

MEMORANDUM

DATE: July 9, 2003

TO: Members of the DuPage County Development Committee

FROM: Members of the DuPage County Regional Planning Commission
John Ferrone, Chairman
Robert Iden, Secretary-Treasurer
Joseph Breinig
Kyle Gilgis
Jack Knuepfer
Frank Kudrna, Jr.
John Noel
Pamela Rion
Mary Eleanor Wall

RE: **Findings Regarding Home Rule and Non Home Rule forms of Government**

Scope of Review

In February of 2003, the Regional Planning Commission (RPC) was asked by the DuPage County Development Committee to conduct public meetings on the subject of home rule for DuPage County. The RPC review was to be an unbiased study of the potential benefits and burdens of the exercise of home rule powers by the County. Written RPC findings were to be prepared and submitted to the Development Committee for its further consideration.

Work of the RPC

Over the last six months the RPC conducted eight meetings to study home rule. The RPC invited a diverse group of speakers who offered various opinions and insight on the values of home rule and non home rule governance. The speakers presented information and answered questions all of which was transcribed. They were:

- Thomas Kelty, Esq., a recognized legal expert on the Illinois Constitution and on the operations and management of local governments;
- Mr. James Tobin, with the National Tax Payers United of Illinois, a recognized advocate for less government and for governmental tax accountability;
- Mr. Jeffrey Pruyn, a trustee with the Village of Itasca, an advocate of home rule at the local municipal level;
- Dr. Andrew Prinz, Director of Urban Studies at Elmhurst College, an expert on urban planning and city management;
- Mr. Paul Castiglione, an Assistant State's Attorney with the Cook County State's Attorney's office familiar with Cook County's home rule process;
- Mr. Colin McRae, with the Attainable Housing Alliance representing the home building industry throughout Northeastern Illinois, an expert on public policy issues that affect the attainability and ownership of housing. Alliance members include the Northern Illinois Home Builders Association, the Home Builders Association of Greater Fox Valley, and the Homebuilders Association of Greater Chicago.

The RPC also reviewed Illinois constitutional provisions and Illinois statutes relating to Home Rule adoption and scope of power, case law, articles and other materials including:

- Illinois Constitution of 1970 (emphasis on Art. VII)
- Counties Code, 55ILCS 5/2 et seq.
- Municipal Code, 65ILCS 5/11 et seq.
- Illinois Attorney General Opinions relating to home-rule/non-home rule power, Opinion No. 96-001, 96-033, 94-024, 96-001, 99-020,01-008
- "Home Rule: the Aftermath of a Revolution," Thomas Kelty, Policy Profiles, pub. By Center for Government Studies, Northern Illinois University (1985)
- "Home Rule Hits The Road In Illinois," Elizabeth Fagan, 25Loy.U.Chi.L.J.577 (1994)
- "Reviewing and Revision Dillon's Rule," Gary Schwartz, 67Chi.-Kent L. Rev.1025 (1991)
- Illinois Zoning, Eminent Domain And Land Use Manual, Thomas Gesebracht, et al, LEXIS Law Publishing (2002)

- “The Way We Tax,” Katherine Barrett, et al, Governing, p. 20 et seq. (Feb., 2003)
- “Home Rule in Illinois,” James Banovetz and Thomas Kelty, Illinois Issues, pub. by Sangamon State U., 1987
- “Illinois Home Rule and Taxation: A New Approach to Local Government,” James Banovetz and Thomas Kelty, No. Ill. U. Law Rev. Vol. 8, No. 3 (1988),
- “Home Rule and Taxes,” Parts II and III, James Banovetz and Thomas Kelty, Unpublished Papers
- Listing of Illinois home rule units of government (Nov. 2002)
- “Is Home Rule The Answer?: Clarifying The Influence of Dillon’s Rule on Growth Management,” Jesse J. Richardson, Jr., et. Al, A Discussion Paper Prepared for the Brookings Institution Center on Urban and Metropolitan Policy, (Jan. 2003)
- “Measuring Local Discretionary Authority,” U.S. Advisory Commission on Intergovernmental Relations (1981).
- Various materials regarding campaign for and against home rule referendum
- Various case law summaries

Summary of Findings

While the bulk of the RPC findings are concentrated in the attached document entitled, “***Findings Regarding Home Rule and Non Home Rule Units of Government,***” the following summarizes what the RPC found.

