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County Home Rule Comes to Minnesota

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COUNTY HOME RULE COMES TO MINNESOTA

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I. INTRODUCTION

Counties have traditionally been considered the administrative arm of the state and, consequently, have not needed broad powers.¹ During this century, however, counties have sought

¹ See Board of County Comm’rs v. Bowen/Edwards Assoc., 830 P.2d 1045, 1055 (Colo. 1992). In Bowen/Edwards, the court noted that “[i]n contrast to a home rule municipality, which has certain inherent powers, ‘[a] county is not an independent government entity, . . . rather, it is a political subdivision of the state, existing only for the convenient administration of the state . . . .’” Id. (citing Board of County Comm’rs v. Love, 470 P.2d 861, 862 (Colo. 1970)).
to become more efficient and effective in governing themselves by adopting a home rule form of government.\(^2\) Home rule provides counties extensive freedom to administer and regulate county-level affairs.\(^3\)

On November 6, 1990, Ramsey County voters adopted Minnesota's first county home rule charter.\(^4\) The adoption of this charter was the result of a five-year combined effort, that included officials and staff at the state, county and other local levels and the voters of Ramsey County. After a two-year enactment period, on November 6, 1992, county home rule government came to Minnesota.

This article explores the concept of county home rule. Part II explains the difference between traditional county government and the charter form of government and discusses the advantages and disadvantages of operating under home rule. Part III is a "cookbook" for enacting a county home rule charter. This section is intended as a practical guide to outline the specific steps and procedures for becoming a home rule

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3. See generally Peggy Flicker Addicks & Gary R. Currie, Home Rule and Home Rule Charters, A Look at Some Elements of County Home Rule for Minnesota and "General Welfare" Powers 1 (1988) (on file with the League of Minnesota Cities, 3490 Lexington Avenue North, Saint Paul, Minnesota 55126) (stating that the term home rule means "extensive freedom for local governmental units to administer and regulate local affairs"); J. D. Hyman, Home Rule in New York 1941-1965, Retrospect and Prospect, 15 Buff. L. Rev. 335, 337-38 (1965) (stating that the term home rule refers to two closely related concepts: granting affirmative power and restricting state legislative interference in matters over which the home rule unit has affirmative power); Terrance Sandalow, The Limits of Municipal Power Under Home Rule: A Role for the Courts, 48 Minn. L. Rev. 643, 644-45 (1964) (stating that home rule is both a political symbol synonymous with self-determination by local units of government, and a legal doctrine which describes a particular method for distribution of power); Susan Barnhizer Rivas, Note, The Indiana Home Rule Act: A Second Chance for Local Self-Government, 16 Ind. L. Rev. 677, 679 (1983) (stating that home rule gives local governments authority to individualize and experiment with new approaches to effective government without needing state authorization).

4. The Ramsey County charter is dated December 12, 1989 and became effective November 6, 1992. The charter and other documents cited herein that specifically pertain to the evolution of the Ramsey County Home Rule Charter are on file in the Ramsey County Charter Commission Office, Office of the County Manager, Ramsey County Court House, Saint Paul, Minnesota.

The Ramsey County Home Rule Charter was not adopted in response to government crisis. Instead, the charter commission hoped the charter would make good government better. See Ramsey County Charter Comm'n, Executive Summary of the Draft Home Rule Charter for Ramsey County 1 (1989) [hereinafter Executive Summary].

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Part IV addresses the scope and extent of home rule power. Because Ramsey County is Minnesota’s first home rule county, the potential scope of county home rule power in Minnesota is unknown. As a general rule, home rule gives a county broad power to legislate on matters that are purely of county concern. Nevertheless, determining whether the state legislature has preempted a certain subject matter and whether a matter is a county rather than a state or city concern can be extremely difficult. Part IV proposes a framework for analyzing the legal issues that may arise when operating under county home rule. Part V contains a comprehensive survey of case law addressing this issue.

II. THE CONCEPT OF COUNTY HOME RULE

A. Traditional County Government

States are divided into counties for the more convenient exercise of government powers. Currently, forty-eight states utilize the county as the local governmental unit. Counties have traditionally been considered the administrative arm of the state possessing only derivative powers. Under this traditional view, counties did not have or need broad powers. The state made policy decisions and counties implemented them. State law provided what little discretion was
necessary.12

County government, however, has undergone an enormous change and has increased in importance.13 Counties now have more responsibilities and more discretion.14 The result is a “county government that is more professional, more flexible, and better equipped to handle the complexities that confront local governments in today’s political and social environment.”15

B. The Concept of Home Rule

1. What is a Home Rule Charter?

Home rule is a state constitutional provision or legislative action16 providing city or county government with a greater measure of self-government.17 The basic document used to carry on the function of home rule is the home rule charter.18 The charter becomes the constitution for local government.19

Effective home rule has two basic components.20 First, effective home rule includes an affirmative grant of power to a city or a county government to manage its own affairs.21 Second, effective home rule gives a city or county government a fair amount of autonomy from state legislative control.22

12. Id.
13. DeSantis, supra note 7, at 55, 64.
14. “Counties are engaged in a wide range of services and regulations relating to law enforcement, jails, roads, human services, health, hospitals, parks and recreation, solid waste disposal, libraries, land use planning and zoning, . . . licensing, . . . building inspections, surface and ground water management, and ambulance service.” Addicks & Currie, supra note 3, at 13.
15. DeSantis, supra note 7, at 64.
16. Addicks & Currie, supra note 3, at 1. Some jurisdictions, such as Wisconsin, grant home rule both by their state constitution and by statute. Sandalow, supra note 3, at 668 n.99.
17. BLACK'S LAW DICTIONARY 733 (6th ed. 1990). See also supra note 3.
19. Id. A home rule charter is “[t]he organizational plan or framework of a municipal corporation, analogous to a constitution of a state or nation, drawn by the municipality itself and adopted by popular vote of its people.” BLACK'S LAW DICTIONARY 734 (6th ed. 1990).
21. Id. Home rule is a “method by which a state government can transfer a portion of its governmental powers to a local government.” Id. at 713 n.1. See also Glauberman, supra note 2, at 177 (stating that home rule was historically adopted so that state legislators were not involved in the day-to-day operations of local government units).
In a county not operating under home rule, the "county government has only the powers expressly granted by the legislature, and powers 'necessarily incident' to those express powers. Counties' powers are narrowly construed and must be granted specifically by statute." Conversely, under home rule, the county possesses broad governmental powers, unless limited by state or federal law.

2. County Home Rule

California adopted the first constitutional provision granting home rule to counties in 1911. Four years later, Maryland followed suit. As recently as 1965, only eighteen states allowed some form of county home rule or other optional form of government. In the 1970s, however, states began to give counties greater autonomy.

At least thirty-six states currently allow some form of county home rule government. Twenty-three of the thirty-six states allow adoption of a home rule charter. Thirteen states give limited autonomy to counties through limited home rule provisions or other optional forms of government.

Although thirty-six states allow some form of county home rule, only eighty of the approximately 3,050 counties nationwide have

the goal of home rule units is to prevent unwarranted and possibly detrimental state interference in local affairs). There continues to be considerable controversy regarding the permissible range of legislative interference in matters of local concern. See Glauberman, supra note 2, at 172 n.3.

23. Addicks & Currie, supra note 3, at 2. As one court stated:

Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control.

City & County of Denver v. State, 788 P.2d 764, 767 (Colo. 1990) (citing City of Clinton v. Cedar Rapids & Mo. River R.R., 24 Iowa 455, 475 (1868)).

24. See infra part IV.

25. Glauberman, supra note 2, at 180.

26. Id.

27. Id.

28. DeSantis, supra note 7, at 58.

29. Id.

30. Id. at 57. Currently, Alaska, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington and Wisconsin allow some form of county home rule. Id.

31. Id. at 56.
adopted home rule charters.\textsuperscript{32} Four states have only one county that has adopted a charter.\textsuperscript{33}

Approximately fifty percent of home rule charters nationwide have been enacted since 1970.\textsuperscript{34} The relative newness of the ability of counties to adopt home rule may explain, in part, the small number of counties that have adopted home rule.\textsuperscript{35} Overall, more populous counties tend to adopt home rule charters more frequently than less populated areas because of their greater need for local services and greater resources.\textsuperscript{36}

C. Advantages of Home Rule

The charter form of government provides many advantages. First, a charter confers broad power on the local governmental unit.\textsuperscript{37} Under home rule, the county is presumed to have the authority to act.\textsuperscript{38} The home rule unit can have the form of government and the full range of power which the people of that community desire it to have.\textsuperscript{39} Home rule power provides a basis for the home rule unit to act assuming state or federal statutes do not prohibit such action.\textsuperscript{40} This power can be used to "fill in the gaps" left by state statutes.\textsuperscript{41} Home rule power is construed broadly by the courts.\textsuperscript{42} As new problems and issues arise, the county has the ability to handle them without going to the legislature.\textsuperscript{43}

Second, the charter form of government gives a county great

\begin{itemize}
\item \textsuperscript{32} Jeffery et al., supra note 8, at 8-14.
\item \textsuperscript{33} Id.
\item \textsuperscript{34} Addicks & Currie, supra note 3, at 24.
\item \textsuperscript{35} States, such as California and Maryland that adopted county home rule early in the century, have greater numbers of counties utilizing home rule. Jeffery et al., supra note 8, at 9-10. In California, for example, 12 of its 58 counties have adopted home rule. Id. at 9. In Maryland, a state which allowed for county home rule as early as 1915, 50\% of its counties are governed by home rule. Id. at 10.
\item \textsuperscript{36} See generally id. For example, California charters have been adopted in the highly populous counties of San Francisco, Sacramento, Los Angeles, San Bernardino, and San Diego. Id. at 31.
\item \textsuperscript{37} See generally infra part III.F.1.
\item \textsuperscript{38} State ex rel. Town of Lowell v. City of Crookston, 252 Minn. 526, 528, 91 N.W.2d 81, 83 (1958).
\item \textsuperscript{39} LEAGUE OF MINN. CITIES, INFORMATION FOR MUNICIPAL OFFICIALS No. 100a.1, ADVANTAGES AND DISADVANTAGES OF A HOME RULE CHARTER 1 (rev. Dec. 1974) [hereinafter LMC].
\item \textsuperscript{40} See infra part IV.B.3.
\item \textsuperscript{41} Addicks & Currie, supra note 3, at 7-8.
\item \textsuperscript{42} See infra note 205.
\item \textsuperscript{43} Addicks & Currie, supra note 3, at 2.
\end{itemize}
flexibility to deal effectively with local needs and desires.\textsuperscript{44} Home rule provides flexibility to choose alternative approaches.\textsuperscript{45} This flexibility may increase efficiency in both public service and resource management.\textsuperscript{46}

Third, the charter form of government makes counties more autonomous.\textsuperscript{47} State legislatures do not need to be involved in day-to-day county operations.\textsuperscript{48} County officials are not required to go to the legislature with county-specific issues. Instead, home rule allows local action at the county level.\textsuperscript{49} Problems that arise on the county level can be resolved by local action, instead of waiting for the state legislature to meet.\textsuperscript{50}

Finally, the charter form of government may make county government more visible and responsive to the people.\textsuperscript{51} The home rule process educates the voters of that county about county government.\textsuperscript{52} Local citizens and officials initiate and

\textsuperscript{44} Id. at 2-3.
\textsuperscript{45} Id.
\textsuperscript{46} DeSantis, supra note 7, at 57.
\textsuperscript{47} The purpose of county home rule is to change the nature of county government by placing decisions regarding organization and structure of county government into the hands of the voters of that county. Cole, supra note 20, at 729; see also Westchester County Civil Serv. Employees Ass'n v. Del Bello, 418 N.Y.S.2d 914, 916 (App. Div. 1979) (O'Connor, J., dissenting).
\textsuperscript{48} Glauberman, supra note 2, at 177. The central objective of constitutional provisions that provide home rule for cities and towns is "to allow the people of the locality to decide upon the organization of their government and the scope of its powers under its charter without having to obtain statutory authorization from the legislature." City of La Grande v. Public Employes [sic] Retirement Bd., 576 P.2d 1204, 1207-08 (Or. 1978).
\textsuperscript{49} Addicks & Currie, supra note 3, at 2. "The legislature is relieved of much time-consuming and expensive labor in devising laws for local communities. The results will be a better legislature and better general laws, to the great benefit of the entire state." LMC, supra note 39, at 1.
\textsuperscript{50} LMC, supra note 39, at 1.
\textsuperscript{51} See id.
draft the charter, and it must be adopted by the voters of that county. Participation in charter enactment gets voters more involved in county government and increases awareness of what counties do for their citizens. The charter form of government also promotes continued involvement by the county voters. This ongoing involvement may include the use of initiative and referendum or the passage of charter amendments.

D. Disadvantages of Home Rule

County home rule also poses some potential disadvantages. First, the scope and extent of county home rule power are not always clear. While generally home rule gives a county broad powers to legislate on matters of purely county concern, federal, state or city laws may preclude regulation of certain subject matter. As a result, resolution of each issue demands a case-by-case analysis.

A second possible disadvantage is the loss of uniformity among charter units. Home rule power entitles a county to shape county matters as it sees fit as long as the matter involves no discernible prevailing state or city interest. In some circumstances, however, there may be an interest in maintaining uniformity between counties.

