every small area could argue that it should have home rule.

Not to be underestimated is the psychological value that is embraced by home rule. It encourages the municipalities to solve their own problems without running to the legislature, and it also encourages people to participate in local government.³¹

THE ARGUMENT AGAINST HOME RULE

It has been pointed out that the principle of self-determination, which is one of the big arguments for home rule, is subject to being readily abused; that is, ". . . it can be used to justify the establishment of a separate government for every dissatisfied ward within a city, or every precinct within a ward."³² On its face this is an invalid argument because every principle known is subject to abuse in one form or another. The "danger of abuse does not in any way

²⁸ Heyerdahl, *Indiana Still Seeks Home Rule*, 43 Nat'l. Munic. Rev. (No. r) 182-184 (April 1954).

²⁹ *Home Rule Shifts Law-Making in Kansas*, 52 National Civic Rev. 543 (Sept. 1963).

³⁰ Schaler, *supra* note 26, at 402-415.

³¹ *Ibid.*

³² MacDonald, *op. cit. supra* note 11, at 67.

invalidate the principle. Almost every desirable reform would prove undesirable if carried to extremes."³³

Some students of government oppose home rule on the basis "that the field of strictly municipal affairs is too narrow to deserve serious consideration, and that, even within this narrow field, cities need the firm hand of the state to protect them from the corruption and inefficiency of their own officials."³⁴ This argument has two fallacies. First, it seems unfair to say that the governmental function in which the local interest is of utmost importance is narrow and/or unimportant.

It includes the structure of city government, the salaries, terms, and qualifications of city officials, the methods of awarding contracts, ordinance procedure, the enforcement of charter and ordinance provisions, street cleaning and lighting, fire protection, recreation, water supply, ownership and operation of municipal utilities, zoning, housing and the construction and maintenance of local streets.³⁵

Second: the argument would have one believe that there is never any corruption at the state level, or that if corruption does exist at the state level, it is always less than that at the city level. Such a position seems untenable. "State legislatures sometimes prevent city councils from using city property and funds for unwise or dishonest purposes, but at other times state control becomes a dangerous instrument of oppression in the hands of unwise or dishonest legislators."³⁶ It has been concluded that "honors—and dishonors—are probably about even."³⁷

Despite the obvious unsoundness of the preceding two arguments, there are some sound arguments against home rule for cities. One is "that it represents the wrong emphasis at the wrong time."³⁸ Ever since the 1930's there has been a strong trend toward more centralization; home rule is running against that tide.

One of the strong arguments for home rule has been to invoke the principle of self-determination and free the city from the domination of state legislatures that are controlled by rural legislators. There are those who believe that the city fathers "overestimate the oppressiveness of legislative control and underestimate the state's interest in urban affairs."³⁹ They also blame the cities in part for rural dominated legislatures because the cities often-times send

³³ *Ibid.*

³⁴ *Id.* at 66.

³⁵ *Id.* at 66-67.

³⁶ *Id.* at 67.

³⁷ *Ibid.*

³⁸ Schaler, *supra* note 26, at 405.

³⁹ *Id.* at 405-406.

their top flight politicians to the United States Congress or use them for municipal affairs while using the state legislatures as training grounds for beginners. On the other hand many rural areas elect men of genuine ability to the legislature. "It is not uncommon for the rural legislator to be a seasoned politician with substantial experience in township, village, city and/or county politics."⁴⁰ Regardless of these views it may be argued that the invoking of self-determination to free the city from the domination of state legislatures that are controlled by rural legislators may represent the wrong emphasis at the wrong time in view of recent court decisions requiring legislative districts to be drawn according to population. In support of the argument that home rule represents an application of such emphasis it can be said:

It is paradoxical that at the same time that the home rule campaign has been carried on, the number of municipal government operations which are local in character is diminishing while the number of functions and services that are of state-wide concern is increasing. This is most apparent in such functions as highways, public health, water pollution abatement and urban renewal. That these are matters of state-wide concern has been recognized not only by the courts and state legislatures but also by the municipalities that have sought both statutory and financial support from the state. It appears inconsistent for a municipality to seek financial help from the state for a new highway or a similar project on the grounds that it is a matter of concern to the entire state, but seek to exercise complete control over the planning and administration of the project on the grounds of home rule.⁴¹

Another argument against home rule is that where there are several municipalities in one metropolitan area, regional planning would be impaired.⁴² Two areas of Kentucky in which this problem would arise would be the Louisville area and the Covington area. With the growth of metropolitan areas this could easily occur in other urban sections of the state.

In addition, there are reasons why home rule may become obsolete. First, more and more states are becoming mostly urban in character; second, local problems are becoming regional in scope. A third reason is that public education in both the rural and the urban areas may help alleviate the problem. Finally, "the entire state has a substantial interest in the quantity and quality of municipal services offered by both the central city and its suburbs in these metropoli-

tan areas."⁴³

⁴⁰ *Id.* at 406.

⁴¹ *Id.* at 407.

⁴² *Id.* at 408.

⁴³ *Id.* at 414-415.

THE LAW IN KENTUCKY

(1.) *Constitutional and Statutory Provisions*

The Kentucky Constitution provides as follows:

The cities and towns of this commonwealth, for the purposes of their organization and government shall be divided into six classes. The organization and powers of each class shall be defined and provided for by general laws, so that all municipal corporations of the same class shall possess the same powers and be subject to the same restrictions. . . . The General Assembly, by a general law, shall provide how towns may be organized, and enact laws for the government of such towns until the same are assigned to one or the other of the classes above named; but such assignment shall be made at the first session of the General Assembly after the organization of said town or city.⁴⁴

The six classes of Kentucky cities are:

First Class	100,000 and over
Second Class	20,000-99,999
Third Class	8,000-19,999
Fourth Class	3,000- 7,999
Fifth Class	1,000- 2,999
Sixth Class	Less than 1,000 ⁴⁵

In each class of cities the legislature has granted certain powers but in each instance such already limited powers are further limited by the legislative prerogative of preemption.⁴⁶ Kentucky has made the following statutory attempt toward home rule for first class cities:

83.011. General grant of power to legislative body. The legislative body of any city of the first class is hereby authorized and empowered to exercise all the rights, powers, franchises, and privileges not in conflict with any statute now or hereafter enacted which such legislative body shall deem requisite for the welfare of the inhabitants of such city, and for the effectual administration of all local government now or hereafter within its territorial limits, to the same extent and with the same force and effect as if the General Assembly had by KRS 83.011 or 83.012 granted and delegated to the legislative body of such city all the authority that it is within the power of the General Assembly to grant.⁴⁷

83.012. Legislative policy declared. (1) KRS 83.011 or 83.012 is intended to enable the legislative body of any city of the first class to enact, amend, and repeal local ordinances or resolutions for the purpose of exercising fully and completely the powers granted by the terms and within the spirit hereof. Nothing in KRS 83.011 or 83.012 shall be construed to abolish or curtail any existing statute, or any

⁴⁴ Ky. Const. § 156.

⁴⁵ *Ibid.*

⁴⁶ Ky. Rev. Stat. §§ 83.010 (1893); 84.010 (1894); 85.010 (1893); 86.010 (1893); 87.010 (1893); 88.010 (1893) [hereinafter cited as KRS].

⁴⁷ KRS 83.011 (1954).

power or rights heretofore conferred upon or delegated to such city, or to any board, body, or officer thereof, nor to restrict the powers of the General Assembly to pass laws for the government of cities of the first class.

(2) The powers herein granted shall be in addition to all other powers granted to cities by other provisions of law. A permissive procedure authorized by KRS 83.011 and 83.012 shall not be deemed to be exclusive or to prohibit the use of any other procedure authorized by any act of the General Assembly or local law but shall be deemed an alternative thereto.