Historically, local units of government in the United States, (i.e.: Counties and municipalities) operated under the doctrine known as “Dillon’s Rule” which generally prescribes that local governments can only exercise powers expressly and explicitly granted them by their state. Most governmental entities in Illinois continue to operate under Dillon’s Rule. In Illinois, separate state statutes govern specific types of governmental entities (e.g. municipalities, counties, park districts, etc.) and enumerate specific powers granted to them by the Illinois constitution and statutes. However, as areas evolved from rural settings to urban environments, the problems and needs of a large community needed local solutions. Local problems became more complex and lawmakers recognized they might require more or different powers from those listed in a state statute.

In Illinois, the issue of solving local problems with local solutions was addressed with the constitutional recognition of home rule units of government. (“POWERS OF HOME RULE UNITS,” Article VII, section 6, 1970 Illinois Constitution). This Home Rule provision grants broad powers to local governments:

“A home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license, to tax, and to incur debt.”

Home rule does not completely free local governments from state legislative control. The State legislature can, and has, preempted home rule by enacting statewide mandates. But home rule local governments are free to act and make policy in all areas that have not been designated to be of statewide interest through state constitutional provision, state law, or initiatives and referendum. While not part of the RPC's scope of review, various methods exist in Illinois for achieving home rule status, including by referendum, by population, or by countywide election of a chief executive officer. Additionally, home rule authority can be limited by voter referendum or by ordinance enacted by a local home rule unit of government.

The attached document represents the RPC's findings on the subject at hand and generally shows that there are benefits to home rule governance that allow local units of government to solve local problems with local solutions. These solutions include the power:

- **“to regulate”**: Home rule governance provides local units of government with tools necessary to establish local regulatory and enhancement programs to address local land use issues and provide incentive for economic growth.
- **“to license”**: Home rule allows local units to set regulatory standards for business and land uses and collect fees for overseeing adherence to those standards.
- **“to tax and to incur debt”**: Home rule allows local units of government to develop ways to recoup the costs of government programs while reducing the burden of the local taxpayer to pay for some of those programs and/or reducing the dependence on the main funding mechanism of local programs - real estate taxes. It allows the governmental entity to find methods to support unfunded mandates from the State and Federal Government or, in some cases, to opt out of those mandates.

However, the attached findings show that the local unit of government's application of home rule authority must be used judiciously to avoid excessive use of its authority, whether real or perceived, or use of authority in conflict with statewide interests.

The attached matrix provides an analysis of the RPC findings on the Pros and Cons of Home Rule and Non- Home Rule units of government.

Thank you for the opportunity to address this very important issue.

Findings Regarding Home Rule and Non Home Rule Units of Government:

Non-home rule units of government operate primarily under Dillon's Rule, which sees local governments as a creation of the State exercising only powers expressly and explicitly granted them by statute. Non-home rule units lack inherent powers over local affairs. The authority of non-home rule units to regulate in different areas is derived from the General Assembly through enactment of State Statutes, which grant enumerated powers to non-home rule units. Article VII, Section 7 of the Illinois Constitution grants non-home-rule units limited power, including the authority to make local improvements funded by special assessments, to incur debt except as limited by law, and to levy additional taxes for the provision of special services (such as garbage collection and building roads).

The Home Rule provisions in the 1970 Illinois Constitution confer broad, flexible powers on qualifying units of government. These powers range from giving the governmental entity greater control over land uses, streamlining its form of governance, and minimizing reliance on real property taxes through the use of other funding sources. These powers provide the structure and authority by which home rule units of government derive their ability to operate more independently from the State legislature.

