Home rule in Illinois: A modern controversy reignites an old debate

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A pitched battle over the rights of citizens to carry guns dominated much of the Illinois legislative session this past Spring. The debate was foisted on the legislature after a federal appeals court struck down Illinois' (the country's only) statewide ban on possessing a firearm in public. Despite the court ruling, some Illinois municipalities continued to limit conceal-and-carry rights. Citing Chicago's authority to regulate firearms under Illinois' home rule doctrine, Mayor Rahm Emanuel argued that the Illinois legislature should not abrogate Chicago's more stringent gun-control laws. The Mayor's position was supported by recent Illinois Supreme Court and Appellate Court decisions. These decisions state that under the Illinois home rule doctrine certain problems in which a city has a significant interest should be open to local solution, free from veto by voters from other parts of the state who might disagree with the approach advanced by the city or might fail to appreciate the local perception of the problem. Illinois Governor Pat Quinn echoed the holdings of these decisions with an amendatory veto to the conceal-and-carry legislation; the amendatory veto, among other things, would have preserved the rights of home rule units to enact future restrictions on assault weapons.

In the end, the state legislature bypassed home rule concerns by overriding the Governor's amendatory veto and adopted legislation that standardizes conceal-and-carry laws across the state. The new legislation, which relaxes gun-control standards in Illinois, does contain a minor concession to cities and villages; it allows them to modify the "assault weapons" provisions of the new law to suit local needs as long as such provisions are enacted within 10 days from the time the law takes effect. However, home rule, the great compromise between state and local governments contained in the 1970 Illinois Constitution, was pre-empted by the new law and cities such as Chicago are now left to apply a standard for conceal-and-carry of weapons that may not reflect the will of their residents and elected officials.

I. Dillon's Rule v. Cooley Doctrine

The tension between municipal and state governments has a long and storied history. Evidence of conflict concerning the rights and privileges of municipal government dates back to the mid-19th century. While state and local officials debated this topic in all regions of the country, the tension was exemplified through the treatises and opinions of two Midwestern state supreme court justices.

In 1850, John F. Dillon, a medical doctor at the age of 20, left his hometown of Davenport, Iowa, to practice his profession. However, a painful medical condition of his own left him unable to ride horseback—a requirement of being a country doctor at the time—and he changed his career path and became a lawyer. He taught himself the law while he was running a family drugstore in Davenport. By 1862 he was serving on the Iowa Supreme Court. In 1872, based on his unprecedented research on the topic, Dillon published his first edition of *Commentaries on the Law of Municipal Corporations*, a treatise that would lay the groundwork for settling the debates of the future as to the powers of local government relative to the state.

Dillon's findings, as set forth in the seminal case on the topic, *City of Clinton v. Cedar Rapids & Mo. River R.R.*, decided by the Iowa Supreme Court in 1868, are known to this day as "Dillon's Rule." Dillon's Rule stands for the premise that cities and villages owe their origin to, and derive their powers wholly from, their state legislatures. The holding in *Cedar Rapids* states that the legislature creates the powers of local government, and consequently it may rescind them. The court further noted that while the chance is quite remote, a state legislature could, by a single piece of legislation, sweep from existence all of the cities and villages in its state.

In 1868, the same year as Dillon's eloquent opinion on the matter, Thomas M. Cooley, a former professor of law at the University of Michigan and Michigan Supreme Court Justice, published his own treatise concerning the powers of municipalities. The book, *Constitutional Limitations Which Rest upon the Legislative Power of the States of the American Union*, went through six editions by 1890 and has been referenced as the best-known legal treatise in the late 19th century. Cooley's treatise argued that local government (in the form of towns and counties) should have and does have greater autonomy than other state-created municipal corporations because such municipalities represent a collective of people who are united by location and community ties, a bond not found in state-created municipal corporations.

In 1871, soon after the first edition of his treatise was published, Cooley and the Michigan Supreme Court staked out a different and opposite position from Dillon and the Iowa Supreme Court with respect to local government rights. In *Leroy v. Hurlbut*, the Michigan court found that each city operated under the protection of certain fundamental principles

which no power in the state could override or disregard. The court added that local government is a matter of absolute right and the state cannot takes such rights away. Further, the court stated that it would be "the boldest mockery" to say a system of government meets the requirements of constitutional freedom where it is equally permitted to give people full control of their local affairs, or no control at all.

By the mid-1800s, most state courts had heard cases concerning the extent to which state legislatures could control municipal government, with differing results. Some state courts outside of Michigan adopted Cooley's idea of inherent right to self-government, while others adhered to some form of Dillon's Rule. The uncertainty regarding local government powers as they related to those of the state was firmly settled by the U.S. Supreme Court in favor of Dillon's position. In 1891, the Court in *Merrill v. Monticello* reversed an Indiana decision on the subject of powers of local government. The Supreme Court, quoting Dillon, stated:

> 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 expressly granted; third, those essential to the declared objects and purposes of the corporation—not simply convenient but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.

The Court's opinion and the temporary resolution of the state-city conflict had a chilling effect on local authorities. As a result, state governments were able to provide a substantial, although not always successful, check on local governments.