53. LMC, supra note 39, at 1.
54. See infra part III.F.5.
55. See id.
56. See infra part III.F.12. The Ramsey County Home Rule Charter provides a process for amendment of the charter. Ramsey County Home Rule Charter § 11.02. See also id. §§ 8.01-8.09. The actual process for proposing an amendment to the charter form of government may take up to nine months. See Amendment of the Charter Procedures (adopted Feb. 8, 1993) [hereinafter Amendment Procedures]. Substantive amendments must be passed by the voters at a general county election. Ramsey County Home Rule Charter § 11.20.14. General county elections are held every two years. Id. § 11.05.05. As a result, in some instances, it may be faster to go directly to the legislature to obtain special or general legislation to handle a problem that may arise at the county level.
57. See generally infra part IV.
58. See infra notes 203, 205.
59. See infra parts IV.B.2-5.
60. Issues are often resolved "on an ad hoc basis, taking into consideration the facts of each case." City & County of Denver v. State, 788 P.2d 764, 768 (Colo. 1990) (citing National Advertising Co. v. Department of Highways, 751 P.2d 632, 635 (Colo. 1988)).
61. At least one court has stated that uniformity of regulation alone is not a persuasive state interest. City & County of Denver, 788 P.2d at 768-69. Moreover, when
Third, home rule government may allow for direct voter involvement in county government. A potential concern is that a small number of voters may try to influence county law and policy.\(^{62}\)

Finally, it may be difficult to adopt, amend, and abandon a home rule charter. These processes take considerable time and effort.\(^{66}\) The cost involved may place a burden on an already tight government budget.\(^{67}\)

**E. Home Rule in Minnesota**

1. **Constitutional Authority**

Prior to 1892, the Minnesota Legislature generally addressed local problems by passing special laws relating to one or two named municipalities.\(^{68}\) In 1892, the state adopted a constitutional amendment that prohibited the legislature from enacting special laws.\(^{69}\) This amendment mandated formula-

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62. Public hearings were held prior to the enactment of the Ramsey County charter. One concern expressed was that because the charter form of government may allow for direct voter involvement, special interest groups or certain population groups could have an increased influence on Ramsey County law and policy.

63. The process for adopting a home rule charter takes considerable time and effort. See infra part III for a complete discussion of the steps involved.

64. See infra part III.F.12.

65. A cited disadvantage of home rule is the alleged permanent nature of charter government. LMC, supra note 39, at 3. "It used to be true that once a charter was adopted, there was no turning back to the statutory form of city government." Id. This disadvantage can be eliminated, nonetheless, by a provision in the charter that provides a procedure for abandoning the charter. See RAMSEY COUNTY HOME RULE CHARTER § 11.02(C).

66. See LMC, supra note 39, at 2.

67. Id. at 3. On the other hand, considerable time and effort is required to obtain state legislation. "The cost of government under a city charter need not be any greater or less than under the statutory city form of government." HANDBOOK FOR MINNESOTA CITIES, THE HOME RULE CHARTER CITY 48 (Supp. 1990). In addition, charters and amendments may now be adopted with less difficulty than under the prior constitutional provisions. Id.

68. Note, Home Rule and Special Legislation in Minnesota, 47 MINN. L. REV. 621, 621-22 (1963). A "special law" applies to "a single local government unit or to a group of such units in a single county or a number of contiguous counties." MINN. CONST., art. XII, § 2.

69. MINN. CONST. of 1857, art. IV, § 33 (1892). This section, first adopted as a constitutional amendment in 1881, prohibited the legislature from passing "special laws" in only very limited cases. MINN. CONST. of 1857, art. IV, § 33 (1881). The 1892 amendment sharply curtailed the areas of special legislation available to the
tion of a new method for solving municipal problems.70

In 1896, the legislature ratified section 36 of article IV of the Minnesota Constitution authorizing cities and villages to adopt home rule charters.71 With the adoption of section 36, Minnesota became the fourth state to allow municipal home rule.72 In 1958, article XI, section 3 of the Minnesota Constitution was adopted to supersede section 36.73 Article XI, section 3 gave counties the ability to adopt home rule.74 At the same time, the prohibition on special laws was repealed.75 In 1974, Minnesota restructured its constitution, and amended and moved language regarding home rule charters to article XII, section four.76 This section now allows any local government unit, when authorized by state law, to adopt a home rule charter.77

2. Ramsey County Home Rule

In 1987, the Minnesota Legislature passed enabling legisla-

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70. See supra note 69.
71. MINN. CONST. art. IV, § 36 (1896) provided: "Any city or village in this state may frame a charter for its own government as a city consistent with and subject to the laws of this state." Id.
72. Note, supra note 68, at 621.
73. MINN. CONST. art. XI, § 3 (1958). The amended article stated: "Any city or village, and any county or other local government unit when authorized by law, may adopt a home rule charter for its government in accordance with this constitution and the laws." Id. (emphasis added).
74. The 1958 amendment to article IV, section 33 reflected the limited restrictions of power found in the original version of the 1881 constitution. MINN. CONST. of 1857, art. IV, § 33 (1858).
75. Article XI, section 2 was amended to require that any "special laws" became effective only after ratification by either the voters or the governing body of the affected unit. MINN. CONST. of 1857, art. XI, § 2 (1958). These provisions are now found in article XII, sections one and two. See MINN. CONST. art. XII, §§ 1, 2.
76. The Minnesota Constitution now provides:

Any local government unit when authorized by law may adopt a home rule charter for its government. A charter shall become effective if approved by such majority of the voters of the local government unit as the legislature prescribes by general law. If a charter provides for the consolidation or separation of a city and a county, in whole or in part, it shall not be effective without approval of the voters both in the city and in the remainder of the county by the majority required by law.

MINN. CONST. art. XII, § 4.
tion for the Ramsey County Home Rule Charter.\textsuperscript{78} On November 6, 1990, the voters of Ramsey County adopted the first county charter ever drafted in the history of the State of Minnesota. After a two year enactment period, on November 6, 1992, Ramsey County became the first home rule charter county in Minnesota.\textsuperscript{79}

III. A "Cookbook" for a County Home Rule Charter

A. The Origin of a Charter

Passing a home rule charter is a complex process that involves the state legislature, a charter commission, local government officials, legal counsel, and the county electorate. This section describes the major steps involved in enacting a county charter.

B. Enabling Legislation

State enabling legislation is the first step toward giving a county home rule authority. In Minnesota, there cannot be a home rule charter without enabling legislation.\textsuperscript{80} In 1987, the Minnesota Legislature passed a special law giving Ramsey County the authority to establish the Ramsey County charter commission for the purpose of examining the concept of home rule and drafting a home rule charter if necessary.\textsuperscript{81} The legis-

\textsuperscript{78} 1987 Minn. Laws ch. 103 (1987). "[T]he Ramsey county legislative delegation shall nominate . . . a charter commission to frame a charter to provide for the form of government for Ramsey county." MINN. STAT. § 383A.552 (Supp. 1987).

Before December 31, 1988, the charter commission shall deliver to the board of county commissioners either (1) its report determining that the present form of county government is adequate for the county and that a charter is not necessary or desirable, or (2) a draft of a proposed charter.

\textsuperscript{79} MINN. STAT. § 383A.556 (1992) (stating that "[t]he charter shall take effect two years after the election.").

\textsuperscript{80} MINN. CONST. art. XII, § 4 (stating that "[a]ny local government unit when authorized by law may adopt a home rule charter for its government.").

\textsuperscript{81} MINN. STAT. §§ 383A.551-383A.556 (1992). The bill for the enabling legislation for the Ramsey County Home Rule Charter was drafted by Dr. Gary Currie in House Research. This enabling legislation passed as a special law for Ramsey County with little opposition. S.F. 557, STATE OF MINNESOTA, JOURNAL OF THE SEN-
lation was amended in 1989 to allow a county charter to be adopted by the same majority vote that city charters are adopted. 82 The Ramsey County board subsequently approved both special laws. 83

C. The Charter Commission

1. Establishing the Charter Commission

Enabling legislation for the Ramsey County charter provided a process for the creation of the Ramsey County charter commission. 84 To ensure that the commission would be a politically neutral body of individuals with a wide variety of experience in the public sector, a two-step process was used for selecting members. First, a notice was published in the daily and weekly newspapers in Ramsey County requesting applications for membership of the commission. 85 The resulting applications were given to the Ramsey County Legislative Delegation. 86 Each delegation member submitted two names to create a pool of forty-one applicants 87 who were then inter-

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82. "If a majority of all the voters voting in the county at the election vote in favor of the proposed charter, it shall be adopted." MINN. STAT. § 383A.556 (1992). The charter commission sought this amendment so that the Ramsey County charter could be adopted by the same majority that city charters are passed. See MINN. STAT. § 410.11 (1992) (requiring city charters to be passed by 51% of those voting on the question).

83. See MINN. STAT. § 645.021 (1992) (requiring local approval of special laws by the governmental entity affected by the law); see also Board of Ramsey County Comm'r Res. 87-492, reprinted in PROCEEDINGS OF THE Bd. OF RAMSEY COUNTY COMM'RS 191 (1987); Board of Ramsey County Comm'r Res. 90-105, reprinted in PROCEEDINGS OF THE Bd. OF RAMSEY COUNTY COMM'RS 33 (1990) (approving Chapter 609, Laws of 1990 changing the threshold for adoption of the charter to 51% of votes cast on the issue).

84. "The legislature shall provide by law for charter commissions." MINN. CONST. art. XII, § 5. In 1987, the Minnesota Legislature enacted legislation allowing Ramsey County to establish a Ramsey County charter commission. MINN. STAT. § 383A.551-.556 (1987).

85. This process was followed to be consistent with the Ramsey County Open Appointment Policy. See Board of Ramsey County Comm'r Res. 79-919, reprinted in PROCEEDINGS OF THE Bd. OF RAMSEY COUNTY COMM'RS 259-262 (1979).

86. The Ramsey County Legislative Delegation consists of Minnesota House and Senate representatives who represent voters living within the territorial jurisdiction of Ramsey County. MINN. STAT. § 383A.551 (1992).

viewed by panels of three judges from the Second Judicial District. In total, seventeen individuals were chosen to serve. Each of the seven county districts had two members and the remaining three members were representatives at large. The entire judicial bench then ratified the appointment of the proposed commission members. Vacancies were filled by judicial appointment from the original pool of applicants under the direction of the chief judge and with the approval of the entire bench.

All members of the charter commission served as volunteers. Once assembled, the charter commission selected a chair, vice-chair and secretary.

2. Task of the Charter Commission

The charge of the charter commission was to examine the concept of home rule, determine whether it was appropriate for Ramsey County, and if so, to draft a charter. The commission members reviewed articles and heard presentations from national and local home rule experts. The authors of the enabling act, county commissioners, and county officials also addressed the commission. This initial process spanned nearly eight months.

3. Support Staff

During the initial period, support staff became vital. The Ramsey County Attorney’s Office acted as counsel to the charter commission. All members of the charter commission served as volunteers. Once assembled, the charter commission selected a chair, vice-chair and secretary.

93. See Minutes of the Ramsey County Charter Commission, October 13, 1987 (on file in the Ramsey County Charter Commission Office in the Office of the County Manager, Ramsey County Court House, Saint Paul, Minnesota 55102). Raymond W. Faricy, Jr. was elected chair. Milton L. Knoll, Jr. was elected vice-chair and Robert Beutel was elected secretary. These individuals continued to serve until the regular Ramsey County charter commission took office on November 6, 1992. Minn. Stat. § 383A.553-1 (1992).
Ramsey County charter commission. The charter commission determined that independent staff was necessary to meet its objective. This independent staff served through the drafting process, the public hearings and the 1990 election. Funding for the staff was included in the Ramsey County budget pursuant to the enabling legislation.

4. Budget

Ramsey County budgeted $50,000 per year for the charter commission staff and support services. In 1987, the commission staff members from the Executive Director's Office initially provided coordinating and clerical services. Later in the process, the charter commission determined that independent staff was necessary to meet its objective. This independent staff served through the drafting process, the public hearings and the 1990 election.

Funding for the staff was included in the Ramsey County budget pursuant to the enabling legislation.

95. "The county attorney shall provide legal services as may be requested." MINN. STAT. § 383A.553-3 (1992). Michele Timmons, Director of the Civil Division of the Office of the County Attorney served as the attorney for the Ramsey County charter commission. Specific duties included issuing legal opinions to the charter commission, giving informal legal advice at meetings, assisting in charter drafting, acting as a liaison to the Ramsey County board, consulting and educating local officials and staff, and educating voters. During the initial stages of the Ramsey County charter, the county attorney provided services to the commission approximately two to three days a month. During the drafting stage, the county attorney provided legal assistance approximately three days a week.

96. For example, Tom Ryan, Ramsey County Intergovernmental Relations Coordinator, provided invaluable staff assistance to the charter commission. After his unexpected death, the charter commission dedicated the Ramsey County Home Rule Charter to Mr. Ryan: "The members of the Ramsey County Charter Commission dedicate the charter to the memory of Tom Ryan whose positive vision, support, and unfailing good humor encouraged the creation of this document for the people of Ramsey County." RAMSEY COUNTY HOME RULE CHARTER. Mr. Ryan's widow, Laurel, and Mr. Ryan's mother and father were presented with a copy of the proposed Ramsey County charter at the Ramsey County Board of Commissioner's December 12, 1989 meeting. Board of Ramsey County Comm'r Res. 89-873, reprinted in PROCEEDINGS OF THE BD. OF RAMSEY COUNTY COMM'RS 494-95 (1989).

97. Ramsey County no longer has an Executive Director. Pursuant to chapter three of the Ramsey County Home Rule Charter, the Executive Director's Office is now the County Manager's Office. See RAMSEY COUNTY HOME RULE CHARTER §§ 3.01-02.

98. The Commission hired a part-time coordinator, Judy S. Grant, and a part-time secretary, Pat Yoerger. See RAMSEY COUNTY HOME RULE CHARTER. Part of the duties of these positions included coordinating services to arrange meetings, contacting individuals to testify before the charter commission, and general clerical work.

99. "The board of county commissioners may make an appropriation to the charter commission to be used to employ research and clerical assistance, for supplies, and to meet expenses considered necessary by the charter commission." MINN. STAT. § 383A.553(3) (1992).

100. See Board of Ramsey County Comm'r Res. 87-738, reprinted in PROCEEDINGS OF THE BD. OF RAMSEY COUNTY COMM'RS 320 (1987). In 1992, as the county absorbed the staff functions back into their regular staff, the county board budgeted $30,000 for the charter commission. See Budget documents 1987 to 1992 (on file in
mission expended $15,489 of the annual budget studying the feasibility of a charter and listening to testimony. In 1988, when the drafting process began, $35,000 of the 1988 budget was used. In 1989, when the drafting was completed and the public hearings were held, the entire $50,000 budget was spent. In 1990, when the charter was published, the summaries and information distributed to the public and the charter issue was on the ballot, $60,000 was spent. In 1991, work on the charter and the administrative code totalled $27,000.

D. Decision to Draft the Charter

During the initial study phase of the charter commission’s work, the commission identified the goals that would be served by a home rule charter. Central to the commission’s goal was improving the visibility of county government, enhancing local autonomy and flexibility, and making county government more efficient and effective. Another goal was to make local government more responsive to county residents.