- A. Home rule authority derives from the Illinois Constitution, not the General Assembly. Home rule places control over affairs of the local units of government with the local government, not the State Legislature. *"A home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license, to tax, and to incur debt."* (Article VII, Sec. 6 of the 1970 Illinois Constitution).
- B. The Illinois Supreme Court has interpreted the home rule provision in the Constitution to mean that, "[h]ome rule units Have the same powers as the sovereign, except where such powers are limited by the General Assembly ... [H]ome rule units have an autonomy and independence limited only by the restrictions imposed by the Constitution or authorized by it" (*City of Urbana v. Houser*, (1977)). The Constitution further directs that the "[p]owers and functions of home rule units shall be construed liberally."
- C. The Illinois Constitution places two kinds of limits on home-rule powers. The first kind of limit is constitutionally explicit: Home rule units may not (i) tax income, earnings or occupation, or license for revenues unless authorized to do so by the General Assembly; (ii) define or punish for felonies; (iii) incur debt payable from property taxes which mature more than 40 years from the date of issuance. The second kind of limit authorizes the General Assembly to restrict, or "preempt", home rule powers. When the legislative limit is invoked a three-fifth's majority of the legislature is required to deny a power to home rule governments, but only a simple majority is needed to reserve to the state the exclusive exercise of power. ("Home Rule, the Aftermath of a Revolution," T. Kelty and J. Banovetz (1985)).

D. The Illinois Supreme Court has ruled that the general body of statutory law limiting the powers of local government does not apply to home rule units, unless the statute explicitly indicates such a legislative intent. (Kanellos v. Cook County, Sommer v. Village of Glenview, Rozner v. Korshak) ("Illinois Home Rule and Taxation: A New Approach to Local Government Enabling Authority," T. Kelty)

The following matrix provides an analysis of the RPC findings on the Pros and Cons of Home Rule and Non Home Rule units of government with respect to three main areas of governance:

A. DEPENDENCE ON STATE LEGISLATURE:

- 1.) Home rule allows the local unit of government to have substantially less dependence on State Government and State Statutes allowing the unit to adopt ordinances important to the local government and its affairs. Under home rule, the local government is able to act and make policy in all areas that have not been designated to be of statewide interest through express statutory limitation. As such, the local unit of government can respond creatively to unique local needs such as quality of life, environmental problems, development regulations, etc.
- 2.) A home rule unit of government is able to revise its own organizational structure to best serve recognized needs and fund programs through the use of a variety of fees, bonds and taxes.

**Non Home Rule Units of Government:
Potential Pros:**

- 1.) State regulations provide sufficient powers to local units of government to allow for equally efficient and fair governance. Where one unit of local government feels disadvantaged by powers possessed by a neighboring unit, that unit can use other remedies granted by the State. (i.e.: State Intergovernmental Agreement Cooperation Act) (J. Tobin)
- 2.) State oversight may prevent exclusionary and provincial actions by local units of government on other units of government. (Brookings Institution)
- 3.) The State, through a limited grant of power to local units, acts as a check on the potential misuse and/or abuse of local government preventing greater taxation or overbearing regulations -- residents mistrust unchecked authority. (J. Tobin)
- 4.) State control provides certainty and stability to local unit of government (i.e.: where power is denied by the state, litigation should be kept to a minimum in deciding legislative affairs).

**Home Rule Units of Government:
Potential Pros:**

- 1.) Local unit of government can exercise any local powers to solve local solutions except those explicitly denied by the State Constitution. (T. Kelty)
- 2.) Liberal construction of home rule per the Illinois Constitution reduces need for litigation to interpret local policymaking and administrative decisions, which in turn reduces cost to fund such litigation. (T. Kelty)
- 3.) Local unit of government has power to design local solutions to local problems-decentralization fosters local experimentation, flexibility, innovation and responsiveness-unit no longer dependent upon the legislature. (T. Kelty)
- 4.) Local unit of government has authority to enact taxes, borrow money, regulate local activities, and alter government structure.
- 5.) Local unit of government is able to revise its own organizational structure. (T. Kelty)
- 6.) Local unit of government can establish the scope and extent of government services and operating procedures. (Pucinski v. County of Cook /T. Kelty)

