

HOME RULE IN WYOMING A Municipal Official's Guide

A HANDBOOK FOR MUNICIPAL ELECTED OFFICIALS



WYOMING ASSOCIATION OF MUNICIPALITIES 2010

*“A local government needs from the central government, the state,
nothing but adequate power to exercise the functions of local government.”*
—Horace E. Deming, *The Government of American Cities*, 1909



*This brochure was prepared by the Leadership Training Services Board under contract with
Community Builders, Inc. a Wyoming-based consulting firm -
Bobbe Fitzhugh and Joe Coyne, principals - www.consultCBI.com*

HOME RULE IN WYOMING

Municipal Official's Guide

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WHAT IS A "MUNICIPAL GOVERNMENT" AND WHERE DOES IT GET ITS POWER?

The Constitution of the United States of America does not mention local governments. They are created and regulated by the states. One would like to think that state governments would readily delegate authority and responsibility for powers and functions not within its jurisdiction to local municipal governments - the government closest to the people. Unfortunately, the struggle for this concept of "home rule" has not been that simple or clear-cut. While Wyoming municipal government earned the legal right to exercise home rule through a constitutional amendment passed in 1972, fully defining the concept in Wyoming has been a continual struggle. To better understand the evolution of "home rule" in Wyoming, a review of the nature of this creature called "local government" is helpful.

HOW ARE MUNICIPALITIES CREATED?

State governments establish cities and towns as municipal corporations by enacting general legislation (*hence the term "incorporated municipality"*). Municipal corporations come into existence either at the direct request of, or by the consent of, the citizens residing in them – they develop from the people.

Counties, on the other hand, are created by the sovereign power of the State without the

solicitation, consent or concurrent action of the people who inhabit them.



Like private corporations, municipal corporations can own property, enter into contracts, and incur debt. The owners of a corporation (the citizens), give the responsibility of running the corporation (the municipality) to a board of directors (the town or city council). The council acts on behalf of the citizen owners in deciding what the municipality should do.

Municipal corporations differ from private corporations in important ways. For one thing, citizens become "owners" of a municipal corporation simply by living within the municipality's jurisdiction. Municipal corporations also have different powers than private corporations. Private corporations can engage in any legal activity they choose. Prior to 1972, Wyoming municipalities could engage in only those activities which the State of Wyoming had delegated to them. By constitutional amendment, approved by the voters and effective on December 12, 1972, local self-government authority, known as "home rule" was granted to Wyoming cities and towns but that self-governance maintained a number of key restrictions which will be discussed.

WHAT DOES "HOME RULE" REALLY MEAN?

The concept of home rule can be traced to the Tenth Amendment of the U.S. Constitution, providing that states and the American people themselves retain all powers not granted to the federal government. Black's Law Dictionary defines home rule as a "state or constitutional provision or type of legislative action which results in apportioning power between state and local governments by providing local cities and towns with a measure of self government if such local government accepts terms of the state legislation." (Black's 1990, 733).

Simply put, home rule is the delegation of power from the state to its sub-units of government (including counties, municipalities, towns, etc.). That power is limited to specific fields, and is subject to constant judicial interpretation.

There are four primary areas in which "home rule" powers are exercised by governments:

- **Structural** – power to choose the form of government, charter and enact charter revisions;
- **Functional** – power to exercise powers of local self government; sometimes qualified as "broad functional" or,
- **Fiscal** – authority to determine revenue sources, set tax rates, borrow funds, and other related activities; and

Simply put, home rule is the delegation of power from the state to its sub-units of government...

- **Personnel** – authority to set employment rules and conditions ranging from remuneration to collective bargaining.

Home rule, observes political scientist Rodney L. Mott, serves three objectives:

1. It grants local governments the power and flexibility to satisfy increasing demands for local services;
2. It permits local governments to determine the kind of government best suited to their needs; and
3. It usually protects local governments from state intervention, while protecting the state from the constant pressures of local governments for additional power to respond to new challenges (Mott, 1949, 1112).

WHAT WAS THE HOME RULE STANDARD PRIOR TO THE 1972 WYOMING CONSTITUTIONAL AMENDMENT?

Dillon's Rule, named after Justice F. Dillon of the Iowa Supreme court, was the 19th Century precursor to Home Rule. Dillon's position treated cities and towns of a state as those of children connected to a parent. The first part of Dillon's Rule states that local governments have only three types of powers:

- those granted in express words,
- those necessarily or fairly implied in or incident to the powers expressly granted, and,
- those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable.

