

# HOME RULE

Local Self-Government



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# Why Should You Care About Home Rule?

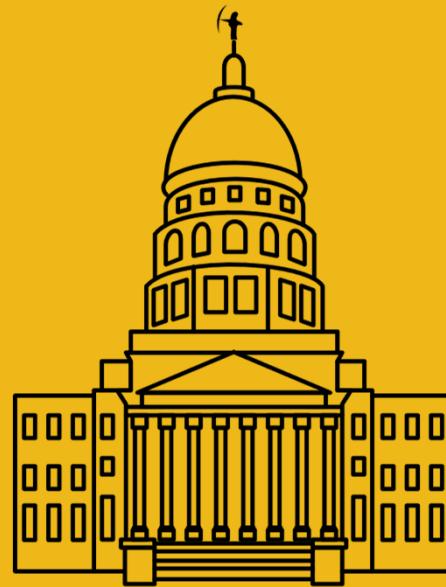


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# Legislative History



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# History

- Prior to the Home Rule Amendment:
  - Dillon's Rule – City only has the power to govern as granted by the state legislature
  - If state statute did not allow the action, it could not be taken
  - If the statutes were silent, cities could not take action
  - Cities had to petition the legislature for specific statutes giving a city the power to take action addressing a local concern



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# History

- League and city officials throughout the 1950's worked to amend the Kansas Constitution to provide cities the authority to self-govern
- Largely based on Wisconsin Constitution
- Study by the Kansas Commission on Constitutional Revision
- Kansas Legislature passed the Constitutional Amendment in 1959



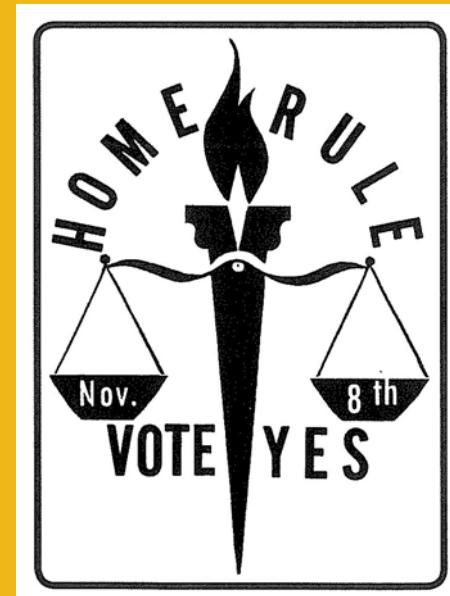
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# Educational Campaign

- Following legislative passage, the League took the lead in educating the public about the benefits of constitutional Home Rule before the 1960 election.