Potential Cons:

- 1.) Local unit of government is restricted to exercise only powers explicitly given by the State – County is a "Creature of the State". (T. Kelty)
- 2.) Local unit of government is limited to the form of government allowed by Statute and can not change form of government or devise its own organizational structure. (J. Banovetz)
- 3.) Without home rule, local unit of governments legislative powers to adopt ordinances important to its government affairs are limited. (T. Kelty/ J. Pruyne)
- 4.) States mandates may be "one size fits all" solution, which may not directly serve local governments. Restricts local governments ability to tailor programs to fit needs of local citizenry.(A. Prinz)
- 5.) A local unit of government is required to comply with existing, applicable statutes relating to civil service systems. Prevents local units from delivering services in an efficient manner and forces uniform mediocrity. (T/ Kelty)
- 6.) Forces local units to send representatives or hire lobbyist to go to State Capital to seek help from State Legislators on each local problem the local unit confronts. This effort causes the local unit to "doubt" its ability to serve the local constituency and hinders local programs from developing fully. (U.S. Advisory Commission on Intergovernmental Relations).
- 7.) Local units must speculate whether the courts will strike down a particular ordinance as a violation or infringements of Dillon's Rule (Brookings Institution).

- 7.) Home rule powers can be used to override certain state regulations and avoid compliance with unfunded state mandates.
- 8.) Services and regulatory framework can be tailored to the needs and characteristics of the local unit of government.
- 9.) Subject to voter's approval, a local unit of government has the power to change its form of government to another statutory form.
- 10.) Local unit of government has authority to alter civil service provisions concerning police and fire commissions. (P. Castiglione)
- 11.) Local unit of government has the authority to establish more modern personnel systems (Cook County used Home Rule to convert the coroner's office into the medical examiners office staffed by professional trained personnel; and created a new office of County Comptroller to improve the budget process). (P. Castiglione)
- 12.) Reduces the amount of time the State legislature devotes to purely "local affairs." Brookings Institute reports estimate that approximately 20% to 25% of State legislature's time constitutes bills of a purely local nature. (Brookings Institution)

Potential Cons:

- 1.) Local officials may act in an arbitrary and capricious fashion. (J. Tobin)
- 2.) Notwithstanding certain checks on potential misuse outlined in the Illinois Constitution the potential for abuse and misuse of power through excessive taxation or overbearing regulatory authority. (J. Tobin).

[There are 3 oversight methods that can be used to guard against the misuse or abuse of home rule power via the Illinois Constitution:

- (a) General Assembly authorized to preempt home rule powers by a 3/5ths vote of both houses; or
- (b) General Assembly can provide for the exclusive state exercise of power by a simple majority vote of both houses.
- (c) A home rule municipal unit can adopt an ordinance to regulate an issue that is regulated by a home rule county, and the home rule municipal ordinance preempts the county's ability to enforce its own Countywide Ordinance in that municipality. (J. Tobin/T. Kelty)]

- 3.) Less uniformity between neighboring units of government. Services, structures and actions available in one jurisdiction may be absent in another. (Brookings Institution)
- 4.) May create exclusionary and provincial forms of taxation and regulatory actions. (Brookings Institution)

B. BROAD ECONOMIC DEVELOPMENT AND REGULATORY POWERS: Including powers to prevent neighborhood deterioration and blighting issues; extra territorial zoning; intergovernmental relations and agreements:

- 1.) Home rule communities may license and regulate any business or activity except for those professions and occupations which the state legislature has declared the sole domain of state regulation, and therefore not subject to local regulations. A recent survey conducted by the Northern Illinois University Center for Government Studies found that home rule governments use their expanded powers to broaden zoning regulations, develop special planning and subdivision control regulations, and design programs to mitigate neighborhood blight and deterioration. (J. Banovetz/T. Kelty)
- 2.) Home rule communities have some limited authority to exercise their licensing and regulatory authority outside their geographic boundaries provided that the regulated activity affects the health, safety, morals and welfare of the community, and provided that the regulations are exercised in a "reasonable" manner.
- 3.) A home rule county can extend its regulatory authority to assist a non home rule municipality in solving local problems that could not be addressed without home rule.

