

Source and Nature of Local Government Authority

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Can a city regulate saggy pants?



Session Overview

- Local governments are created by, and receive all of their authority from the state.
- Issues that come to the courts include:
 - Has the local government acted within its authority?
 - What authority has been delegated?
 - What is the scope of that authority?
 - Have statutory procedures been met?

National Perspective



- In a majority of states, local governments operate under “home rule”: A broad delegation of authority over matters of local concern.
- Sometimes limits state authority to preempt local powers.
- North Carolina is NOT a home rule state.



North Carolina local governments operate under specific grants of authority in individual statutes, charters, and

Cities:
Ch. 160A

Counties:
Ch. 153A

Schools:
Ch. 115C

Local Government Relation to State



Practically unlimited authority to define, restrict, control, local government structure and authority*

* Note state constitutional limit on local acts: [Article II, sec. 24.](#)

N.C. “Home Rule” powers

- Limited authority for local modification of government structure. [G.S. 160A-101](#); [G.S. 153A-58](#)
 - Initiated by governing body, or by petition.*
 - Includes change in form and structure of government.
- SOG resources on changing form of government: <http://www.sog.unc.edu/node/428>

*Note: NC had no general right of initiative, recall, or referendum, but some city charters authorize it.

Statutory Interpretation Issues

- What authority has been granted?
- Role is to determine legislative intent.
 - How much to make of variation in procedural detail?
 - How much to make of variations in delegation among local governments.
 - Implications from specific authorization in local acts.

See blog post: [What is a Local Act?](#)

Counties and Cities Compared



COUNTIES:

- Local implementation of state programs
- More decentralized
- Commissioners have less control over administration of specific programs
- More mandated functions

Counties and Cities Compared



Significant overlap in authorized functions

WHAT IS THE SCOPE OF AUTHORITY?



Judge Dillon

DILLON'S RULE:
A TOWN POSSESSES AND MAY
EXERCISE THE FOLLOWING POWERS
AND NO OTHERS:
THOSE GRANTED IN EXPRESS
WORDS;
THOSE NECESSARILY OR FAIRLY
IMPLIED IN OR INCIDENT TO POWERS
EXPRESSLY GRANTED; AND THOSE
ESSENTIAL TO THE
ACCOMPLISHMENT OF CORPORATE
PURPOSES.

CIRCA 1868

Broad Construction: [G.S. 160A-4](#)

It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, duties, privileges, and immunities conferred upon them by law. **To this end, the provisions of this Chapter and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect:** Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State. (1971)

See also: [G.S. 153A-4](#).

Police Power Authority

- General ordinance-making authority to protect public health, safety, and welfare.
- Statutory preemption:
 - Local ordinance must be consistent with state and federal law and constitution
 - Must not conflict with or duplicate state law
 - No authority if state law “occupies the field.”

G.S. [160A-174](#), [153A-121](#)

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School of Government Local Government Law Resources

- [Coates' Canons NC Local Government Law Blog](#)
- [County and Municipal Government in North Carolina](#)
- [Local Government Law Bulletins](#)
- [Other Publications \(search by topic or author\)](#)
- [Faculty \(by area of expertise\)](#)