The second part of Dillon's Rule states that if there is any reasonable doubt whether a power has been conferred on a local government, then the power has NOT been conferred. This is the rule of strict construction of local government powers. (1 Dillon Mun. Corp., 448)

The "Dillon Rule" supported the premise that cities and towns were creatures of the legislature and any doubt as to the existence of a specific power would be interpreted against the city or town. Strict adherence to this rule by the Wyoming Supreme Court was in place prior to 1972. On December 12, 1972, the will of the people of Wyoming reversed the old philosophy.

The key determinant of the ability of a local government to fully exercise the granting of powers from the state is adequate finances. Unfortunately, the least discretionary authority granted by the State of Wyoming tends to be in the area of finance. It is essential for local governing bodies to maximize the flexibility of their legislative and administrative authority and to fulfill the intended purpose of the home rule amendment - to permit cities and towns to govern their own local affairs without the necessity of approaching the legislature for permission to act or soliciting funds to pay for the services they need.



WHAT DOES THE CONSTITUTIONAL AMENDMENT ON HOME RULE SAY?

The purpose of home rule is to give municipalities the widest possible latitude in the handling of their local affairs. To this end, the Wyoming Constitution, Article 13, Section 1, as amended, empowers all cities and towns to provide for their own government and local affairs by ordinance. This power to determine local affairs is subject only to:

- Referendum when prescribed by the legislature;
- Statutes uniformly applicable to all municipalities;
- Statutes prescribing limits of indebtedness; and
- Laws in effect on December 12, 1972 (*the effective date of the home rule amendment*) relating to the incorporation of cities and towns, the methods by which city and town boundaries may be altered, and the procedures by which cities and towns may be merged, consolidated or dissolved, as well as existing laws pertaining to civil service, retirement, collective bargaining, and the levying of taxes, fees or any other charges, whether or not applicable to all municipalities on the effective date of this amendment, which laws remain in effect until changed by general law. Such laws are not subject to charter ordinance.

THE MANDATE FOR HOME RULE

The 1972 Amendment contains a clear mandate by the people of Wyoming to the legislature and to the courts of this state when it provides:

“(b) All cities and towns are empowered to determine their local affairs and government as established by ordinance passed by the governing body...”

“(d) The powers and authority granted to cities and town, pursuant to this section, shall be liberally construed for the purpose of giving the largest measure of self-government to cities and towns.”

Cities and towns can now govern their own affairs, except to the extent the legislature clearly prohibited or preempted an action of the governing body by legislation equally applicable to all cities and towns.

Unfortunately, the Wyoming Supreme Court has not yet firmly established the application of the Home Rule amendment in Wyoming.

WHAT CAN "HOME RULE" DO?

Home rule is designed to provide a democratic, responsible system of local self-government where citizens and officials can meet and solve day-to-day problems as they occur without having to seek permissive legislation. Cities and towns have complete authority to govern their own local affairs by ordinance in all areas not denied them in the constitutional amendment, insofar as any such ordinance does not conflict with an existing uniformly applicable statute.

Examples of areas where Wyoming municipalities can exercise home rule authority include:

Administration

- Creation of Town or City Administrator positions
- Granting of franchises to public utilities

Elections and Government Structure

- Wards or at-large division of municipality
- Number of Council Members
- Method of filling of vacancies on Council
- Form of government (Mayor-Council; City Manager; Commission)
- Decision to become a First Class City rather than an Incorporated Town

Land Use

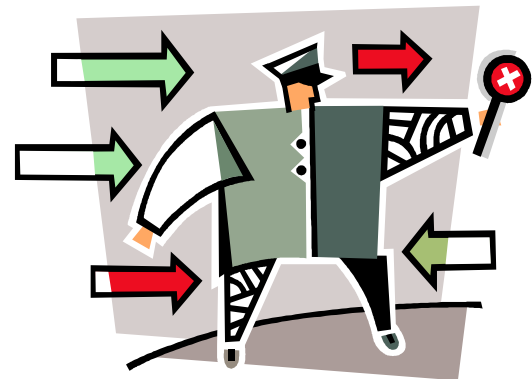
- Zoning
- Planning

Personnel

- Hiring and termination
- Development of salary structure

Enforcement

- Municipal courts
- Traffic enforcement
- Business regulation
- Animal control
- Nuisance abatement



WHAT DOES HOME RULE NOT DO? WHAT IS A CHARTER ORDINANCE?