II. The rights of cities and villages in Illinois

In the mid-19th century many political leaders in Illinois, like many of their counterparts in other states, believed that local municipalities had too much decision-making power. Some unfortunate cities and towns entered into risky, ill-fated public works projects, such as subsidies for private railroads, that left taxpayers and local officials struggling to pay debts. Leading into the 1870 Illinois Constitution Convention, Dillon's Rule was popular among local Illinois politicians—many of whom served as constitutional delegates—as a way to provide oversight to local communities who on several notable occasions had abused the privilege of unbridled local government spending. As a result, Dillon's Rule was firmly embedded in the 1870 Illinois Constitution.

Over the next 100 years, however, the views of many local officials in Illinois shifted towards a strong preference for more local control. In the very early part of the 20th century, notwithstanding the *Merrill* decision by the U.S. Supreme Court, Illinois, and many other states, began to limit legislative authority to enact local laws. The intent of these restrictions was to limit the legislature's ability to unduly interfere in a municipalities' local affairs. Problematically, the state did not make corresponding amendments to its constitution that would grant stronger powers to local governments to address matters of local concern. Consequently, local governments lacked the authority to create laws applicable to their own affairs. By the 1940s, the rigid restrictions of the 1870 Illinois Constitution had resulted in an almost complete inability of large municipalities to police their populations. Chicago, for example, could not create licensing fees, allocate tax revenue, or enforce city criminal ordinances without fear of judicial invalidation at the appellate level.

Perhaps recognizing the need to grant stronger powers to certain local governments, including the City of Chicago, but faced with the rigid restrictions of Dillon's Rule, the Illinois Constitutional Convention delegates in 1970 added a home rule provision to the new state constitution. The new provision granted significant authority to certain types of cities and villages through the creation of home rule units. Once a municipality became a home rule unit, the state constitution gave local governments a large degree of control over its "local government and affairs," including the powers to tax, to license, and to incur debt. Under the 1970 Constitution, local government units in Illinois can gain home rule status in two ways. First, any Illinois county with an elected chief executive officer (currently, this is only Cook County), or any Illinois municipality with a population over 25,000 automatically becomes a home rule unit. Second, any other municipality or county can elect to become a home rule unit by referendum.

Once a unit of local government gains home rule status, it is in many ways autonomous from state government. According to the Illinois Constitution, "[p]owers and functions of home rule units shall be construed liberally." However, home rule units are nonetheless subject to limitations found in both the Illinois Constitution and statutes passed by the General Assembly that specifically indicate that they apply to home rule units. Therefore, whereas non-home rule units may only take actions specifically granted by the Illinois Constitution or the General Assembly, home rule units may take any action pertaining to their local government and affairs unless such action is specifically limited by the Illinois Constitution or the General Assembly.

continued next page

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Home rule in Illinois: continued

from previous page

III. Modern permeations of home rule issues

The concept of home rule is now fully integrated into the politics and policies of Illinois. There are approximately 205 home rule cities and villages in Illinois. Of those, roughly 66 became home rule due to population and 139 have affirmatively voted to become home rule. Judge Dillon's doctrine remains intact, but Illinois, like many other states, has come to embrace Judge Cooley's beliefs in the fundamental importance of local government's authority over matters pertaining to their governance and affairs.

The debate between Dillon and Cooley and the resulting home rule provisions in the 1970 Illinois Constitution continue to shape current debates in Springfield regarding the powers of cities and villages. The controversy surrounding the conceal-and-carry law is a powerful current reminder of the ongoing debate between the state and its cities with respect to how much local decision-making should be involved in crafting laws with significant local implications, but each legislative session brings forth other interesting examples. Issues such as casinos and other forms of gaming, environmental regulation, sports stadiums, and various taxes, fees and other revenue-related items are frequently debated in Springfield under the back drop of home rule.

Many members of the legislature understandably may not fully appreciate the robust history of the state-city conflict when debating legislation influenced by such conflict, but with respect to conceal-and-carry of guns the legislature did seem to fully appreciate the two very different opinions on the matter in front of it. The final result, in the face of the unusual combination of a court-imposed deadline for establishing a constitutional conceal-and-carry law, the influence of a very powerful pro-gun lobby, and perhaps the need to have a uniform State-wide law regarding conceal-and-carry, produced legislation that bypassed home rule considerations. Consequently, Chicago and other communities were left with diminished authority to govern such matters. The result will likely meet both federal and state constitutional muster but also is in direct conflict with the expressed will of the Chicago's mayor and perhaps a majority of its residents.

The evolution of the state-city conflict in Illinois dates back more than 100 years and has been influenced by many factors, including the wisdom of prominent judges from other states and the decisions of the U.S. Supreme Court. A population shift in Illinois from an agrarian society to a large urban and suburban society also played a role leading into the Illinois Constitutional Convention of 1970. The results of that convention, the advent of home rule powers contained in the 1970 Constitution, strike a great compromise between the state and its cities and villages. That compromise allows many municipalities great control over their local government and affairs, while at the same time recognizing that ultimately the state has final decision-making authority should it choose to exercise it. More than 40 years after the constitutional compromise, most would agree that the home rule provisions of the 1970 Constitution have been a great success.

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