**Non Home Rule Units of Government:
Potential Pros:**

- 1.) Municipalities are free from interference from a non-home rule county unit of government. (J. Tobin/T. Kelty)
- 2.) Under the State Intergovernmental Agreement Cooperation Act, a unit of government can enter into agreements with municipalities and other counties on issues the county unit has statutory authority over. (J. Tobin/ T. Kelty)

Potential Cons

- 1.) County unit of government is limited in its ability to respond expeditiously and constructively to quality of life concerns and community problems
- 2.) County unit of government may place controls on businesses and uses only when there is specific statutory authority to do so.
- 3.) County unit of government can **not** enter into an intergovernmental agreement with another government body if the

**Home Rule Units of Government:
Potential Pros**

- 1.) Local unit of government would be able to frame innovative responses to community problems (i.e., regulations on adult land uses without state authorization).
- 2.) Local unit of government could expeditiously adopt ordinances aimed at responding to local needs such as quality of life and environmental problems that cannot be properly addressed under limited grant of authority; e.g. highway signage, cell towers; local preference policies.
- 3.) The home rule communities of Northbrook, Addison and Hanover Park used home rule authority to increase frequency of inspections for rental housing units.
- 4.) A home rule community may adopt its own civil service standards for review. (Peters v. Springfield).
- 5.) Home rule powers were used to promote economic and community development in Skokie, including, establishing special economic development districts within the community with special zoning and

agreement covers a topic, which is **not** enumerated under the County's powers in the Constitution. (T. Kelty)

- development goals. (Consumers Ill. Water Co. v. Will County).
- 6.) Ability to implement various strategies such as tax increment finance districts, tax abatements, infrastructure investments, subsidies/loan guarantees, initiated trade missions (Freedom from statutory restrictions facilitate economic development activities.)
 - 7.) Expedite the use of eminent domain in acquiring properties, which are being allowed to deteriorate. (City of Wheaton v. Sandburg)
 - 8.) Enforce regulations regarding property maintenance costs. (Oak Park Trust & Savings v. Village of Mount Prospect)
 - 9.) Working with a non-home rule municipality, a county home rule unit may use its power to solve problems that the non home rule municipality could not have solved without home rule.
 - 10.) If a home rule county adopts an ordinance to regulate an issue, which is regulated by a home rule municipality, the County ordinance does not preempt the Municipality's ability to enforce its own Ordinance. (A. Prinz)

Potential Cons:

- 1.) Municipal home rule units do not possess extraterritorial governmental powers (Commercial National Bank v. City of Chicago). However, County home rule units possess certain extraterritorial governmental powers including taxing authority except where expressly prohibited by the Illinois Constitution and State Law as in the case of the General Assembly's prohibition on a use tax on tangible personal property (T. Kelty).

C. BROAD FUNDING POWERS: Including taxation (sales, motel and property), borrowing (lower interests rates, bonding), creative approaches to financing including fees and licenses to handle several needs including unfunded mandates:

- 1.) Home rule gives the local unit of government wide and flexible taxing powers.
- 2.) Home rule units are allowed to levy any tax needed for local purposes except for taxes on earnings, income and occupations. While a home rule cannot levy its own sales tax, it can increase the local portion of the state sales tax collected within its area.
- 3.) Home rule communities are not subject to statutory limitations on the amount of property taxes they can levy, nor are they subject to property tax caps.
- 4.) Home rule units are not subject to statutory restrictions on the amount of money they can borrow, or on the methods of borrowing money.
- 5.) Home rule units do not need to seek voter approval through a referendum before issuing general obligation bonds.
- 6.) Home rule units can develop creative funding mechanisms such as fees and licenses to pay programs and unfunded mandates from the Federal and State legislators.