Home Rule does not grant authority to cities and towns to:

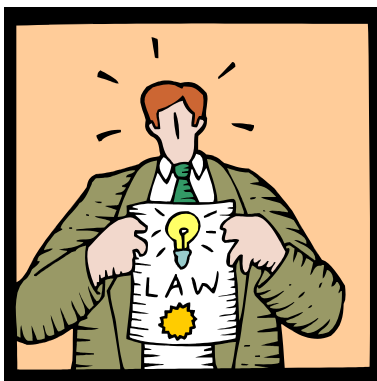
- Establish debt limits. Debt limits for municipalities are set by the Legislature.
- Determine the methods by which they may be incorporated, merged or dissolved, or determine boundaries. This is the legislature's area by general law applicable to all cities and towns.
- Establish laws pertaining to civil service, retirement, collective bargaining in areas where statutes in 1972 were adopted.
- Provide for the levying of taxes, excises, fees or other charges.

The principal general restriction is that any law uniformly applicable to all cities and towns cannot be changed or ignored under home rule. This was written into the constitution so that the legislature could continue to control cities and towns relative to matters of statewide concern.

To the extent that the city or town may wish to adopt an ordinance which conflicts with a statute, other than those specifically addressed in the home rule amendment, the city or town, may, by charter ordinance, actually exempt itself from such statute or modify the statute to its liking, unless the statute is uniformly applicable to all cities and towns. Article 13, Section 1(c) of the Wyoming Constitution states:

“Each city or town may elect that the whole or any part of any statute, other than statutes uniformly applicable to all cities and towns and statutes prescribing limits of indebtedness, may not apply to such city or town. This exemption shall be by charter ordinance passed by a two-thirds vote of all members elected to the governing body of the city or town.”

Municipal officials interested in adopting charter ordinances should be aware of special conditions concerning their passage and should always consult their municipal attorney.



WHAT'S THE BOTTOM LINE ON HOME RULE?

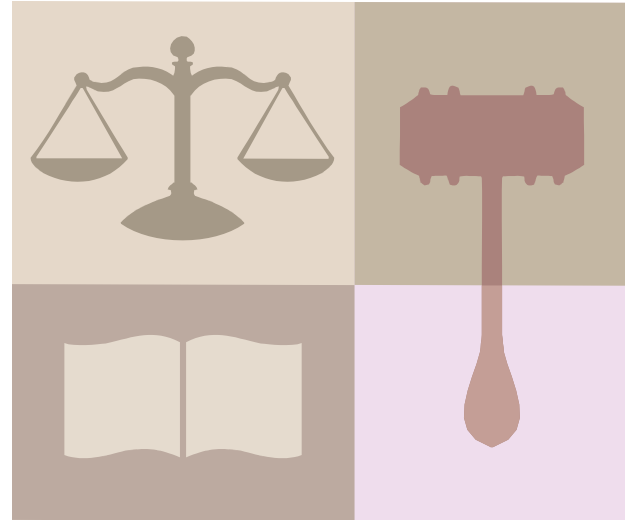
In summary, Wyoming municipalities:

1. Have the right to determine their local affairs and government by ordinance.
2. May legislate on the same subject as contained in a statute, whether or not the statute is uniformly applicable, if the ordinance does not conflict with the statute, and the field of legislation has not been clearly preempted by the statute.

Cities and towns often enact municipal traffic ordinances that mirror state statute to provide for the option of writing citations into municipal court rather than district or county court as dictated by the state statute.

3. May, by charter ordinance, opt out of a statute which is in conflict with an ordinance; if the statute is not uniformly applicable and has not been clearly preempted by statute.

Charter ordinances are commonly used in Wyoming to create the position of Town or City Administrator, exempting the municipality from statutory provisions applicable to either incorporated towns or first class cities that place such authority in the Mayor. Another example of a charter ordinance would retain at-large council member positions in first class cities where dividing the municipality into wards is prescribed by statute.



4. May not opt out of a statute by charter ordinance, which has uniform application, or which is in a subject matter which has been clearly preempted by statute.

A city or town could not establish a maximum fine of \$1,500 for violation of any city ordinance because the \$750 statutory limit is applicable to all cities and towns.

Three criteria are critical in crafting an ordinance under home rule:

1. Does the proposed ordinance relate to a matter reserved to the legislature by paragraph (a) of the Home Rule Amendment?
2. Does the ordinance relate to a matter which can be justified as a local rather than statewide matter?
3. Is the ordinance in conflict with an existing law which is not uniform in its application and does not relate to limitations of indebtedness?

Our government was founded on the principle that the people closest to the problem know best how to solve it.

However, the ongoing ability of any level of government to exert its influence rests upon how effectively that government responds to problems or challenges, and not solely on prescribed rights and authorities.

Political inaction at any level of government leads to preemption by other levels of government. It is incumbent on Wyoming municipal officials to develop the competencies and political will to utilize home rule authority in order to maintain the widest possible latitude in the handling of their local affairs.



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