After deliberating almost a year, the charter commission held a retreat to decide whether to draft a charter. At the retreat, the commission reviewed the goals identified during the study phase. The charter commission also reviewed the basic

the Ramsey County Charter Commission Office in the Office of the County Manager, Ramsey County Courthouse, Saint Paul, Minnesota).

101. Id.
102. Id.
103. Id.
104. Id.
105. See infra Part III.F.6.
106. See Budget documents 1987 to 1992 (on file in the Ramsey County Charter Commission Office in the Office of the County Manager, Ramsey County Courthouse, Saint Paul, Minnesota). This money was used for staff time and equipment to provide services, including public information, answering constituent phone calls and letters, coordinating the enactment of mandates from the charter with county staff, and preparing background information on proposed charter amendments. The Ramsey County charter commission’s expenses were under $1,000 per year for mailing committee notices and background materials, publishing documents, and miscellaneous committee expenses.
107. EXECUTIVE SUMMARY supra note 4, at 1.
108. Tom Kelley, former Ramsey County administrator and Chair of the Ideas Subcommittee, thought that a charter could improve the visibility of Ramsey County government. The notion that county government is “invisible government” is not uncommon. Cf. Addicks & Currie, supra note 3, at 2.
109. POSITION PAPERS, supra note 51, at INITIATIVE, REFERENDUM, AND RECALL.
status of Ramsey County government and debated whether a charter that merely fine-tuned existing county government would be enacted. A countervailing concern, however, was that the opportunity would be lost if the commission chose not to draft a charter. After considerable discussion, the charter commission voted to prepare a draft charter.

E. The Drafting Process

After determining that a charter was "necessary and desirable," the commission elected to draft the proposed charter themselves. The charter commission discussed the form and content of the charter and decided to make the document brief and constitution-like. The commission appointed a drafting committee to review model county charters and existing county and city charters. The drafting committee divided the work into twelve chapters and one or two committee members worked on each chapter.

110. The commission became frustrated as they did not want their efforts to be futile. Charter commission chairman Ray Faricy spoke at the retreat and expressed a concern that the opportunity would be lost and that the chance to have a charter form of government would not come again for at least 10 years. Ramsey County, he said, had the opportunity to be a "pioneer."


112. The Ramsey County charter commission made a conscious decision to draft the proposed charter themselves rather than relying on staff or outside consultants. The charter commission wanted the Ramsey County charter to be a document drafted by the people of Ramsey County for the people of Ramsey County.


114. See id.

115. Parts of the Saint Paul City Charter were used.

116. Chapters of the charter include:

Chapter 1 - Powers of the County
Chapter 2 - County Board of Commissioners
Chapter 3 - County Manager
Chapter 4 - Administrative Departments, Offices, and Agencies
Chapter 5 - Ordinance and Resolution Procedures
Chapter 6 - Coordination of Services and Planning
Chapter 7 - Nominations and Elections
Chapter 8 - Initiative, Referendum, and Recall
Chapter 9 - Taxation and Bonding
Chapter 10 - Budget
Chapter 11 - Charter Provisions
Chapter 12 - Transitional Provisions

RAMSEY COUNTY HOME RULE CHARTER.

117. The chapters were based largely on existing model charters and existing Ramsey County special laws, with some original drafting. See RAMSEY COUNTY HOME RULE CHARTER (1992). Another resource was Minnesota Statutes Chapter 410.
Next, the full charter commission reviewed and revised each chapter. The commission then issued an annotated draft that set forth the sources and rationale for the significant sections. The commission distributed the draft to county and municipal officials for review and comment. After further revisions, the commission published a proposed final draft. This proposed draft, with an executive summary, was distributed to the public. Eight public hearings were then held on the draft throughout Ramsey County.

Final revisions were made after the public hearings and the proposed Ramsey County Home Rule Charter was delivered to the Ramsey County Board of Commissioners on December 12, 1989. The enabling legislation required the county board to present the proposed charter to the voters, unchanged, in

Chapter 410 is technically applicable only to city home rule charters, but Ramsey County used it as an analogy. The full drafting committee then reviewed each section and chapter as it developed. During the initial eight month drafting period, the drafting committee convened at least weekly.

Mayors and city managers throughout Ramsey County were active participants in the first year and a half study of home rule. They gave extensive testimony and written comments on particular issues under consideration. When the first draft of the charter was ready for public response, all the mayors, city managers, county elected officials, newspaper editors, and citizens who had attended any of the open meetings received a copy of the draft and were asked to comment. See Ramsey County Charter Comm'n Charter Distribution [hereinafter Charter Distribution].

The proposed draft was dated September 25, 1989.

Information about the charter was sent to every local elected official and advisory board member (i.e., planning commission members, county park advisory board members) in every city in Ramsey County. See Charter Distribution, supra note 119; Executive Summary, supra note 4, at 1. Through wide distribution, the charter commission hoped to inform public leaders to enable them to answer pre-election questions from their constituents.

The public hearings were advertised by sending notices to all local government officials, cable television community calendar boards, local and daily newspapers, and individual mailings within each commissioner’s district. Eight public hearings were held during October, 1989, one in each commissioner’s district and two in the largest geographical district. Each public hearing began with a welcome and explanation of the goal of encouraging public input during the evening’s discussion. The presentation also included a ten minute slide show on the development and meaning of the proposed charter. Charter commission members listened to the comments and questions from the public. Attendance at the hearings varied from one to fifty individuals.

“The charter commission is required to hold at least one public hearing in each of the county commissioner districts.” Minn. Stat. § 383A.554 (1992).

the next general election held on November 6, 1990.125

F. Major Substantive Issues

1. General Grant of Power

An "all powers" grant is essential to a charter.126 An all powers grant was incorporated into the final version.127 During the development of the charter, the public asked numerous questions about the scope and extent of home rule power provided by the proposed charter. Ultimately, the scope and extent of county home rule power under the Ramsey County charter will be determined as specific situations arise in Ramsey County.128

The Ramsey County Home Rule Charter reserves existing municipal powers to cities and townships within Ramsey County.129 If a conflict exists between county and municipal powers, the resolution will be made on the basis of the particular laws, facts, and circumstances applicable to the particular issue.130

2. Structuring County Government

A home rule charter may permit a county to structure its own county government. For example, the enabling legislation for the Ramsey County Home Rule Charter provides:

The proposed charter may provide for any form of government consistent with the constitution of the state of Minnesota. It may provide for the establishment and administration of all departments of a county government . . . . It may abolish or consolidate any department or agency . . . . It shall provide methods of procedure in re-

125. "Upon delivery of the proposed charter to the board of county commissioners, the board shall submit it to the voters at the [next] general election." MINN. STAT. § 383A.555(1) (1992).
127. The Ramsey County Home Rule Charter contains an all powers grant that gives "all powers possible for a county to have . . . ." RAMSEY COUNTY HOME RULE CHARTER § 1.01.
128. See infra part IV, for a framework to follow in analyzing these issues.
129. "No existing function, duty or power of any political subdivision within Ramsey County . . . is transferred, altered or impaired by this charter." RAMSEY COUNTY HOME RULE CHARTER, § 1.04; see also POSITION PAPERS, supra note 51, at MUNICIPAL POWERS.
130. See infra part IV.B.4.
spect to the operation of the government created . . . .\textsuperscript{131}

This broad grant of power enabled Ramsey County to structure its county government through its home rule charter.

\textit{a. Elected Officials}

A home rule charter may allow a county to prescribe the number of its elected officials and their functions. The enabling legislation for the Ramsey County charter provides for "present functions to be assumed by new elective or appointive officers . . . ."\textsuperscript{132} Based on this authority, the Ramsey County charter maintains a seven-member board of commissioners elected to staggered terms by districts.\textsuperscript{133} The charter also requires that the county board determine each commissioner's salary by ordinance\textsuperscript{134} and that per diem allowances go directly to the county treasury to be incorporated into the salary given to the board member.\textsuperscript{135} The charter also maintains the elected county sheriff and county attorney positions,\textsuperscript{136} as well as the appointed status of the county

\textsuperscript{131}MINN. STAT. § 383A.554 (1992).
\textsuperscript{132}Id.
\textsuperscript{133}RAMSEY COUNTY HOME RULE CHARTER § 2.01(A). "There shall be a Board of Commissioners of Ramsey County (hereafter 'county board'), State of Minnesota, composed of seven members elected by districts." Id. The charter commission debated whether the county board should become larger or smaller, but ultimately decided that seven was an appropriate number.
\textsuperscript{134}Id. § 2.01(D)(1)-(3).

The county board may determine the amount of the annual salary of its members by ordinance. The ordinance shall state the dollar amount of the annual salary and shall be passed by July 1 of the year prior to the effective date of the ordinance . . . .

The salary ordinance shall not be effective until the first business day of the following January. A petition asking for an election on the proposed ordinance . . . . is to be filed with the county within 30 days following its publication. The salary ordinance, thus petitioned, shall not be effective until it has been approved by [the voters] . . . .

\textit{Id.} § 2.01(D)(1)-(3).
\textsuperscript{135}Id. § 2.01(D)(4)-(5). "Members of the county board shall receive their actual and necessary expenses incurred in the performance of their functions . . . . Fees, payments or other compensation paid to county board members . . . . shall be remitted to the county treasury . . . ." Id.
\textsuperscript{136}RAMSEY COUNTY HOME RULE CHARTER § 4.01(D). In Ramsey County, the only elected officials are the sheriff, county attorney, and county commissioners. Id. Cf. MINN. STAT. § 383A.20-2 (1992) (stating that the county auditor, treasurer, court commissioner, and recorder are appointed positions). The charter commission felt that the elected status of the county attorney and sheriff was important to provide accountability to the voters. However, there was discussion about establishing an appointed civil counsel through the charter. The charter commission decided to maintain that function under the elected county attorney.
b. Appointed Staff

A home rule charter may permit a county to determine what staff may be appointed to manage county government. The Ramsey County charter makes professional management mandatory—rather than optional—for Ramsey County. The professional manager is hired or fired by a majority vote of the county board. Professional management may not, however, be eliminated without a charter amendment.

The charter gives the county manager the authority to hire and fire certain department heads. A grandfather clause covered the transition to the new system. Under the Ramsey County charter, the county board establishes policy and the county manager manages county business.

c. Departments

A home rule charter may allow a county to structure its own departments. The enabling legislation for the Ramsey County

137. RAMSEY COUNTY HOME RULE CHARTER § 3.01(A). The charter commission discussed the possibility of having an elected county manager. Current state law provided a basis for this discussion. See MINN. STAT. § 375A.02 (1992) (providing for an "Elected Executive Plan").

138. RAMSEY COUNTY HOME RULE CHARTER § 3.01. Prior to enactment of the Ramsey County charter, the county board could appoint a professional manager to assume the management authority, could decide to delegate the management authority or could decide not to have professional management at all. POSITION PAPERS, supra note 51, at COUNTY MANAGER. Following passage of the charter, a professional "county manager" position was created: "Professional management in Ramsey County was instituted upon the recommendation of a previous citizen study committee's work . . . . [Therefore,] a resolution of the county board cannot eliminate professional management." Id.

139. Id. RAMSEY COUNTY HOME RULE CHARTER § 3.01.

140. RAMSEY COUNTY HOME RULE CHARTER § 3.02(A) (stating that the county manager may "[a]ppoint, review, transfer, suspend or remove all appointive department heads . . . .").

141. Id. § 12.02(F). "Department heads hired before the charter goes into effect will be covered by the present policy which requires board approval of a recommendation for dismissal. Department heads hired after enactment of the charter will be hired with the understanding that the county manager has the authority to hire and fire department heads." POSITION PAPERS, supra note 51, at HIRING AND FIRING.

142. Id. "The Charter Commission would like to see the county manager's authority include hiring and firing. This is the final phase in separating the board from the administrative duties generally delegated to an executive officer. The board should make policy and the executive officer should manage the county business." Id.
Home Rule Charter gives Ramsey County the power to “aboli-

sh or consolidate any department . . .” While the charter
commission elected to maintain existing departments, the
charter does provide a procedure for restructuring.

A charter could potentially allow a county to regulate county
personnel matters. The enabling legislation for the Ramsey
County charter, however, expressly preempts charter regula-
tion of Ramsey County personnel matters currently governed
by special law.

3. Bonding Authority

A home rule charter may provide for county bonding au-
thority. The Ramsey County Home Rule Charter gives the
county board full authority over the financial affairs of Ramsey
County, including the power to issue “general or special
bonds, notes, obligations, or evidence of indebtedness.” The
charter authorizes a bonding process that requires bond-
ing decisions to be made by ordinance. Those ordinances
are, however, also subject to the referendum process allowing
Citizens to refer any ordinance to a vote of county resi-
dents. The charter also preserves the net debt limit provided by state law.

The charter commission wanted bonding decisions to be

144. Ramsey County Home Rule Charter § 5.01(A)(1).
matters relating to Ramsey county employees shall continue to be governed by sec-
tions 383A.281 to 383A.301 and sections 197.455 to 197.48. A charter proposed for
adoption . . shall not apply to personnel matters.” Id.
146. Ramsey County Home Rule Charter § 9.01.
147. Id. § 9.05. Section 9.05 is consistent with the enabling legislation for the
charter providing that “[a]ll special and general laws authorizing the county to incur
indebtedness or issue bonds shall be subject to the charter, provided that the charter
provisions are not in conflict with general laws relating to public indebtedness.”
148. Ramsey County Home Rule Charter § 9.05. The charter provides that
“Ramsey County by ordinance and without an election may issue general or special
bonds, notes, obligations, or evidence of indebtedness for any authorized corporate
purpose.” Id. The ordinance procedure provides for notice, two public readings and
a public hearing prior to adoption. Id. § 5.02.
149. Position Papers, supra note 51, at Bonding. See Ramsey County Home Rule
Charter § 8.06. All ordinances under the Ramsey County Home Rule Charter are
subject to referendum. Id. § 8.01.
150. Position Papers, supra note 51, at Bonding. See Ramsey County Home Rule
Charter § 8.06.
151. Ramsey County Home Rule Charter § 9.05. See Minn. Stat. § 475.53(1)
made by county officials who are accountable to Ramsey County voters. The charter shifts management decisions on bonding from the state legislature to the local level and opens up the process to increase participation by Ramsey County citizens. Perhaps most important, bonding authority at the county level permits cost-effective and ongoing long-range planning for capital improvements.