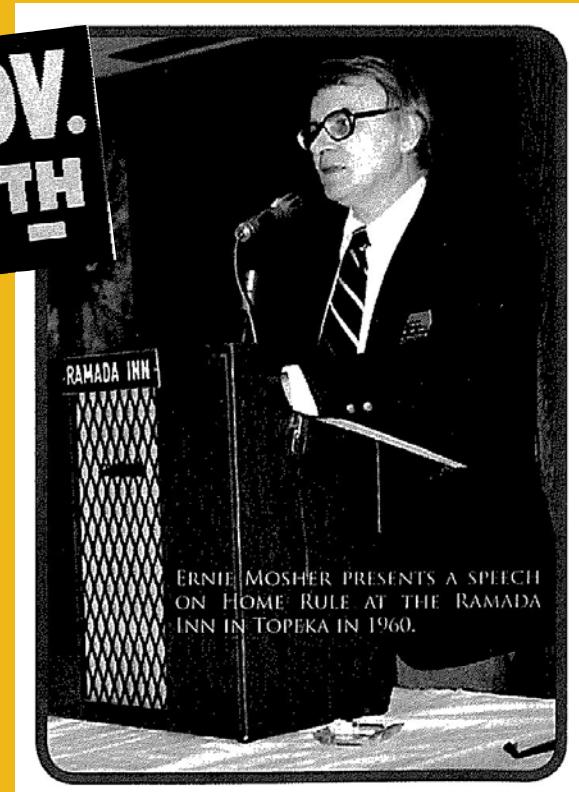


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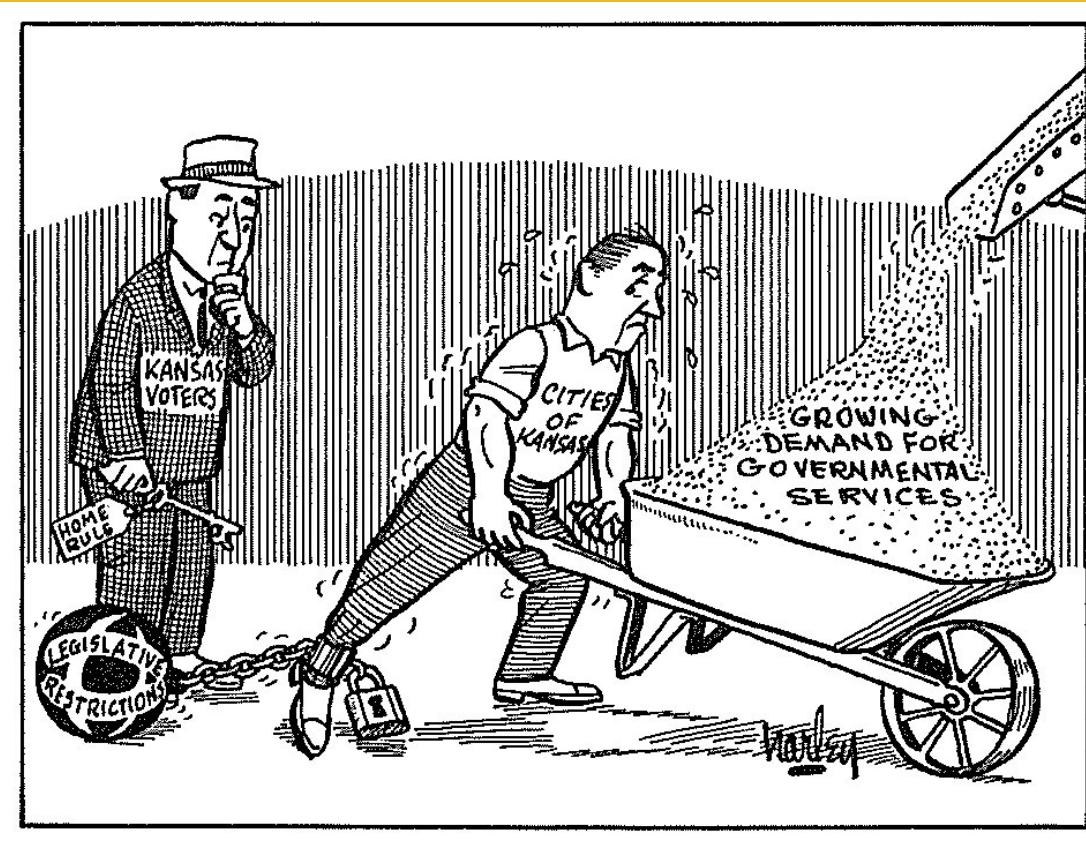
**VOTE YES HOME RULE NOV. 8<sup>TH</sup>**



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# Election Results

- November 8, 1960 voters approved constitutional Home Rule and it took effect July 1, 1961
- Vote Count: 346,739 of the 617,559 votes
- 92 of 105 counties passed the measure
- 56.15% of the 617,559 votes cast
- Carried 90% of KS 617 cities
- “No” votes clustered around Sedgwick County



	City	1960 Population	For Home Rule	Against Home Rule
(1)	Wichita	244,500	26,755	32,761
(2)	Kansas City	130,013	8,682	6,157
(3)	Topeka	118,260	25,508	14,918
(4)	Salina	39,235	4,759	7,518
(5)	Hutchinson	37,392	6,090	6,435
(6)	Overland Park	28,085	8,850	3,761
(7)	Lawrence	25,035	5,784	4,732
(8)	Prairie Village	24,488	7,770	2,757
(9)	Leavenworth	23,181	4,280	2,324
(10)	Junction City	19,622	2,396	1,710
(11)	Manhattan	19,370	4,881	1,910
(12)	Pittsburg	19,273	4,049	2,438
(13)	Coffeyville	18,003	3,248	2,763
(14)	Great Bend	17,731	3,592	1,779
(15)	Emporia	15,537	4,284	2,389
Total 15 largest cities.....			120,928	94,352

