
Coates' Canons Blog: Postcards from Home Rule States

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Article: <https://canons.sog.unc.edu/postcards-from-home-rule-states/>

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When it comes to local government authority in North Carolina, it's a lot easier to say what we're not than what we are. North Carolina is not a home rule state. We're variously described as a "Dillon's Rule" or "broad construction" state, but what we know is that we don't have the broad delegation of authority over local matters that a majority of other states enjoy. Do they really enjoy it? An article summarizing recent litigation about red-light cameras suggests that it's not always greener on the other side of the home rule fence.

A few years ago, I spent some time learning about home rule in order to determine what the real differences are between North Carolina's approach and those in other states. My conclusion, as I expressed in an article on the subject, was that the legislature has delegated to North Carolina local governments a range of authority comparable to the authority most home rule jurisdictions have. The form of the delegation, coming as it does through individual statutes, some containing specific restrictions and procedural limitations, is the main difference.

When it comes to novel or controversial issues, cautious lawyers representing North Carolina local governments generally like to obtain specific enabling legislation rather than rely on an interpretation of the broader delegations of authority that might cover the subject. Similarly, even in home rule states, where local governments have authority over matters of local concern, it's the controversial issues that wind up in court, with judges deciding whether they are matters of local, as opposed to state-wide concern. As noted in my article, determining which matters are primarily local, and which are of state-wide concern, is not an easy task. Colorado courts, recognizing this, established a standard in which things can be categorized as being of mixed state and local concern, but in those cases, tie goes to the state.

So, is traffic enforcement a matter of local or state-wide concern? The answer is unclear. A recent article in the July/August 2009 edition of *The Municipal Lawyer Magazine* (published by the International Municipal Lawyers Association), describes the mixed results home rule cities have experienced in court cases challenging the use of automated traffic enforcement systems. The author, Carie A. Torrence, city attorney for North Las Vegas, notes that in two states, Colorado and Minnesota, the courts held that the local ordinances were preempted. (One effect of home rule authority is that it can impose a limit on state preemption of matters of local concern.) Courts in Ohio and Iowa reached the opposite result.

The most interesting aspect of the article is the author's conclusion that obtaining express state statutory authority is the best option for local governments (including those in home rule states) to ensure that their automated traffic enforcement system ordinances will survive judicial review. (*Municipal Lawyer*, Vol. 50, No. 4, p. 17.) She also describes the mixed results local governments have achieved at the state level in attempting to secure this statutory authority.

So apparently, when a home rule city wants to address a controversial issue, it ends up in the same place a North Carolina local government would start: that is, with a need for specific state enabling authority. Judge Dillon (famous for his rule narrowly construing local authority) might say "I told you so."

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