4. Taxation

A home rule charter may provide taxing power to a county. In Minnesota, current state law prohibits a charter county from assessing new taxes. The Ramsey County charter authorizes the county board to levy taxes "authorized by law without regard to charter or statutory limitations." This charter provision reserves the right for future taxation in the event that state law is amended to allow for new forms of taxation at the county level.

5. Initiative, Referendum and Recall

A home rule charter may provide for initiative, referenda, and recall. Initiative gives registered county voters the power to propose ordinances to the county board of commissioners. Id. § 8.01. If the county board fails to adopt a
Initiative and referendum are processes that provide voters an opportunity to take an ongoing, direct, and active role in local government. The issues of initiative and referendum were addressed by the members of the Ramsey County charter commission and those who appeared before the commission. One concern was that the rights of the electorate not be compromised by citizen groups who may use the initiative and referendum process to further special interests. While the charter commission voted to include the initiative and referendum processes in the Ramsey County Home Rule Charter, the processes adopted balance a desire to keep frivolous issues off the ballot yet still allow the petition process to work in a practical way.

Recall is a method for removal of an official. Minnesota state law provides a process for removal of county elected officials. The Ramsey County charter provides that recall for elected officials shall be pursuant to this state law.
6. **Administrative Code**

A county home rule charter may provide for the development of an administrative code.168 In Ramsey County, the goal of the charter commission was to draft a brief and constitution-like charter.169 While specific detailed provisions were not included, the charter requires the Ramsey County manager to develop an administrative code, to be adopted by resolution of the county board.170

7. **Ordinances and Resolutions**

A county home rule charter may provide for an ordinance and resolution procedure. Prior to enactment of the home rule charter in Ramsey County, there were very few county ordinances because the authority to enact ordinances came specifically from the legislature. The charter commission wanted a greater number of topics to be handled by ordinance171 and mandated that certain topics be addressed by ordinance and others by resolution.172 The commission drafted procedures for the enactment of ordinances and resolutions that potentially allow for greater voter involvement.173

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168. See, e.g., Ramsey County Home Rule Charter § 3.02(B). The Ramsey County Administrative Code, "at a minimum, shall identify and define specific areas of accountability, delegation and reporting requirements for county departments, offices, agencies, boards and commissions, and shall enforce and maintain such administrative code after adoption by the county board resolution." Id.

169. See supra part III.E.

170. Ramsey County Home Rule Charter § 3.02(B). The charter provides that the county board also has the power to amend the administrative code. Id. § 2.02(E).

171. For example, it was the intent of the Ramsey County charter commission that public input on salaries, bonding, and conveying park land would be increased by having these issues decided by ordinance. Position Papers, supra note 51, at Ordinances.

The charter commission was especially concerned about the current system for disposal of park property for uses inconsistent with park purposes. At the time of drafting, existing special laws stated, "[t]he county may sell, lease or otherwise dispose of property . . . upon such terms as it considers best in the public interest, but the use of real property so disposed of must remain consistent with the purposes of subdivisions 1 to 15." Minn. Stat. § 383A.07(6) (1988)(repealed 1991). This language meant that disposal of park property for an inconsistent use had to be effectuated by state law. The charter commission believed that the county board, not state legislators, should make and be held accountable for decisions affecting county park property. The charter gives the county board authority to make such decisions by ordinance, after public input, and subject to referendum. Ramsey County Home Rule Charter § 2.02(K).

172. Ramsey County Home Rule Charter §§ 5.01, 5.04.

173. Id. Ch. 5. A charter may provide for greater voter involvement in county
8. **Budget Process**

A county home rule charter may provide a budget process. The Ramsey County charter commission considered it important for the charter to contain a budget process for Ramsey County. After reviewing the current county budget process set forth in a special law, the charter commission incorporated that process, in its entirety, into the charter.

9. **Planning: County Wide Coordination**

A county home rule charter may provide for county-wide coordination of services. The Ramsey County charter commission was interested in coordinating operational services and strategic planning for the county. Together with other local officials, the charter commission drafted chapter six of the Ramsey County charter which provides for coordination of operational services and planning.

10. **Special Laws**

A county home rule charter may, if permitted by the state constitution, supersede special laws. When there are special laws on a subject matter being regulated by a home rule charter, these laws can be modified or superseded by the charter. For example, the Ramsey County Home Rule Charter allows the county board to determine its own rules of procedure but requires the board to keep a record of its official proceedings. This official record is distributed to all city halls and public libraries throughout the county.

A charter may also provide for greater voter involvement in county decision making by making county commissioners more visible and accountable. For example, it may be difficult to determine the vote of an individual commissioner when a voice vote is taken. The Ramsey county charter provides for roll-call voting.

Decision making by regulation of county board meeting procedures. For example, the Ramsey County Home Rule Charter allows the county board to determine its own rules of procedure but requires the board to keep a record of its official proceedings. This official record is distributed to all city halls and public libraries throughout the county. Id.

A charter may also provide for greater voter involvement in county decision making by making county commissioners more visible and accountable. For example, it may be difficult to determine the vote of an individual commissioner when a voice vote is taken. The Ramsey county charter provides for roll-call voting. Id. § 2.04(D). See **POSITION PAPERS**, supra note 51, at ROLL-CALL VOTING.

The Minnesota Constitution specifically authorizes a county to modify or supersede a special law through a charter provision. **MINN. CONST.** art. XII, § 2.
ter, the charter should specify whether the special law is being superseded for purposes of clarity. 179


A county home rule charter may provide transitional provisions. Such provisions provide guidelines and simplify the transition from the statutory to charter form of government. 180

12. Amendment Process

A county home rule charter may provide a method for amendment of the charter. In Ramsey County, the charter commission sought to allow greater decision making capabilities at the local level with increased input and control by county citizens. 181 The Ramsey County Home Rule Charter provides that amendments to the charter form of government 182 may be proposed by the charter commission, by voter petition, 183 or by ordinance passed by the county board with approval of the charter commission. 184 Nonsubstantive amendments may be passed by the charter commission and a unanimous vote of the county board. 185 Substantive amendments 186 must be passed by a majority of voters in a general

179. The Ramsey County Home Rule Charter specifically lists Minnesota special laws for Ramsey County superseded by the charter. RAMSEY COUNTY HOME RULE CHARTER § 12.03.

180. Id. § 12.02(A)-(F). This section provides in pertinent part:

The taking effect of this charter causes no break in the existence or legal status of the county.

- All rights, claims, causes of action, contracts, and legal and administrative proceedings . . . continue unimpaired by the charter.
- All county ordinances, resolutions, orders, rules and regulations . . . remain in force . . . until amended or repealed.
- All elected officials . . . in office . . . shall continue in office . . .
- The status of county employees shall not be affected . . .
- All appointed department heads . . . may be removed . . . only with the approval of the county board.

Id.

181. POSITION PAPERS, supra note 51, at AMENDING THE HOME RULE CHARTER.

182. "The amendment process gives Ramsey County citizens the power to propose modification, deletion or addition to the charter form of government." AMENDMENT PROCEDURES, supra note 56, § 11.05.01.

183. Ramsey County voters may propose an amendment to the Ramsey County charter by petition. Id. §§ 11.00.00, 11.15.00.

184. See RAMSEY COUNTY HOME RULE CHARTER § 11.02; AMENDMENT PROCEDURES, supra note 56, § 11.00.00.

185. AMENDMENT PROCEDURES, supra note 56, § 11.00.00.

186. A substantive amendment is an amendment to an essential part of the charter. Id. § 11.05.14. An essential part of the charter is one that "gives, creates, defines
county election.\textsuperscript{187}

\section*{13. Charter Commission}

A charter may provide for a standing charter commission. The Ramsey County Home Rule Charter provides for a seventeen-member standing charter commission appointed by the district court.\textsuperscript{188} The standing Ramsey County charter commission is responsible for guiding amendment of the charter.\textsuperscript{189}

\subsection*{G. Educating the Voters}

After a charter has been drafted, it is the voters who ultimately decide whether the charter becomes law. In Ramsey County, fifty-one percent of the votes cast on the charter were required to approve the charter for enactment.\textsuperscript{190} Therefore, educating the voters was a vital step to the enactment of the Ramsey County Home Rule Charter.

The Ramsey County charter commission formed a Public Education Committee to serve as a nonpartisan group\textsuperscript{191} to educate the voters of Ramsey County on home rule.\textsuperscript{192} Members of the charter commission gave presentations on the charter to every city, town council and school board in the county in addition to numerous civic organizations.\textsuperscript{193} At the conclusion of each presentation, the hosting group was asked to pass a reso-

\textsuperscript{187} Id. A nonsubstantive amendment is an "amendment which is minor and noncontroversial . . . ." Id. \textsection{11.05.07.

\textsuperscript{188} RAMSEY COUNTY HOME RULE CHARTER \textsection{11.03. See also supra part II.C.1.

\textsuperscript{189} RAMSEY COUNTY HOME RULE CHARTER \textsection{11.03. The charter commission members shall periodically review the charter and propose any necessary amendments. The commission shall review any proposed amendments, declare the sufficiency of a petition, prepare a summary of any proposed amendment, recommend any revisions to proposed amendments, and submit proposed amendments to an election." Id.

\textsuperscript{190} MINN. STAT. \textsection{383A.556 (1992).

\textsuperscript{191} The charter commission, funded by public dollars, consciously decided to run a nonpartisan and informational educational campaign. A "vote yes" group organized near the election ran advertisements, but this group was independent of the work of the Ramsey County charter commission.

\textsuperscript{192} The Public Education Committee met with local civic leaders and individuals to plan an appropriate campaign to educate citizens of Ramsey County about the upcoming charter ballot issue.

\textsuperscript{193} There were nineteen presentations made to city and township councils and six to school boards. There was a slide show and question and answer session at each presentation.
olution\textsuperscript{194} in support of the Ramsey County charter commission's educational efforts to inform the public about the charter issue.

In furthering the educational process, copies of the charter, background information, and a videotape on the charter were available to the public in every city hall and library in the county. The videotape was shown on all the public and government access cable television channels in Ramsey County. Private corporate funding assisted in some of these educational endeavors.\textsuperscript{195} Articles and editorials appeared in daily, weekly, and monthly newspapers. The entire charter was printed, as required, in a qualified newspaper of general distribution for two successive weeks before the election.\textsuperscript{196} The charter was also posted at each polling place on election day.\textsuperscript{197}

\textbf{H. Charter Adoption and Enactment}

On November 6, 1990, voters cast 83,877 votes in favor of the adoption of the Ramsey County charter, which represented fifty-eight percent of the number voting on the issue.\textsuperscript{198} The necessary majority was achieved\textsuperscript{199} and Minnesota's first county charter was adopted. A two-year enactment period was written into the enabling legislation.\textsuperscript{200} During this enactment

\begin{itemize}
\item \textsuperscript{194} See, e.g., \textit{RCLLG urges voting on home-rule charter}, NEW BRIGHTON BULL., Sept. 5, 1990, at 5 (noting passage of resolution by Ramsey County League of Local Governments urging residents to become informed about the charter and to vote on it).
\item \textsuperscript{195} The St. Paul Pioneer Press printed and donated 10,000 newspaper copies of the charter and a brief synopsis. The 3M Foundation funded 33 videotape prints of the slide show, which was then shown on all the public access television stations and made available in city halls and public libraries throughout Ramsey County. Land O'Lakes donated the printing of the Position Papers explaining the intent of the Ramsey County charter commission in drafting the major sections of the Ramsey County charter.
\item \textsuperscript{196} "The notice of election must contain the complete charter and must be published once a week for two successive weeks in a qualified newspaper of general circulation . . . ." MINN. STAT. § 383A.555(1) (1992).
\item \textsuperscript{197} The charter, in its entirety, was posted at the polls. No informational materials were distributed at the polling place in order to avoid the appearance of favoring the charter.
\item \textsuperscript{198} Board of Ramsey County Comm'r Res. 90-635, \textit{reprinted in Proceedings of the Bd. of Ramsey County Comm'rs 392} (1990).
\item \textsuperscript{199} \textit{Id.} "If 51 percent of the votes cast on the proposition are in favor of the proposed charter, it shall be considered adopted." MINN. STAT. § 383A.556 (1992).
\item \textsuperscript{200} \textit{Id.} "The charter shall take effect two years after the election. At that time the courts shall take judicial notice of the new charter . . . ." \textit{Id.}
\end{itemize}
period, the Ramsey County charter commission developed the final version of the annotated charter. The charter commission also served as an advisory body to the Ramsey County board and staff as the administrative code was written and a plan for coordinating delivery of operational services was created. In addition, a new charter commission was formed pursuant to the charter. On November 6, 1992, the Ramsey County Home Rule Charter went into effect.

IV. THE SCOPE AND EXTENT OF COUNTY HOME RULE POWER

Under a charter that contains an all-powers grant, a county can enact provisions that have the force and effect of legislative enactments. Charter provisions are the controlling law of the county and are superseded only by conflicting provisions of the state and federal constitutions or by preemptive state and federal law.

While courts liberally construe home rule powers, these powers are not unlimited. Determining whether the legislature has preempted a certain subject matter and whether a...
matter is a county, rather than a state or city concern, can be extremely difficult. The following framework may be followed when analyzing these legal issues on a case-by-case, fact specific basis. A more in-depth analysis of the specific issues involved follows.

A. Framework for Analysis

1. Is the regulation consistent with the constitution and enabling legislation?
   a. Do the United States or state constitutions prohibit such regulation?
   b. Does the enabling legislation prohibit such regulation?
   c. Is the regulation within the territorial limits of the county?

2. Are there federal laws on the subject matter being regulated?

3. Are there state general laws on the subject matter being regulated?
   a. The county may add consistent charter provisions.
   b. The county may add charter provisions inconsistent with or more restrictive than state law when
      (1) There is no express preemption;
      (2) There is no implied preemption; and
      (3) The matter is purely a county concern in which the state has no interest.
         (a) Do the general laws indicate whether the subject matter is purely a county concern?
         (b) Is the subject matter one traditionally governed by state or county government?
         (c) Is uniformity between counties necessary?
         (d) Is there extraterritorial impact?
         (e) Is there case law on the issue?

4. Are there city provisions on the subject matter being regulated?

5. Are there special laws on the subject matter being regulated?
B. Discussion of the Framework

1. Is the Regulation Consistent with the Constitution and Enabling Legislation?

   a. Do the United States or State Constitutions Prohibit Such Regulation?