(3) Nothing in KRS 83.011 or 83.012 shall restrict the powers granted to cities of the first class by KRS 83.010.⁴⁸

The above statutory provisions were labeled as only an attempt at home rule because in the declaration of the legislative policy, it was declared that "nothing in KRS 83.011 or 83.012 shall be construed . . . to restrict the powers of the General Assembly to pass laws regulating matters of state concern or provide by general laws for the government of cities of the first class."⁴⁹ Consequently, the General Assembly has virtually the same powers now as it did before the passage of this statute. Furthermore, this statute could easily be repealed by another legislative act.

(2) *Kentucky Case Law*

In *Callis v. Brown*⁵⁰ the Kentucky Court of Appeals said that generally, in absence of a constitutional provision safeguarding it to them, municipalities have no right to self government beyond the legislative control of the state. Yet Kentucky has espoused in *Hatcher v. Meredith*⁵¹ the doctrine that municipal corporations are free from legislative control of their private affairs. This appears to be a rather narrow term, especially in a day when the emphasis seems to be on a growing and expanding state and national community.

In *McDonald v. City of Louisville*⁵² the court held that section 181 of the Kentucky Constitution, by providing that "the General Assembly shall not impose taxes for the purpose of any county, city or other municipal corporation, but may by general laws, confer on the proper authorities thereof, respectively, the power to assess and collect such taxes," had taken from the General Assembly the power to impose taxes for purely local purposes. It was further held that while the legislature can prescribe the purposes for which such taxes may be levied and fix a maximum rate therefor, the assessment and

⁴⁸ KRS 83.012 (1954).

⁴⁹ KRS 83.012(1) (1954).

⁵⁰ 283 Ky. 759, 142 S.W.2d 675 (1940).

⁵¹ 295 Ky. 194, 173 S.W.2d 665 (1943).

⁵² 113 Ky. 425, 68 S.W. 413 (1902).

collection of taxes are left to the discretion of the local authorities, and therefore the amendment of March 16, 1900, by the legislature to the charter of the cities of the first class was unconstitutional, to the extent that it required the general council to levy a specified tax to create a fund for pensioning crippled and disabled members of the fire department and the families of deceased members. This case turns not only on section 181 of the Kentucky Constitution, but also on Judge Cooley's theory in *People ex rel. Board of Park Com'ts v. Common Council of Detroit*⁵³ and *People ex rel. LeRoy v. Hurlbut*,⁵⁴ that local government is a matter of absolute right, which the State cannot take away. In *City of Lexington v. Thompson*⁵⁵ it was determined that there were certain implied restrictions on the legislature which may dictate declaring some legislative acts void though not expressly prohibited by the constitution. This case involved the fixing of the compensation of the officers and members of a city fire department, devised for the benefit of the local community. This was held not to be governmental in nature but was rather a matter affecting the municipality in its private or corporate capacity. The act was therefore held void as violative of the city's right to control its local affairs.

While those two Kentucky cases represent the view of the court with respect to fire departments, the court took a different view when it came to police departments. In *Ex parte City of Paducah*⁵⁶ an act fixing the number of policemen in second class cities was upheld. The opinion stated that the broad power conferred by section 156 of the constitution upon the General Assembly to define and provide for the organization and powers of the cities has no limitation other than in principles announced by the courts that the legislative power does not extend to functions performed by the cities merely for the convenience and benefit of the inhabitants. The court then proceeded to give lip service to Judge Cooley's theory that local government is a matter of absolute right which the state cannot take away and to their decision in the *Thompson* case. But after so doing the court held that by reason of public concern with the protection of life and property and the preservation of peace, city police systems are subject to legislative control because they are a part of the state government.

In 1928 came the case of *Board of Trustees of Policemen's Pension*

⁵³ 28 Mich. 228 (1873).