**Non Home Rule Units of Government:
Potential Pros:**

- 1.) State-level control ensures greater uniformity, which ensures companies and citizens those requirements such as business licenses, and taxation will be consistent throughout the state. (Brookings Institution).
- 2.) Affords a local unit of government a reason not to legislate for things the public may want because funding through increase taxes, bonds or fees are not available to the unit. (Brookings Institution)
- 3.) Local electorate has direct control (i.e. voting on referendum) to insure local unit of government does not create excessive and unreasonable taxes, fees and licenses (J. Tobin)
- 4.) Amount of bonding authority (and therefore debt) is limited by statute.

Potential Cons

- 1.) Can not levy new taxes or issue bonds without referendum approval. (T. Kelty/A. Prinz/J.Pruyn)
- 2.) Can not levy or increase sales taxes or property taxes. (T. Kelty)
- 3.) Hotel tax receipts limited to tourism uses. (T. Kelty)

**Home Rule Units of Government:
Potential Pros**

- 1.) Home rule units with control of their finances place the responsibility for public expenditures and taxation at the local level and on the local elected officials not on distant state officials.
- 2.) Local unit of government could enter into partnership with a for-profit entity to provide a service and secure a new source of revenue: e.g. power generation; alternate fuel source station. (T. Kelty)
- 3.) Local unit of government could levy new taxes aimed to shift a portion of the local tax burdens from residents to non-residents – “Seven of the nine non-property taxes levied by home rule powers are taxes paid in part by non-residents.” (Kelty, T., “Home Rule and Taxes”)
- 4.) Broader application of Hotel-Motel taxes to reduce property taxes or provide services currently funded from property taxes. (T. Kelty/J. Pruyn)
- 5.) Greater freedom (no voter approval necessary) to borrow money at the lowest possible cost; reduce interest rates. (T. Kelty)/J. Pruyn)
- 6.) Ability to shift a greater portion of bonded indebtedness to general obligation bonds (GO) – (Debt in home rule municipalities is underwritten to a much greater extent by general obligation bonds than by revenue bonds.) (T. Kelty)

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| <ul style="list-style-type: none">4.) Limitation on ability to raise funds in response to additional health and safety needs. (T. Kelty)5.) Subject to statutory restrictions on the amount and the method of borrowing money. (T. Kelty)6.) Limited authority to impose fees and requirements aimed at defraying cost of development.7.) Can not raise funds to provide for cost of mandates from state or federal government including health and safety mandates. (T. Kelty/A. Prinz/J Pruyn)8.) Can not create local schedule of fines to better recoup cost of enforcement activities (i.e.: "P" Tickets)9.) Limited ability to engage in public/private partnerships to generate new source of income. (T. Kelty) | <ul style="list-style-type: none">7.) Borrowing at low interests and having a greater share of their debt financed by general obligation bonds results in savings to local residents (Kelty, T.)8.) Bonded debts can be increased beyond the limits imposed by the State without a referendum (Tobin, J.)9.) Ability to impose a broad and flexible array of impact fees to help finance community infrastructure and defer cost of development. (<u>Village of Lombard v. Illinois Bell Tele. Co.</u>)10.) Local unit of government able to levy property taxes above the levels established by the Illinois Property Tax Extension Limitation Law (35 ILCS 200-18-185, et. seq.) without referendum approval. (T. Kelty)11.) Ability to create new funding mechanism to defray cost of unfunded state and federal mandates such as health and safety mandates.12.) Ability to create fine and/or court fee to better recoup cost of code enforcement activities (i.e.: "P" tickets) <p>Potential Cons:</p> <ul style="list-style-type: none">1.) County home rule units and municipal home rule units may impose a similar tax levy with the municipality collecting their share and the county collecting its share- effectively creating a dual tax. (<u>City of Evanston v. County of Cook</u>)2.) Local electorate loses direct control (via voting) on issues related to taxing, fees, and licenses. (J. Tobin)3.) Potential for property taxes and retail taxes to increase without local mandates (i.e.: referendum) (J. Tobin) |
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