   The power to frame and adopt charter provisions is limited by constitutional provisions. Charter provisions must be in harmony with and are subject to the state and federal constitutions. Nonetheless, the rule that state laws are presumed to be constitutional also applies to home rule provisions.

   b. Does the Enabling Legislation Prohibit Such Regulation?

   In Minnesota, enabling legislation is required before a county can operate as a home rule unit. The enabling legislation may include express limitations. Home rule provisions, therefore, must be consistent with any limitations set out in the charter enabling legislation.

   c. Is the Regulation Within the Territorial Limits of the County?

   County home rule power must encompass only local county
functions within its territorial limits.\textsuperscript{210} Any extraterritorial regulation must be established by an authority that governs all relevant political subdivisions.\textsuperscript{211} However, home rule regulation will not be invalidated when the impact of the regulation on other parts of the state is de minimis.\textsuperscript{212}

2. Are There Federal Laws on the Subject Matter Being Regulated?

Congress may expressly preempt home rule regulation in a legislative act.\textsuperscript{213} Congress may also impliedly preempt home rule regulation.\textsuperscript{214} Implied federal preemption exists when a home rule provision would frustrate a federal statutory scheme or when Congress intended to occupy the field to the exclusion of a home rule unit.\textsuperscript{215} The Supreme Court has indicated that Congress preempts an area "only where its intent is unmistakable, or where the nature of the regulated subject matter per-

\begin{itemize}
  \item \textsuperscript{210} See County of Will v. City of Naperville, 589 N.E.2d 1090, 1093 (Ill. App. Ct. 1992) (holding that a home rule unit does not have authority to zone beyond its territorial limits); Chicago Health Clubs, Inc. v. Picur, 508 N.E.2d 742, 750 (Ill. App. Ct. 1987) (holding that a home rule unit does not possess extraterritorial governmental powers), \textit{res’d on other grounds}, 528 N.E.2d 978 (Ill. 1988); State \textit{ex rel.} Dann v. Hutchinson, 206 Minn. 446, 448, 288 N.W. 845, 847 (1939) (holding that the constitutional authority for home rule charters is transgressed if and to the extent that they overreach local municipal government); City of Duluth v. Orr, 115 Minn. 267, 270, 132 N.W. 265, 266 (1911) (holding an ordinance to be invalid because it applied to an area extending one mile beyond the city limits).
  \item \textsuperscript{211} Independent School Dist. No. 700 v. City of Duluth, 284 Minn. 279, 288-89, 170 N.W.2d 116, 122 (1969).
  \item \textsuperscript{212} City & County of Denver v. State, 788 P.2d 764, 769 (Colo. 1990) (stating that an extra-territorial regulation is not invalidated where the economic impact on the state is de minimus). \textit{Cf.} State \textit{ex rel.} Miller v. Columbus, 602 N.E.2d 1242, 1245 (Ohio Ct. App. 1991) (holding that a city ordinance which disclaims the city’s duty to maintain fire hydrants attached to city water mains located outside city’s corporate limits did not exceed city’s home rule power).
  \item \textsuperscript{214} Bessette, supra note 213, at 1139.
  \item \textsuperscript{215} \textit{Id.} \textit{Cf.} ILC Data Device Corp. v. County of Suffolk, 588 N.Y.S.2d 845, 851 (App. Div. 1992) (holding that the state labor law impliedly preempts a local regulation in field of employee safety by its comprehensive scheme).
\end{itemize}
mits no other conclusion.”216

A home rule unit may also add a layer of regulation when federal laws establish minimum standards, “as long as [the home rule unit] provide[s] the same or greater protection than the national standards.”217 A home rule unit may even prohibit legal business activities regulated by the federal government.218

3. Are There State General Laws219 on the Subject Matter Being Regulated?

a. The County May Add Consistent Charter Provisions.

The mere existence of state legislation on a subject is not necessarily a bar to local regulation.220 There may still be

[216. Bessette, supra note 213, at 1139-40 (citing Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 208 (1985); Florida Lime & Avocado Growers v. Paul, 373 U.S. 132, 142 (1963)). See also Bloom v. City of Worcester, 293 N.E.2d 268, 278 (Mass. 1973) (stating that the test of whether both federal and state legislation may operate is whether both can be enforced without impairing the federal scheme of the field); Long Island Tobacco Co. v. Lindsay, 343 N.Y.S.2d 759, 764 (Sup. Ct. 1973) (stating that “[a] court should not declare that federal statutes have preempted the field, so as to bar all state legislation in that field, unless the preemption is quite clear”), aff’d, 313 N.E.2d 794 (N.Y. 1974).

217. Bessette, supra note 213, at 1140 (citing Hillsborough County v. Automated Medical Lab., 471 U.S. 707, 717 (1985); Mayor & Alderman of Annapolis v. Annapolis Waterfront Co., 396 A.2d 1080, 1086 (Md. 1979)). See also Fisher v. City of Berkeley, 693 P.2d 261, 273-277 (Cal. 1984) (holding that an ordinance may be invalidated as being in conflict with federal antitrust law only if the ordinance “mandates or authorizes conduct that necessarily constitutes a violation of the antitrust laws in all cases”), aff’d, 475 U.S. 260 (1986); Illinois Gasoline Dealers Ass’n v. City of Chicago, 491 N.E.2d 112, 114 (Ill. App. Ct. 1986) (holding that a seven-cent tax on sale of leaded gasoline by a home rule city was not a regulatory measure preempted by the Federal Clean Air Act); Mobil Oil Corp. v. Town of Huntington, 380 N.Y.S.2d 466, 471 (Sup. Ct. 1975) (holding that town regulation does not impermissibly infringe on Federal Water Quality Improvement Act); City of Houston v. Harris County Outdoor Advertising Ass’n, 732 S.W.2d 42, 48 (Texas Ct. App. 1987) (holding that the federal and state highway beautification acts which establish minimum regulations for outdoor advertising do not prevent stricter regulation by other governmental agencies).


219. A general law is a law that in terms and effect applies alike to all political subdivisions within a state. ILC Data Device Corp. v. County of Suffolk, 588 N.Y.S.2d 845, 848 n.3 (App. Div. 1992). “Even if a statute applies to all municipalities through the state, it is not necessarily a general law [limiting the legislative power of a home rule municipality] if it does not relate to a matter of statewide concern.” State ex rel. Haynes v. Bonem, 845 P.2d 150, 155 (N.M. 1992).

220. Just because state and local laws touch upon the same area is not necessarily enough to support a determination that the state has preempted the entire area of
room for local discretion and flexibility. 221 Home rule power can be used to add provisions consistent with the limits set out by state law. 222 A home rule regulation may not, however, "forbid what the legislature has expressly licensed, authorized, or required, nor may it authorize what the legislature has expressly forbidden." 223

b. The County Can Add Charter Provisions Inconsistent With or More Restrictive than State Law.

There is no general requirement that all charter provisions be consistent with all state general laws. 224 "If such consistency were invariably required, 'every charter provision would have to conform to every applicable general law and there could never be . . . an alternative form of [county] government regulation. Incorporated Village of Nyack v. Daytop Village, Inc., 583 N.E.2d 928, 930 (N.Y. 1991). When a home rule provision deals with the same subject matter as a state law, the courts will attempt to harmonize both laws. See State v. City of Seattle, 615 P.2d 461, 463 (Wash. 1980).

221. See Incorporated Village of Nyack, 583 N.E.2d at 929.

222. Del Duca v. Town Adm' r of Methuen, 329 N.E.2d 748, 754 (Mass. 1975); Bloom v. City of Worcester, 293 N.E.2d 268, 280 (Mass. 1973); MJR's Fare of Dallas, Inc. v. City of Dallas, 792 S.W.2d 569, 573 (Texas Ct. App. 1990). See also Adler v. Deegan, 167 N.E. 705, 711 (N.Y. 1929) (Cardozo, C.J., concurring) (holding that local regulations may be adopted to add additional protections); City of Houston v. Harris County Outdoor Advertising Ass'n, 732 S.W.2d 42, 48-49 (Texas Ct. App. 1987) (holding that the federal and state highway beautification acts which establish minimum regulations for outdoor advertising do not prevent stricter regulation by other governmental agencies).

223. Rinzler v. Carson, 262 So. 2d 661, 668 (Fla. 1972) (declaring that "[i]n order for a municipal ordinance to prohibit which is allowed by the general laws of the state there must be an express legislative grant by the state to the municipality authorizing such prohibition"); City of Portland v. Lodi, 767 P.2d 108, 109-110 (Or. Ct. App. 1989) (holding that an ordinance that prohibits the carrying of a concealed knife with a blade longer than three and one half inches is preempted by a statute that prohibits carrying concealed knives of specified types because the ordinance prohibits an act that the statute permitted), aff'd, 782 P.2d 415 (Or. 1989); Town of Republic v. Brown, 652 P.2d 955, 958 (Wash. 1982) (holding as invalid a municipal law which potentially allowed behavior that was restricted under state law).

224. See, e.g., State ex rel. Town of Lowell v. City of Crookston, 252 Minn. 526, 528, 91 N.W.2d 81, 83 (1958).

The Power . . . to frame and adopt home rule charters is limited by the [constitutional] provision that "such charter shall always be in harmony with and subject to the constitution and laws of the state." But these limitations do not forbid the adoption of charter provisions as to any subject appropriate to the orderly conduct of municipal affairs, although they may differ from those of existing general law. Id. (quoting MINN. CONST. art 4, § 36). "The provisions of home rule charters upon all subjects proper for municipal regulations prevail over the general statutes relating to the same subject matter. . . ." Id.
In matters of purely local concern, when there is no legislative preemption, home rule regulation may supersede conflicting state statutes by enacting and enforcing conflicting or more restrictive regulations to the exclusion of the state general laws. A problem, however, often arises in determining what constitutes a "local concern." Furthermore, determining whether a state legislature has preempted a certain subject matter may be extremely difficult. The courts must weigh various facts on a case-by-case basis.

(1) There is No Express Preemption.

The legislature has the power to enact general laws that are superior to home rule charters and may expressly forbid the

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227. See, e.g., Universal Outdoor, Inc. v. Village of Elk Grove, 550 N.E.2d 1254, 1258 (Ill. App. Ct. 1990) (finding that the Illinois Highway Advertising Control Act does not preempt a more restrictive sign ordinance passed by a home rule village); National Advertising Co. v. Village of Downers Grove, 519 N.E.2d 502, 504 (Ill. App. Ct. 1988) (holding that a home rule municipality may enact a more restrictive local advertising sign regulation); People v. Qualls, 403 N.W.2d 594, 595 (Mich. Ct. App. 1987) (holding that a city may enact an ordinance regulating storage of fireworks in retail stores that is more restrictive than state law provided that it is not in direct conflict with that state law); Abilene Oil Distrib., Inc. v. City of Abilene, 712 S.W.2d 644, 645 (Tex. Ct. App. 1986) (holding that a zoning ordinance of a home rule city may be inconsistent with state statutes if the ordinance imposes a higher standard); Lenci v. City of Seattle, 388 P.2d 926, 928-30 (Wash. 1964) (holding that a city home rule provision requiring eight foot fences is valid even though state law only requires a six foot fence).
228. Sandalow, supra note 3, at 661.
229. See generally City of Greenwood Village v. Fleming, 643 P.2d 511 (Colo. 1982). "To state that a matter is of local concern is to draw a legal conclusion based on all the facts and circumstances presented by a case." City & County of Denver, 788 P.2d at 767.
230. "Express preemption occurs when the legislature expressly declares its intent
adoption of home rule provisions on any subject which is addressed in a general law. 231 One court stated that express pre-emption must appear with unmistakable clarity:

[G]enerally speaking, it is agreed by most home rule stu- 
dents that unless a state statute clearly limits local actions by use of the directive word shall (as opposed to the permissive word may) or by use of the phrase but only in the manner herein- after provided, or similar words of exclusion, municipalities may do other than is as provided by that statute—unless the state legislation so broadly encompasses the field as to indi- 
cate a clear intention to preempt the matter as an area of complete state concern . . . 232

Therefore, home rule charter provisions must be consistent with express limitations dictated by general law. 233

A theoretical problem arises in attempting to ascertain the intention of the legislature concerning preemption by a statute that predates the enactment of a home rule charter. 234 For example, the Ramsey County charter is the first and the only county home rule charter in Minnesota. Prior to the adoption of home rule in Ramsey County, the Minnesota Legislature did not express its intent to preempt a Minnesota county home rule jurisdiction in its statutes because the preemption issue did not exist. This question can be analyzed by examining to have exclusive jurisdiction over a particular subject matter.” Michael M. K. Sebree, One Century of Constitutional Home Rule: A Progress Report?, 64 Wash. L. Rev. 155, 171 (1989). See, e.g., State ex rel. Town of Lowell v. City of Crookston, 252 Minn. 526, 528, 91 N.W.2d 81, 83 (Minn. 1958); Ramaley v. City of St. Paul, 226 Minn. 406, 411, 33 N.W.2d 19, 22 (1948); State ex rel. Haynes v. Bonem, 845 P.2d 150, 154 (N.M. 1992) (holding that home rule units do not look to legislature for grant of power to legislate but look only to the statutes to determine whether any express limitations have been placed on that power).

231. A general law may expressly provide that it is applicable to all municipalities, to anything in their charter, or any other law to the contrary, and that its provisions are controlling to the extent that they are inconsistent with any other regional law within the state.

Conversely, a general law may expressly state that its provisions do not override the charter of a municipal corporation. By stating that a law is not intended to super- 
sede, abridge or otherwise limit a charter, or by providing that the general law is applicable to municipal corporations only to the extent not otherwise provided in a home rule charter, the state is effectively deferring to the local government.


233. See People ex rel. Village of Lake Bluff v. City of North Chicago, 586 N.E.2d 802, 805 (Ill. Ct. App. 1992) (holding that municipalities are creatures of legislation and are therefore subject to legislative will); see also State ex rel. Town of Lowell v. City of Crookston, 252 Minn. 526, 529, 91 N.W.2d 81, 84 (1958).

234. See Bloom, 293 N.E.2d at 281 n.16.
whether a county home rule provision frustrates the fulfillment of the legislative purpose of the state general laws,\(^\text{235}\) by examining any analogous state statutes applicable to city home rule charters, and by surveying existing case law on the issue.