The home rule vote in the 10 largest counties:

	County	1960 Population	For Home Rule	Against Home Rule
(1)	Sedgwick	325,399	33,512	44,418
(2)	Wyandotte	198,937	12,734	9,685
(3)	Johnson	138,998	36,084	17,541
(4)	Shawnee	134,440	28,176	17,271
(5)	Reno	59,116	9,075	10,175
(6)	Montgomery	46,508	8,513	7,013
(7)	Saline	46,459	5,706	8,711
(8)	Crawford	39,074	7,314	4,518
(9)	Butler	38,120	6,456	7,077
(10)	Leavenworth	37,338	6,626	4,018
Sub Total 10 largest counties.....			154,116	130,427
Total all other counties.....			192,623	140,393



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## League Publishes Home Rule Manual

A manual, *Home Rule for Kansas Cities*, was prepared by the League and distributed the first of July.

The manual, consisting of 34 pages of text plus index, discusses briefly the new Kansas home rule constitutional provision. Chapter 1 is a brief introduction. Chapter 2 has a copy of the constitutional provision and an outline. Chapter 3 relates to ordinary ordinances, when to use them and two examples, a brief statement on referendums and the status of ordinances passed before the amendment took effect.

Chapter 4 discusses statutes applicable uniformly to all cities. Chapter 5 defines charter ordinances, states when they may be used, outlines the procedure and has a sample charter ordinance. Chapter 6 relates to taxes, excises, fees, charges and other exactions. It discusses tangible property tax levies, the provisions of Chapter 78, Laws of 1961, occupation taxes and Chapter 79, Laws of 1961, and has lists of statutes prohibiting the levying of certain taxes and fees or providing limitations.

Chapter 7 relates to the United States constitution and other provisions of the Kansas constitution, the tax levy exception in the home rule provision, and police courts. Chapter 8 discusses a number of miscellaneous matters, such as annexation, extraterritorial power, bond issues, elections, governmental and proprietary functions, duties of officers, etc.

The appendix contains copies of chapters 78 and 79 of the Laws of 1961.

The price is \$2, plus tax where applicable.

*From the August 1961  
Kansas Government  
Journal – our first  
Home Rule Manual.*



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# So What Is Home Rule?

- Article 12, § 5(b) empowers cities to determine local affairs and government including the levying of:
  - Taxes
  - Fees
  - Charges
  - Other Exaction



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# Is a City's Power Unlimited?



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# Legislature's Exclusive Power

The Kansas Legislature has exclusive power to prescribe requirements and procedures relating to incorporation, annexation and exclusion, merger, consolidation and dissolution of cities. Kan. Const. Article 12, §5(a).



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# Power the Legislature May Exercise

- The legislature may limit or prohibit taxes, excises, fees, charges and other exactions by enactment applicable uniformly to all cities of the same class provided the legislature may not establish more than 4 classes of cities for all these limitations and prohibitions. Kan. Const. Article 12, §5(b).



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# Limits of Indebtedness

- Cities are subject to enactments prescribing limits of indebtedness which prevail whether applicable uniformly or not. Kan. Const. Article 12, §5(b).



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# How does a City Exercise Its Home Rule Power?

1. Ordinary ordinances passed by the governing body.  
Referendum only in such cases as prescribed by the legislature.
2. By Charter Ordinance



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# When Can a City Act?

Step One → Is the Statute Uniform?



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# Uniform Statutes

- Cities can be bound by state laws uniformly applicable to all cities regardless of whether the subject matter of the state law is one of statewide or local concern; however, the state may only preempt the constitutional authority of cities in the manner prescribed in the Home Rule Amendment.



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# Uniform?