⁵⁴ 24 Mich. 44 (1871).

⁵⁵ 113 Ky. 540, 68 S.W. 477 (1902).

⁵⁶ 125 Ky. 510, 101 S.W. 898 (1907).

Fund v. Schupp.⁵⁷ This case held valid an act of the legislature which required that any city of the first class which previously had elected to establish a policemen's pension system, under permissive legislation, must pay increased benefits. The opinion of the court referred to the *Thompson* case and distinguished it in the same manner as it did in *Ex parte City of Paducah*, but the court did mention the fact that the decision in the *Thompson* case had been questioned and that there were many decisions of other courts to the contrary. As to Judge Cooley's theory, the court in the *Schupp* case made this reference:

The theory that the right of local self-government inheres in the municipalities of this state is essentially unsound, and is based upon the now discarded doctrine that the Constitution of this state is a grant or delegation of power by the people of the state to the state government, and is not, as is now generally recognized a limitation upon a power which, merely by virtue of its sovereignty, would otherwise be absolute.⁵⁸

The *Schupp* case then reaffirms the position taken in *Ex parte City of Paducah* in holding that the regulation of a city police force is a matter of general public concern and not merely one of purely municipal concern or purpose. "[T]he general public is interested in the maintenance of order in all municipalities of the commonwealth, and the General Assembly may by general laws, require municipal corporations to take such steps and to impose such taxes as will provide for the maintenance of order."⁵⁹ It is to be noted that the *Schupp* case also dealt with section 181 of the Kentucky Constitution, but that is not a matter of concern here. Section 181 was also of concern in the *McDonald* case, *supra*.

The distinction drawn between fire and police departments existed until 1960 when the court was faced with the peculiar problem presented in *Board of Trustees of Policemen's & Firemen's Retirement Fund of City of Paducah v. City of Paducah*.⁶⁰ In that case the lower court held unconstitutional an act of the 1956 General Assembly (KRS 95.851 to 95.885) which had established a new form of retirement and pension system for the police and fire departments of second class cities. In those second class cities which had established pension systems for police and firemen under former statutes prior to 1956 the act was mandatory. It was in this category that the appellee City of Paducah fell. The act was optional as to other sec-

⁵⁷ 223 Ky. 269, 3 S.W.2d 606 (1928).

⁵⁸ 223 Ky. 269, 274, 3 S.W.2d 606, 609 (1928).

⁵⁹ *Ibid.*

⁶⁰ 333 S.W.2d 515 (Ky. 1960).

ond class cities. The provision of the act that raised the question of constitutionality was the one requiring the city to make contributions to the pension fund upon an actuarially determined basis out of the general fund of the city. The lower court was of the opinion that the part of the act relating to the police department would have been constitutional if it had been standing alone, but that the part relating to the fire department was unconstitutional and that the two parts could not be severed; consequently, the entire act was held unconstitutional. The lower court based its decision as to the unconstitutionality of the part relating to the fire department upon the decisions in the *McDonald* and *Thompson* cases, *supra*. After determining that no real distinction existed between fire departments and police departments because they serve the primary purpose of protecting property and person and are oftentimes under a single public safety unit, the Court of Appeals was faced with the decision of either overruling the *McDonald* and *Thompson* cases or the *Schupp* case and *Ex parte City of Paducah*. The former two cases were overruled, and the Cooley doctrine was rejected.