(2) There is No Implied Preemption.

When the legislature has not expressly limited home rule power, the next step is to determine whether preemption by implication exists.\(^\text{236}\) The test is not whether local law conflicts with state law but whether the state legislature has acted upon a subject and, in so acting, has evidenced an intent that its regulations should preempt the possibility of varying local regulations.\(^\text{237}\) When the state has demonstrated an intent to preempt an entire field and preclude local regulation, a charter provision regulating the same subject matter will not be given effect.\(^\text{238}\) However, if the state's legislative purpose can be achieved in the face of local regulation on the same subject, the local regulation will not be considered inconsistent with the state legislation.\(^\text{239}\)

Where it is determined that the State has preempted an en-

\(^{235}\) Id.


\(^{237}\) AD + Soil, Inc. v. County Comm'rs, 513 A.2d 893, 902 (Md. 1986). Preemption is grounded upon the authority of the legislature to reserve for itself exclusive dominion over an entire field of legislative concern. Preemption may be accomplished impliedly or by unequivocal conduct of the legislature. The focus of the inquiry must be on whether the legislature has manifested a purpose to exclusively occupy a particular field. \textit{Id.}

\(^{238}\) See District Election v. O'Connor, 144 Cal. Rptr. 442, 450 (Ct. App. 1978) (stating that courts will give great weight to purpose of the legislature in enacting general laws which disclose an intent to preempt an area of law to the exclusion of local regulation); Midcoast Disposal, Inc. v. Town of Union, 537 A.2d 1149, 1151 (Me. 1988) (holding that where act created a comprehensive and exclusive regulatory scheme, the legislature manifested a clear intention to remove municipal authority to prohibit the establishment and operation of a private solid waste facility within its borders); Halpern v. Sullivan County, 574 N.Y.S.2d 837, 838 (1991) (holding that a county's home rule powers are not unlimited and may be restricted by doctrine of preemption that applies when the state has clearly indicated an intent to occupy an entire field); ILC Data Device Corp. v. County of Suffolk, 588 N.Y.S.2d 845, 849 (App. Div. 1992) (holding that a local law may be held inconsistent with state law where the state "has clearly evinced a desire to preempt an entire field thereby precluding any further local regulation"); Zumbo v. Town of Farmington, 401 N.Y.S.2d 121, 123 (App. Div. 1978) (holding that where the state has evidenced a desire that its general laws should preempt local laws, a local enactment that prohibits that which is acceptable under state law is preempted).

tire field, a local . . . [regulation] is deemed inconsistent with the State's overriding interest because it either (1) prohibits conduct which the State law, although perhaps not expressly speaking to, considers acceptable or at least does not proscribe, or (2) imposes additional restrictions on rights granted by State law.\textsuperscript{240}

To preclude local action, however, the intent must be clear.\textsuperscript{241} Intent to preempt home rule regulation may be inferred from a declaration of policy in the general laws\textsuperscript{242} or from a comprehensive or detailed scheme in a given area of law.\textsuperscript{243} While the state law may not have addressed a specific subject, detailed state statutes may govern the general area.\textsuperscript{244} Legislation that comprehensively deals with a subject and/or describes the authority of municipalities, may be reasonably inferred as intending to preclude the exercise of any local power or function.

\textsuperscript{240} ILC Data Device Corp., 588 N.Y.S.2d at 849.

\textsuperscript{241} Scadron v. City of Des Plaines, 606 N.E.2d 1154, 1166, (Ill. 1992) (holding that a home rule ban on outdoor advertising signs did not clearly interfere with state's policy of effectively controlling outdoor advertising signs); Del Duca v. Town Adm'r of Methuen, 329 N.E.2d 748, 754 (Mass. 1975) (requiring for state law the same clear legislative intent as is required for ascertaining legislative intent in federal preemption cases). Cf. Long Island Tobacco Co. v. Lindsay, 343 N.Y.2d 759, 764 (Sup. Ct. 1973) (stating that "[a] court should not declare that federal statutes have preempted the field, so as to bar all state legislation in that field, unless the preemption is quite clear").

\textsuperscript{242} State ex rel. Town of Lowell v. City of Crookston, 252 Minn. 526, 528, 91 N.W.2d 81, 83 (Minn. 1958) (stating that "[t]he adoption of any charter provision contrary to public policy of the state, as disclosed by general laws or its penal code, is . . . forbidden."). See also Wisconsin Ass'n of Food Dealers v. City of Madison, 293 N.W.2d 540, 544 (Wis. 1980) (holding that success of a preemption challenge to municipal ordinance will depend on whether challenged ordinance infringes on state law or the general state policy); Volunteers of America v. Village of Brown Deer, 294 N.W.2d 44, 47 (Wis. Ct. App. 1980) (holding that a home rule provision may "not infringe on the spirit of a state law or general policy of the state").

\textsuperscript{243} See, e.g., Village of Park Forest v. Thomason, 495 N.E.2d 1036, 1039 (Ill. App. Ct. 1986) (holding that a statutory driving under the influence (DUI) scheme removes from home rule units the discretion to separately treat class A misdemeanors in local DUI ordinances); Whitehead v. Estate of Bravard, 719 S.W.2d 720, 721-23 (Ky. 1986) (holding that a home rule ordinance is preempted by a comprehensive scheme of legislation, meaning that the city could not limit the number of retail beer licenses in conflict with the state statutory scheme regulating manufacturing, sale, and distribution of alcoholic beverages); Bloom v. City of Worcester, 293 N.E.2d 268 (Mass. 1973) (stating that comprehensive legislation precludes the exercise of any local power or function on the same subject to avoid frustrating legislative purpose of that statute); ILC Data Device Corp. v. County of Suffolk, 588 N.Y.S.2d 845, 850 (App. Div. 1992) (holding that the state labor law preempted county from regulating employee safety in the workplace).

\textsuperscript{244} See supra note 243.
on the same subject.245

(3) The Matter is Purely a County Concern in Which the State Has No Interest.

When there is no legislative preemption, the ultimate issue in determining whether a charter provision supersedes a conflicting state statute is whether the matter is “of purely local concern.” In matters of purely local concern, home rule regulation supersedes conflicting state statutes.246 Home rule power may be used to enact and enforce conflicting regulations to the exclusion of the state general laws.247 In matters of state-wide concern, state statutes supersedes conflicting home rule provisions.248

There is no particular test to resolve whether a particular matter is a local, state, or mixed concern.249 Instead, the courts make determinations on an ad hoc basis, taking into

245. As one court stated:
   We regard it as inconceivable that the legislature, after setting up elaborate procedures and requiring consideration of every imaginable interest, intended to leave the regulation . . . to the whim of individual towns . . . . Whatever power towns may have to regulate . . . that power cannot be exercised in a way that is inconsistent with state law. Public Serv. Co. v. Town of Hampton, 411 A.2d 164, 166 (N.H. 1980); see also County of Kendall v. Avery Gravel Co., 463 N.E.2d 723, 725-26 (Ill. 1984) (distinguishing a home rule unit from a non-home rule unit and holding that a non-home rule unit cannot subvert state environmental regulation); Bloom, 293 N.E.2d at 280 (finding that legislative intent to preclude local action can be by explicit indication or inferred from the totality of the circumstances); Town of Salisbury v. New England Power Co., 437 A.2d 281, 282-83 (N.H. 1981) (holding that the state chemical defoliant regulations preempted a town ordinance on the same topic); City of Spokane v. Portch, 596 P.2d 1044, 1046 (Wash. 1979) (holding that a home rule charter city could, under state statutes granting annexation power, properly annex land abutting a city without amending the charter).

246. See supra note 226.

247. Id.

248. See, e.g., Voss v. Lundvall Bros., Inc., 830 P.2d 1061, 1066 (Colo. 1992) (holding that, in matters of mixed local and state concern, a state statute will supersedes conflicting home rule provisions); R.E.N. v. City of Colorado Springs, 823 P.2d 1359, 1362 (Colo. 1992) (holding that a home rule ordinance may coexist with a state statute where no conflict exists between the ordinance and the statute, and where conflict exists, state statute supersedes local ordinance); Walgreen Co. v. Charnes, 819 P.2d 1039, 1045 (Colo. 1991) (holding that the general assembly has ultimate authority on matters of statewide concern); Town of Normal v. Seven Kegs, Two Tappers and Two Barrels, 599 N.E.2d 1384, 1387 (Ill. App. Ct. 1992) (holding that a home rule municipality may enact ordinances that do not conflict with state law); Thompson v. City of Omaha, 455 N.W.2d 538, 541 (Neb. 1990) (holding that legislative action of statewide concern takes precedence over any home rule action).

consideration the facts of each case. The following five factors have been used by the courts when analyzing whether a matter is "of purely local concern."

(a) Do the General Laws Indicate Whether or Not the Subject Matter is Purely a County Concern?

In determining whether a subject matter is purely a local concern, one factor to consider is whether the general or special laws provide some guidance. Courts tend to give great weight to legislative declarations that a particular matter is one of statewide concern. While such a statutory declaration is relevant, it may not be binding: "If the constitutional provisions establishing the right of home rule municipalities to legislate as to their local affairs are to have any meaning, we must look beyond the mere declaration of a state interest and determine whether in fact the interest is present."

(b) Is the Subject Matter One Traditionally Governed by State or County Government?

A second factor to consider is whether the subject matter is one traditionally governed by state or county government. Consideration must also be given to whether the state constitution specifically commits a particular matter to state or local regulation.

250. Id. at 267-68.
251. See, e.g., City of Ormond Beach v. County of Volusia, 535 So. 2d 302, 305 (Fla. Dist. Ct. App. 1988) (holding that the scheme of a general law gives planning, building, and maintaining function for county roads exclusively to counties, not to cities).
252. City & County of Denver, 788 P.2d at 768 n.6.
253. Id. See also Johnson v. Bradley, 841 P.2d 990, 1000 (Cal. 1992) (holding that, the courts must be concerned not with legislative intent but with whether good reason exists to label a given matter a statewide concern).
254. 1 C. Antieau, MUNICIPAL CORPORATION LAW § 3.40, at 3-104 (1992). See, e.g., Board of Supervisors v. McMahon, 268 Cal. Rptr. 219, 226 (Cal. Ct. App. 1990) (noting that the public social services were traditionally governed by the state); Village of Dolton ex rel. Winter v. CSX Transp., Inc., 554 N.E.2d 440, 442 (III. App. Ct. 1990) (noting that the regulation of railroad operations has traditionally been outside scope of municipal powers); Crain Enterprises v. City of Mound, 544 N.E.2d 1329, 1334 (Ill. App. Ct. 1989) (stating that real property matters are generally recognized as falling within the competence of the state).
255. See Voss v. Lundvall Bros., Inc., 830 P.2d 1061, 1068 (Colo. 1992) (acknowledging that a state constitution can expressly authorize either state or local regulation of a matter); City & County of Denver v. Colorado, 788 P.2d 764, 768-770 (Colo. 1990) (stating that the Colorado Constitution committed limited authority to munici-
(c) Is Uniformity Between Counties Necessary?

A third factor to consider is whether the legislature intended to create a uniform standard among political subdivisions or whether a uniform standard is necessary. In the appropriate case, the need for uniformity may be a sufficient basis for legislative preemption.\(^{256}\) Further, uniformity may be necessary to insure adequate protection under the law among different political subdivisions.\(^{257}\) In some cases, however, "uniformity in itself [may have] no virtue, and a municipality is entitled to shape its local law as it sees fit if there is no discernible pervading state interest."\(^{258}\)

(d) Is There Extraterritorial Impact?

A fourth factor to consider is whether there is extraterritorial impact. In order to avoid classification as a statewide concern, county home rule regulation may not have an impact beyond the borders of the county.\(^{259}\) Any regulation which substan-
tially affects an area beyond the territorial limits of the home rule unit must be established by an authority superior to all applicable political subdivisions.

(e) Is There Case Law on the Subject Matter?

A fifth factor to consider is any case law addressing the specific issue. Section V contains a survey of Minnesota authority addressing the issue of city home rule provisions that have conflicted with Minnesota state law. These cases may be helpful to Minnesota counties when analyzing analogous issues. Section V also contains a survey of decisions from other jurisdictions analyzing home rule power.

4. Are There City Laws on the Subject Matter Being Regulated?

A municipality has certain inherent powers of its own, while a county is generally viewed as a political subdivision of the state. If there is a conflict between county and municipal powers, each situation must be analyzed on the basis of the particular laws, facts, and circumstances applicable to the particular issue.

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260. City & County of Denver v. State, 788 P.2d 764, 772 (Colo. 1990) (stating that where the extraterritorial impact is minimal, the matter will not be considered a statewide concern).

261. See Chicago Health Clubs, Inc. v. Picur, 508 N.E.2d 742, 750 (Ill. App. Ct. 1987) (holding that the home rule unit does not possess extraterritorial governmental powers), rev'd on other grounds, 528 N.E.2d 978 (Ill. 1987); Independent School Dist. No. 700 v. City of Duluth, 284 Minn. 279, 288, 170 N.W.2d 116, 122 (1969) (holding that a home rule charter city could properly annex land abutting the city without amending its charter under a state statute which grants such annexation power); State ex rel. Dann v. Hutchinson, 206 Minn. 446, 448, 288 N.W. 845, 847 (1939) (holding that the constitutional authority for home rule charters is transgressed if and to the extent that an ordinance overreaches local municipal government).

262. See infra part V.A.

263. See infra part V.B.

264. Board of County Comm'rs v. Bowen/Edwards Assoc. Inc., 830 P.2d 1045, 1055 (Colo. 1992) (holding that, in contrast to a home rule municipality, a county is not an independent government entity and exists only for the convenient administration of the state).