- No --- then you can use a Charter Ordinance



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# Procedure for a CHARTER ORDINANCE

- Specific procedure for adoption
  - 2/3 vote of the governing body (includes mayor so mayor has no Veto Power)
  - Published 2 consecutive weeks in the official newspaper
  - Not valid until 60 days after final publication
  - If a proper petition is filed with the clerk during the 60 day period there must be a vote of the citizens before it becomes valid



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# Common Examples

- Residency requirements for City Clerk
- Municipal Court ability to charge court costs
- Elections to establish staggered governing body terms
- 12-104a Vacancy in the Governing Body 60-day requirement
- Transient Guest Tax Percentage



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# When Can a City Act?

- Is the Statute Uniform?
- If yes, does the Ordinance Conflict with Statute?



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# Is there a Conflict?

- "The primary method of determining whether an ordinance is inconsistent with a state standard is to see whether the local law prohibits what the state law permits or the state law prohibits what the local law permits."



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- *Missouri Pacific Railroad v. Board of Greeley County Comm'rs*, 231 Kan. 225, 227, 643 P.2d 188 (1982). The mere fact that a local ordinance is more restrictive than the state law does not create a conflict.
- *City of Wichita*, 275 Kan. at 850-52 (upheld an ordinance extending the city's DUI ordinance to cover operating a bicycle while under the influence);
- *Hutchison Human Relations Commission v. Midland Credit Management, Inc.*, 213 Kan. 308, 517 P.3d 158 (1973) (affirming the ability of cities to establish local civil rights agencies despite the existence of state laws prohibiting acts of discrimination);
- *City of Junction City v. Lee*, 216 Kan. 495, 499, 532 P.2d 1292 (1975) (upholding an ordinance defining the crime of unlawful use of weapons as the carrying of both concealed and unconcealed weapons despite the uniform state law only making it a crime to carry a concealed weapon);



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- *Leavenworth Club Owners Association v. Atchison*, 208 Kan. at 318 (upheld an ordinance establishing a more restrictive closing time for private clubs than state law);
- *Steffes v. City of Lawrence*, 284 Kan. 380, 388, 160 P.3d 843 (2007) (citing with approval 74 J.K.B.A. at 32, which says, "Where both a local law and the statute are prohibitory and the local law goes further in its prohibition but not counter to the state prohibition, there is no conflict.");
- *Home Builders Ass'n v. City of Overland Park*, 22 Kan. App. 2d 649, 669, 921 P.2d 234 (1996) (The excise tax imposed by the city does not conflict with the fee in K.S.A. 28-115 but, rather, is in addition to the fee which K.S.A. 28-115 requires. Thus, the excise tax is not prohibited...).

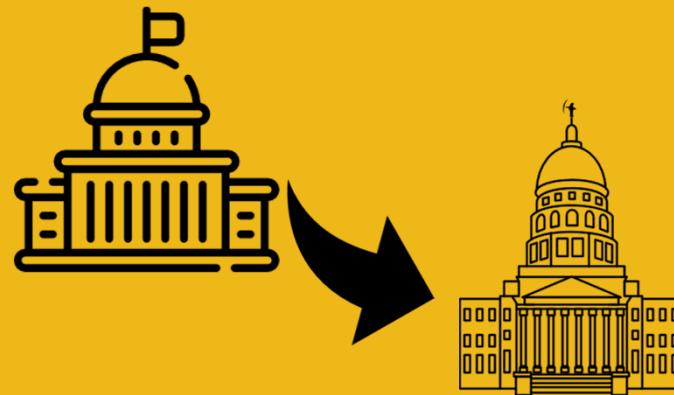


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- Think of Pre-emption like the Federal-State Relationship



# When Can a City Act?

- Is the Statute Uniform?
- If yes, does the Ordinance Conflict with Statute?
- If there is no conflict, did the legislature preempt cities from acting on this subject?



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# If No Conflict, Did the Legislature Preempt?

- Requires Express Preemption. This is what is currently at issue in the T-21 Topeka case.



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# Liberal Construction Required

- Constitutional language itself calls for liberal construction
- Courts must seek ways to find ordinance constitutional if at all possible



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