With respect to local legislation, *Murphy v. City of Lake Louisville*⁶¹ held that where penalties for violation of traffic regulations set forth in the statutes⁶² were fixed at a fine of not less than ten dollars nor more than one hundred dollars for each offense, the provisions of a city ordinance fixing a fine not to exceed fifty dollars for exceeding a speed limit of fifteen miles per hour were not consistent with that provided by the statute and were repugnant to the constitutional provision⁶³ that no ordinance shall fix a penalty for violation thereof at less than that imposed under statute for the same offense. It was determined by the court that violation of the ordinance establishing a speed limit of fifteen miles per hour upon any street or public way within the city was the same offense as covered by the statute providing a fine for the offense of operating a motor vehicle upon a highway in excess of the statutory speed. Here the municipality had not found that conditions existed requiring a lower speed limit than thirty-five miles per hour, as authorized by the statute which provided that municipalities could authorize by ordinance a reasonable and safe speed limit where there were reasonable limits and notice thereof was given. Instead the city had enacted an ordinance setting a maximum speed limit of fifteen miles per hour on all of its streets. The ordinance was invalid as not contemplated

⁶¹ 303 S.W.2d 307 (Ky. 1957).

⁶² KRS 189.390 (1920); 189.990 (1920).

⁶³ Ky. Const. § 168.

by the statute, in the absence of proof that conditions in the city were of such a peculiar nature that a low speed of fifteen miles per hour should be observed at all times on all of its streets.

The legislature also has considerable power concerning the appointment and removal of municipal officers. *Whitney v. Skinner*⁶⁴ held that the qualification of municipal officers may be prescribed by the legislature. As to the abolition of municipal offices, it has been held that since the General Assembly created the office of city attorney in cities of the third class, it had the right to abolish such office and leave such cities to secure counsel by contract.⁶⁵ The legislature can also abolish a municipal office which has been created under delegated power from the legislature.⁶⁶ But in such cases the legislature cannot impair the obligation of the contract of employment between an individual and a municipality.⁶⁷ The legislative body of the state also possesses the right to allow cities permission to adopt civil service systems.⁶⁸

Municipal taxes are primarily governed by another constitutional provision.⁶⁹ Because of this it does not seem appropriate at this time to enter into a lengthy discussion of them. It will be sufficient to say that the latest case in this area is *Board of Trustees of Policemen's & Firemen's Retirement Fund of City of Paducah v. City of Paducah, supra*. The court there stated the rule that the General Assembly cannot require a city to impose a city tax for strictly local purposes but can require a city to impose a city tax where the purpose is to provide for the general public or the matter is of statewide concern.

From a review of the above it would seem to be rather safe to assume that the General Assembly of Kentucky possesses the power to control cities in many minute details. Furthermore, the classification of cities is such as to aid the legislature in passing laws that apply to only a few cities without having to name the cities specifically.

THE METHOD OF ACHIEVING HOME RULE

If it should be decided that Kentucky should adopt home rule, it is submitted that the only proper way to do so is through a constitutional provision to that effect. One reason for this is a practical one. If it is done through the method of a statute, that statute is

⁶⁴ 194 Ky. 804, 241 S.W. 350 (1922).

⁶⁵ *Black v. Sutton*, 301 Ky. 247, 191 S.W.2d 407 (1945).

⁶⁶ *Howard v. Saylor*, 305 Ky. 504, 204 S.W.2d 815 (1947).

⁶⁷ *Ibid.*

⁶⁸ *City of Covington v. Crolley*, 283 Ky. 606, 142 S.W.2d 151 (1940).

⁶⁹ Ky. Const. § 181.

subject to either an amendment or repeal by another legislative act. In such a case the purpose of home rule could be substantially impaired or defeated. If home rule is brought about by constitutional amendment, the task of changing the provision is much more difficult, and the purpose of home rule would not be so easily impaired or defeated.

There is also a legal issue that may have to be resolved if home rule is brought about by legislative grant through the means of a statute. Home rule by legislative grant in no way changes the constitutional status of municipal corporations. Under such circumstances the Court of Appeals might decide that this was an unconstitutional delegation of legislative power.⁷⁰

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⁷⁰ Two cases so holding are *State ex rel. Mueller v. Thompson*, 149 Wis. 488, 137 N.W. 20 (1912) and *Elliott v. City of Detroit*, 121 Mich. 611, 84 N.W. 820 (1899).