265. See City of Crown Point v. Lake County, 510 N.E.2d 684, 687 (Ind. 1987) (holding that a county government's property is subject to the zoning authority of the city within which the property is located); Matter Contracting Co. v. Greene County, 572 N.Y.S.2d 965, 967 (N.Y. App. Div. 1991) (holding that county legislation affecting solid waste is effective only outside the town borders because the town also had legislation regulating solid waste); Norristown Fraternal Order of Police, Lodge 31 v. DeAngelis, 611 A.2d 322, 326 (Pa. 1992) (stating that ambiguities are to be resolved
Rule Charter does not change the current laws of municipalities within Ramsey County.\textsuperscript{266}

5. Are There Special Laws on the Subject Matter Being Regulated?

The Minnesota Constitution specifically authorizes a county to modify or supersede special laws through charter provisions.\textsuperscript{267} The constitution further provides that "[a]ny special law may be modified or superseded by a later home rule charter or amendment applicable to the same local government unit, but this does not prevent the adoption of subsequent laws on the same subject."\textsuperscript{268} When adopting a charter provision, the charter provision should specify whether the special law is being superseded.\textsuperscript{269}

V. State Versus Local Concerns: A Survey of Case Law

When a charter provision conflicts with state law, the ultimate issue often becomes whether a subject matter is a local concern in which the state has no interest. This section con-
tains a survey of legal authorities addressing this particular issue. Part A surveys Minnesota authority regarding various aspects of city home rule power. Part B includes case law from other jurisdictions.

A. Minnesota City Home Rule Power: An Analogy for Minnesota Counties

1. Amending the Charter

State statutory provisions setting forth the percentage of votes necessary to adopt a home rule charter or to amend an existing charter control over provisions contained in a home rule charter.270

2. Assessments

Where city charter provisions are inconsistent with state assessment laws, the charter provisions are inoperative.271

3. Compensation and Appointment of Officials

Charter provisions must be followed when they specify a city's compensation and appointment procedures.272 As long as a city charter provision is not inconsistent with state statutes, the compensation of a city appointee may be calculated without state intervention.273


A contract provision entered into pursuant to the Public Employment Labor Relations Act that violates or is in conflict with the public employer's home rule charter is void.274

270. See Bowman v. City of Moorhead, 228 Minn. 35, 37, 36 N.W.2d 7, 8 (1949) (holding that publication of proposed amendments to a home rule charter only once instead of once each week for four successive weeks as required by statute was defective and the holding of an election thereunder was subject to injunction); Minn. Op. Att'y Gen. No. 59a-11 (Dec. 30, 1981) (stating that the legislature is constitutionally granted exclusive authority to determine the percentage of votes necessary to amend or adopt a municipal home rule charter).


5. **Courts and Judges**

Minnesota statutes relating to municipal courts supersede inconsistent home rule charter provisions. 275 The term of office of a municipal court judge may not be changed by home rule charter provisions inconsistent with the Minnesota Constitution. 276 Municipal judges of a municipal court are state officers, and their terms of employment are unaffected by the terms of a home rule charter. 277

6. **Criminal Matters**

The Minnesota Constitution, as it relates to home rule charters, does not authorize a city to punish a witness for contempt. 278

7. **Liability**

The Minnesota Legislature has not expressly declared that general law shall prevail over home rule charter provisions in the area of municipal liability. 279 Moreover, conditions for which a municipality may be liable for damages to individuals are matters belonging to municipal government and may be regulated in a home rule charter. 280 Home rule charter provisions may not, however, exempt city officials from personal liability that may exist absent such charter provisions. 281

8. **Municipal Contracting Law**

The dollar limits set forth in the State Municipal Contracting Law will prevail over those set forth in a home rule charter. 282

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280. Schigley v. City of Waseca, 106 Minn. 94, 101, 118 N.W. 259, 262 (1908) (stating that a municipality could properly regulate its own tort liability because the state legislature had not otherwise precluded such regulation).
281. Stevens v. Lycan & Co., 259 Minn. 106, 110, 105 N.W.2d 889, 892 (1960) (holding that home rule provisions, exempting a city from liability for injuries sustained by reason of defective streets, do not exempt the officials of the city from any liability that would exist absent the charter provisions).
9. **Newspaper**

In order to be designated as the official legal newspaper of a home rule charter city, a home rule unit is free to set its own criteria, and the requirements set out in state statutes need not be satisfied.\(^{283}\)

10. **Ordinances: Methods of Enacting**

The method and manner of enacting ordinances and adopting resolutions are local matters.\(^{284}\)

11. **Public Contracting**

Minnesota statutes of limitation on public contractor's bond suits and notice of claim filing requirements are inapplicable to home rule units.\(^{285}\) A home rule charter may be used to enact ordinances prescribing specific surety bonds requirements for public contractors regardless of state statutes.\(^{286}\)

12. **School Matters**

Home rule charter provisions relating to school matters must harmonize with the Minnesota Constitution and statutes in that area.\(^{287}\)

13. **Streets & Roadways**

The state legislature has the undisputed power to control the highways of the state.\(^{288}\) However, municipalities may regulate the granting of rights to utility companies.\(^{289}\)

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284. State ex rel. Town of Lowell v. City of Crookston, 252 Minn. 526, 530, 91 N.W.2d 81, 84 (1958). In Lowell, the Minnesota Supreme Court decided that the City of Crookston had to follow its own charter provisions in an annexation proceeding. Because the matter was of purely local concern, neither public policy, the constitution, nor state law prohibited it. Id.


289. Id. at 389.
14. Taxes

The Minnesota Constitution provides that general property tax law is a law of general application to all municipalities.\(^{290}\) Therefore, these general statutes prevail over inconsistent provisions of a home rule charter.\(^{291}\)

15. Voting Machines

General laws granting authority to municipalities to acquire and to use voting machines are superior to home rule charter provisions relating to the same matter.\(^{292}\)

16. Water Courses

Municipalities may ban seaplane landings within its boundaries where there is no state or federal preemption in the area.\(^{293}\) Home rule powers may be used to impose reasonable speed limits on water craft on lakes within municipal boundaries as long as the provisions are not inconsistent with state law.\(^{294}\)

17. Zoning

Zoning is purely local concern.\(^{295}\) Thus, a state statute that fails to provide for municipal veto power in zoning is subordinate to a charter ordinance that provides this veto power.\(^{296}\) A local zoning ordinance is proper because zoning is an area of local concern subject to municipal regulation.\(^{297}\)

B. Other Jurisdictions

1. Aid to Families with Dependent Children (AFDC)

Public social services like AFDC are matters of statewide

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290. Minn. Const. art X, § 1.
291. See supra part III.F.4.
292. Rice v. City of St. Paul, 208 Minn. 509, 518-19, 295 N.W. 529, 533 (1940) (stating that the authority of a municipality to acquire and use voting machines is specifically granted by general laws of the state legislature).
296. Id.
297. Id.
Home rule principles do not prevent the state from requiring local contributions to state mandated programs.  

2. Animals

A home rule unit clearly has the authority to enact ordinances to protect the public peace, safety, health, welfare, comfort and convenience. Ordinances regulating animals are often enacted pursuant to the county’s duty to protect the public safety. For example, the prohibition of pit bulls within city limits is a purely a matter of local concern.

3. Appointed and Elected Officials

Charter provisions pertaining to the appointment and compensation of government employees are an exercise of local self-government. The number of commissioners in a municipal governing body is also a subject of local concern.

4. Charter Amendments

The legislature has the power to enact laws regulating how home rule charters may be enacted, amended or repealed.

5. Civil Service

State courts are divided on whether the state or the home

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299. Id.
301. Id.
303. See Resnick v. County of Ulster, 376 N.E.2d 1271, 1273 (N.Y. 1978) (holding that local governments have the power to appoint officers of local government); State ex rel. Canade v. Phillips, 151 N.E.2d 722 (Ohio 1958) (holding that promotional appointment made in accordance with home rule charter provisions is proper exercise of a power of local self-government despite conflicting state civil service statute); Springfield Command Officers Ass’n v. City Comm’n, 575 N.E.2d 499, 501 (Ohio Ct. App. 1990) (holding that the appointment of officers within a city’s police force is an exercise of local self-government).
rule municipality has control over civil service practices.\textsuperscript{307}

6. Court Matters

Home rule power may not be used to prescribe the judicial branch's adjudicatory role.\textsuperscript{308} Access to courts and remedies are matters of statewide concern.\textsuperscript{309}

7. Criminal Matters

Not all courts agree as to whether state criminal law preempts home rule ordinances.\textsuperscript{310} Home rule authority may not impose greater penalties than those afforded by state law for the same conduct.\textsuperscript{311} How violations of state law are investigated by state and county officials is a matter of statewide

\textsuperscript{307} Compare Trettenero v. Civil Serv. Comm'n, 581 N.E.2d 857, 860 (Ill. Ct. App. 1991) (holding that a home rule city properly provided its own system for determining due process rights of classified civil service officers and employees) and State Personnel Bd. of Review v. City of Bay Village Civil Serv. Comm'n, 503 N.E.2d 518, 522 (Ohio 1986) (holding that charter provisions regulating the procedures for selection and removal of commissioners was sufficiently confined to internal affairs of municipalities as to be immune from conflicting state regulations) and Jacomin v. City of Cleveland, 590 N.E.2d 846, 848 (Ohio Ct. App. 1990) (holding that charter provisions dealing with civil service employment promulgated pursuant to home rule authority prevail over conflicting state statutes) and Hudak v. Cleveland Civil Serv. Comm'n, 540 N.E.2d 741, 743 (Ohio Ct. App. 1988) (holding that a city's charter generally controls its civil service practices) with Church v. New Orleans Aviation Bd., 612 So. 2d 126, 129 (La. Ct. App. 1992) (holding that a civil service employee is governed by state civil service rules, rather than by a home rule charter) and Norristown Fraternal Order of Police Lodge 31 v. DeAngelis, 611 A.2d 322, 326 (Pa. Commw. Ct. 1992) (holding that statutory civil service provisions apply to home rule charter municipality). See also 62 C.J.S. Municipal Corporations § 198 (1949 & Supp. 1992).


\textsuperscript{309} Thompson v. City of Omaha, 455 N.W.2d 538, 541 (Neb. 1990) (holding that statutes governing claims against cities that affect access to state courts and state law remedies are of statewide concern).

\textsuperscript{310} See Village of Park Forest v. Thomason, 495 N.E.2d 1036, 1039 (Ill. App. Ct. 1986) (holding that a state statutory driving under the influence (DUI) scheme removes from home rule units the discretion to separately treat Class A misdemeanors in local DUI ordinances); City of Portland v. Lodi, 767 P.2d 108, 109 (Or. Ct. App.) (holding that for preemption purposes, home rule cities are empowered to enact ordinances that punish the same conduct that is punished by state criminal law, but that the ordinances may not conflict with or be incompatible with state statutes), aff'd, 782 P.2d 415 (Or. 1989). Cf. City of Fargo v. Little Brown Jug, 468 N.W.2d 392, 395 (N.D. 1991) (holding that regardless of a state statute providing for punishment as a Class A misdemeanor, a city could enact an ordinance making the sale of alcoholic beverages to a person under 21 years of age a Class B misdemeanor).

concern and is not subject to county home rule.312

8. Employees and Employment

Generally, personnel matters, including hiring methods, health and efficiency matters, and salary concerns, are considered local matters.313 But, unemployment compensation disputes for city employees are matters of statewide concern.314 Home rule powers may not be used to enact provisions inconsistent with a collective bargaining act for public employees,315 nor can home rule powers be used to define an employer-employee relationship.316

9. Fees

A home rule municipality may impose road maintenance fees on all motor vehicles registered in the municipality as long as the fee is a fair and reasonable alternative to increasing general property taxes.317 A home rule municipality also has the power to impose special assessments.318

313. See City & County of Denver v. State, 788 P.2d 764, 772 (Colo. 1990) (holding that the issue of employee residency was a matter of local concern and thus, municipality could adopt a residency requirement in conflict with state law); Burgess v. Board of Fire & Police Comm'rs, 568 N.E.2d 430, 433 (Ill. App. Ct. 1991) (holding that home rule units may enact ordinances pertaining to municipal employees that conflict with state statutes concerning the same matters); Messina v. City of Chicago, 495 N.E.2d 1228 (Ill. App. Ct. 1986) (holding that home rule personnel policies override the state statutory procedure for discharging employees). See also 62 C.J.S. Municipal Corporations § 198 (1949 & Supp. 1992).
314. See City of Colorado Springs v. Industrial Comm'n, 749 P.2d 412, 416-17 (Colo. 1988) (holding that the award of compensation does not violate home rule provisions of the state constitution); Santwire v. Department of Employment & Training, 530 A.2d 571, 573 (Vt. 1987) (holding that an unemployment statute is not relative to local governments, rather the statute treats municipalities as any other employer).
316. McSweeney v. Louisiana Board of Veterinary Medicine, 555 So. 2d 469, 470 (La. 1990) (holding that a city ordinance that merely states that an employer-employee relationship exists with the city does not circumvent the state law governing whether employer-employee relationship exists).
10. Forfeiture

Home rule powers may be used to control substance abuse forfeiture ordinances. These ordinances may treat items used to facilitate the unlawful sales of controlled substances as contraband.\footnote{Town of Normal v. Seven Kegs, Two Tappers & Two Barrels, 599 N.E.2d 1384, 1386-87 (Ill. App. Ct. 1992).}

11. Highway Signs

State roadside advertising laws may be either a statewide, or a mixed statewide and local concern for purposes of determining whether state or local laws control.\footnote{See National Advertising Co. v. Department of Highways, 751 P.2d 632, 635-38 (Colo. 1988) (holding that roadside advertising laws are a matter of mixed statewide and local concern and that a city regulatory scheme is invalid to the extent that it conflicts with state law); Root Outdoor Advertising, Inc. v. City of Fort Collins, 759 P.2d 59, 60 (Colo. Ct. App. 1988) (holding that a city’s sign code was invalid to extent it conflicted with provisions of state law because control of advertising along state highway system was a matter of mixed statewide and local concern). Contra Universal Outdoor, Inc. v. Village of Elk Grove, 550 N.E.2d 1254, 1258 (Ill. App. Ct. 1990) (holding that the Illinois Highway Advertising Control Act does not preempt a more restrictive sign ordinance by a home rule village). But see Adams Outdoor Advertising v. East Lansing, 483 N.W.2d 38, 42 (Mich. 1992) (holding that a home rule ordinance eliminating nonconforming billboards and signs was a proper exercise of police power under home rule authority).}

12. Meeting Rules

A home rule municipality may enact its own rules regarding municipal board meetings.\footnote{Glenwood Post v. City of Glenwood Springs, 731 P.2d 761, 762-63 (Colo. Ct. App. 1986) (holding that a city council may deliberate in an executive session that was closed to public in accordance with authority granted by ordinance).}

13. Minimum Wage

Local governmental units are subject to the minimum wage provisions of the Federal Fair Labor Standards Act\footnote{29 U.S.C. §§ 201-219 (1988). The Fair Labor Standards Act was held applicable to local units of government in Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528, 555-57 (1985).} and to applicable state minimum wage provisions.\footnote{See, e.g., MINN. STAT. §§ 177.21-177.35 (1992).} Any conflicting home rule regulation must yield to state and federal laws in
14. Obscenity

Obscenity is an area of municipal concern. While the state also has an interest in controlling obscenity, obscenity is a social problem that does not lose its character as a municipal concern merely because the state also has an interest. Where the state has not preempted regulation and no impermissible conflict with state law exists, municipalities may adopt obscenity ordinances.

15. Penalties for Ordinance Violations

A municipality may, under its home rule powers, prescribe penalties for violation of its ordinances. A municipality may not, however, forbid what the legislature has expressly licensed, authorized or required. Similarly, it may not authorize what the state legislature has expressly forbidden. Nevertheless, the mere existence of a state regulation will not preclude a local authority from adding additional requirements where the provisions do not conflict.

16. Police Power

The preservation of order, the enforcement of law, the protection of life and property, and the suppression of crime are all matters of statewide concern. Thus, when a state legisla-

327. Id.
328. Id.
329. Thomas v. State, 583 So. 2d 336, 340-41 (Fla. Dist. Ct. App. 1991) (holding that a municipal ordinance requiring that bicycles be equipped with bell is not preempted by state legislation requiring other equipment on bicycles but not prohibiting bells, gongs, or other audible warning devices).
330. Id. at 340.
331. Id.
332. Id.
333. See New York State Club Ass'n, Inc. v. City of New York, 505 N.E.2d 915, 917-18 (N.Y. 1987) (holding that a local government may not exercise its police power by adopting local laws inconsistent with the state constitution or with state general laws), aff'd, 487 U.S. 1 (1988); Local Union No. 487 v. City of Eau Claire, 415 N.W.2d 543, 545 (Wis. Ct. App. 1987) (holding that regulation of police and fire
ture enacts a general law that constitutes an exercise of police power, such law overrides any home rule charter provisions.\textsuperscript{334} Notwithstanding such state regulations, home rule power may confer broad police powers upon local government and allow the municipality to enact ordinances to provide for public peace and health and to promote personal safety and preservation of property within its boundaries.\textsuperscript{335} These powers are subject only to the requirement that they be consistent with general law and are limited to specific areas that have not been preempted.\textsuperscript{336} For example, ordinances eliminating nonconforming billboards,\textsuperscript{337} limiting the sale of cigarettes in taverns to vending machines,\textsuperscript{338} regulating liquor control,\textsuperscript{339} regulating storage of fireworks,\textsuperscript{340} and dealing with problems associated with alcohol abuse\textsuperscript{341} have all been found to be valid exercises of home rule power.

State courts have not, however, agreed as to whether the state or the municipality has control over the organization and operation of municipal police and fire departments.\textsuperscript{342}

\textsuperscript{334} See New York State Club Ass'n, 505 N.E.2d at 917-18; Local Union No. 487, 415 N.W.2d at 545.
\textsuperscript{336} Id.
\textsuperscript{337} See Adams Outdoor Advertising v. East Lansing, 483 N.W.2d 38, 42 (Mich. 1992) (holding that while the state legislature did not expressly authorize a home rule city to regulate billboards, such authority is inferred from the broad language of the state's home rule act).
\textsuperscript{338} See Vactore v. Commissioner of Consumer Affairs, 584 N.Y.S.2d 728, 730 (App. Div. 1992) (holding that a local law limiting the sale of cigarettes in taverns to vending machines was a valid exercise of police power pursuant to home rule provisions).
\textsuperscript{340} People v. Qualls, 403 N.W.2d 594, 595 (Mich. Ct. App. 1987) (holding that a home rule city's police power includes the power to regulate the storage of fireworks in retail stores as long as such regulations do not conflict with the state statutory scheme).
\textsuperscript{341} Town of Normal v. Seven Kegs, Two Tappers & Two Barrels, 599 N.E.2d 1384, 1387-88 (Ill. App. Ct. 1992) (holding that the state constitution does not prohibit a home rule municipality from dealing with problems associated with alcohol abuse in ways different from state methods as long as the local methods do not conflict with, or run contrary to, state law).
\textsuperscript{342} Compare Burke v. Board of Trustees of Police Relief & Pension Fund, 87 P. 421, 422 (Cal. Ct. App. 1906) (holding that the matter of pensions is within the exclusive control of home-rule municipality) and Kadzielawski v. Board of Fire & Police
17. **Public Health & Sanitation**

Courts have generally held that matters of health and sanitation are state-wide concerns. A state may impose duties and responsibilities upon home rule units in these areas. A home rule charter does not, therefore, deprive the state of sovereignty with respect to health and sanitation issues.

However, some health matters may be deemed purely local concerns. In such cases, a municipal government may enact provisions inconsistent with state law, in keeping with the theory that municipalities have broad powers to enact local legislation concerning the health, safety and welfare of their citizens. Thus, unless the legislature has preempted a par-

Comm’rs, 551 N.E.2d 331, 336 (Ill. App. Ct. 1990) (holding that a home rule municipality may enact ordinances that differ from or conflict with state law provisions in police and fire personnel matters) and Kelly v. City of Detroit, 100 N.W.2d 269, 273-74 (Mich. 1960) (holding that pension matters respecting police officers or their widows are within the exclusive control of the municipality) with Los Angeles County Safety Police Ass’n v. County of Los Angeles, 237 Cal. Rptr. 920, 923-24 (Ct. App. 1987) (holding that police departments of charter cities are not beyond the reach of statutes addressing matters of statewide concern even where those statutes affect local regulation) and Petri v. Milhim, 527 N.Y.S.2d 291, 292-93 (App. Div. 1988) (holding that advancement of efficiency in local police departments is a matter of urgent state concern and that the legislature could enact general laws designed to improve structure of local police departments).

343. Michelson v. City of Grand Island, 48 N.W.2d 769, 775 (Neb. 1951) (holding that where the state has entered the field, the matters of health and sanitation are of state-wide concern); see also Voss v. Lundvall Bros., Inc., 830 P.2d 1061, 1066-69 (Colo. 1992) (holding that the state’s interest in “efficient development and production of oil and gas in a manner preventive of waste” preempts a home rule ordinance which totally excludes all drilling operations within its city limits); City of De Kalb v. White, 591 N.E.2d 522, 523 (Ill. App. Ct. 1992) (holding that the Illinois Vehicle Code must be applicable and uniform throughout the state and that no municipality may enact any ordinance in conflict with its provisions); see generally 56 Am. Jur. 2d Municipal Corporations § 134 (1971 & Supp. 1993).


345. Southard, 184 N.E. at 15.

346. Harrison v. Judge, 550 N.E.2d 982, 984 (Ohio Ct. App. 1989) (holding that a chartered home rule municipality may create a board of health that differs in structure from that set forth in state statute as long as the board was established and maintained under authority of municipality’s charter, had no extraterritorial effect, and was not an exercise of police power), aff’d, 591 N.E.2d 704 (Ohio 1992).

ticular subject from municipal control, the municipality has full authority to act in this area through its home rule powers.\textsuperscript{348}  

18. \textit{Public Works Matters}  

State statutes dealing with placement of railways in streets may be superseded by home rule provisions.\textsuperscript{349} Regulation and vacation of streets and alleys are generally considered to be local matters and are not matters normally falling within the realm of the state legislature.\textsuperscript{350}  

19. \textit{Railroads}  

The regulation of railroad operations has traditionally been outside the scope of municipal powers.\textsuperscript{351} The state has a vital interest in regulating rail transportation.\textsuperscript{352}  

20. \textit{Taxation}  

There is perhaps no area of greater municipal concern than the appropriation of local tax dollars.\textsuperscript{353} Similarly, this is an

\textsuperscript{348} For example, at least one court has found that a municipality is authorized to create a board of health to make and to enforce regulations to control diseases. State \textit{ex rel.} Freeman v. Zimmerman, 86 Minn. 353, 355-58, 90 N.W. 783, 784-85 (1902) (holding that, in the absence of any state statute that specifically authorizes or restricts counties with respect to vaccination requirements as a condition precedent to a child's admission to a public school, a municipal authority may properly enact such a requirement). \textit{See also} Speer v. Olson, 367 So. 2d 207, 211 (Fla. 1978) (holding that in the absence of preemption, counties have the authority to issue general obligation bonds to acquire sewage and water systems and to pledge for their payment the net revenues to be derived from the operation of such facilities). \textit{Contra} Midcoast Disposal, Inc. v. Town of Union, 537 A.2d 1149, 1151 (Me. 1988) (holding that the state's solid waste management act was a comprehensive and exclusive regulatory scheme and that a town was therefore precluded from enacting a solid waste disposal ordinance which prohibited the disposal within the town of solid waste generated beyond its borders).  


\textsuperscript{350} \textit{Id.} \textit{See also} City of Ormond Beach \textit{v.} County of Volusia, 535 So. 2d 302, 305 (Fla. Dist. Ct. App. 1988) (holding that the scheme of a general state law gives planning, building, and maintaining function of county roads exclusively to counties, and that cities could not therefore exercise such power).  

\textsuperscript{351} Village of Dolton \textit{ex rel.} Winter \textit{v.} CSX Transp., Inc., 554 N.E.2d 440, 444 (Ill. App. Ct. 1990) (holding that a home rule regulation regarding railroad obstruction of public travel was not a local issue and thus, violated the limited grant of home rule power).  

\textsuperscript{352} \textit{Id.} at 443.  

\textsuperscript{353} Johnson \textit{v.} Bradley, 279 Cal. Rptr. 881, 886-87 ( Ct. App. 1991). In \textit{Johnson}, the court held that a decision by city voters to use city funds to partially finance political campaigns for city elections was a matter of purely local concern and thus,
area of little interest to taxpayers of other municipalities. As a result, in exercising its home rule powers, a city has the clear authority to decide how to spend its tax dollars.

Each state has varying constitutional provisions and state statutes regarding taxation. As a result, state courts vary regarding a state’s power to supervise, review, and revise the tax budgets of a home rule government.

21. Tax Increment Financing

A state legislature may confer upon home rule municipalities the power to divide and allocate tax increments resulting from increased valuation brought about by urban renewal projects, even if such powers go beyond the home rule amendment.

22. Utility Rates

The courts are divided on whether a home rule unit has the authority to determine the rates to be charged by public utilities.

23. Workers’ Compensation

State workers’ compensation law preempts local regulation. As a result, a city ordinance that reduces disability pension benefits paid from a city pension fund by the amount

could not be invalidated by contrary state law. The court noted: “We can think of nothing that is of greater municipal concern than how a city’s tax dollars will be spent.” Id. at 889.

354. Id. at 890.
355. Id. at 886-87.
357. Id.
359. Compare People ex rel. Public Util. Comm’n v. Mountain States Tel. & Tel. Co., 243 P.2d 397, 401-02 (Colo. 1952) (holding that municipalities have no power to regulate the business and rates of a utility company because the public utilities commission of the state is the sole agency empowered to do so) and City of Champaign v. Illinois Commerce Comm’n, 490 N.E.2d 119, 122 (Ill. App. Ct. 1986) (holding that home rule powers may not be used to regulate utility rates) and City of Logansport v. Public Serv. Comm’n, 177 N.E. 249, 252 (Ind. 1931) (holding that, in the absence of state enabling regulation, city home rule power does not extend to public utility rate regulation) with Alliance for Affordable Energy, Inc. v. Council of New Orleans, 578 So. 2d 949, 965-66 (La. Ct. App.) (holding that the New Orleans City Council has the authority to regulate retail utility rates within Orleans Parish under its home rule charter), vacated as moot, 588 So. 2d 89 (La. 1991) (vacating the lower court decision pursuant to a settlement agreement by the parties).
of workers’ compensation benefits received by a disabled worker may not be sustained. 361

24. Zoning Power

Home rule units have the authority to promulgate zoning ordinances regulating the use of property for certain purposes in furtherance of the general welfare, safety, public health and morals of the community. 362 For example, there is a local interest in preventing air pollution 363 and in regulating the location of drug treatment facilities 364 and topless bars, 365 through local zoning ordinances. This power is limited, however, to the territorial limits of the municipality. 366

VI. Conclusion

The Ramsey County Home Rule Charter became effective November 6, 1992. It is too soon to know whether the charter will ultimately be viewed as a success, a failure, or a mixture of both. Nevertheless, the experiences of Ramsey County to date and the analysis contained in this article may be helpful to any county in deciding whether to seek home rule powers and if so, how to go about the task. The Ramsey County Home Rule Charter could serve as a model and incentive for other

361. Id. at 254-55.
362. MJR’s Fare of Dallas, Inc. v. City of Dallas, 792 S.W.2d 569, 573 (Tex. Ct. App. 1990).
363. Village of Carpentersville v. Pollution Control Board, 553 N.E.2d 362, 364 (Ill. 1990) (holding that the state Environmental Protection Act did not preempt a home rule or a non-home rule entity’s zoning ordinances that regulate air pollution).
364. Incorporated Village of Nyack v. Daytop Village, Inc., 577 N.Y.S.2d 215, 219 (1991) (holding that although state has an interest in promoting a substance abuse policy and some interest in where these facilities are located, the state has not evidenced a desire that its regulations should preempt the possibility of varying local regulations).
365. MJR’s Fare of Dallas, 792 S.W.2d at 573 (holding that the state alcoholic beverage code does not preempt zoning power of a home rule city to regulate secondary activities by zoning ordinances).
366. County of Will v. City of Naperville, 589 N.E.2d 1090, 1093 (Ill. App. Ct. 1992) (holding that a city may not zone property it owns that lies outside of the city’s corporate limits and that it was the prerogative of the county to zone such property). See also City of Evanston v. Regional Transp. Authority, 559 N.E.2d 899, 905 (Ill. App. Ct. 1990) (holding that the application of city zoning ordinance to a regional bus facility was not within the grant of home rule power because the facility served the entire region and was operated by the regional governmental authority).
counties.\textsuperscript{367}

\footnotesize{367. Stan Peskar, \textit{City Home Rule: Is It Still Alive in Minnesota?}, \textit{Minnesota Cities}, December 1989, at 8, 10.}