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ILLINOIS GOVERNMENT RESEARCH  
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INSTITUTE OF GOVERNMENT AND PUBLIC AFFAIRS

JUNE 1975 40

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SEP 25 1975

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## HOME RULE USE BY ILLINOIS MUNICIPALITIES: THE FIRST THREE YEARS

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On July 1, 1971, for the first time home rule became an option available to Illinois municipalities and counties. The extent and ways in which home rule has been used were among the topics studied by staff members of the Illinois Home Rule Clearinghouse and Policy Analysis Project. In October 1974 a survey was conducted of the seventy-five existing home rule municipalities in Illinois to determine the amount and types of home rule use since the inception of home rule. In this paper the frequency of home rule use by the units is discussed and an attempt made to account for the number of times a given municipality has employed home rule. Then, more importantly, the various areas in which home rule has been used are described to identify factors associated with the different uses. Finally, the attitudes of municipal officials toward home rule are examined.

### Background of Illinois Home Rule

The 1970 Illinois Constitution contains what may be the most liberal home rule provisions of any state constitution. Under previous Illinois constitutions, all local governments in the state operated under Dillon's Rule. This doctrine, first enunciated by Judge John F. Dillon of the Iowa Supreme Court in an 1868 case, declares that local governments have only those powers specifically delegated to them by the state constitution or state law. All other powers are the province of state government. Although home rule means something different in each of the approximately forty states where it exists, in all these states home rule was introduced to change the state-local balance of power in favor of local government. Dillon's Rule still prevails in many of these states, however, because of narrow judicial interpretations of local powers.

Illinois home rule is unique, since it follows neither of the two usual models for home rule. It neither delegates specific powers and functions to state and local governments nor gives the state completely free rein in preempting local powers and functions.

The general constitutional home rule grant is extremely broad. Section 6(a) of article VII states that, except as

limited by other parts of the section, "a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt." Unless it receives authorization from the General Assembly, a home rule unit may not (1) license for revenue, (2) impose taxes upon or measured by income or earnings, or (3) tax occupations (sec. 6(e)). The General Assembly has not granted any of these additional powers.

Under the preemption provisions — sections 6(g), (h), and (i) — the General Assembly may deny or limit almost any local power. However, these provisions require a three-fifths majority in both the Senate and the House of Representatives for some types of preemption, including preemption of local taxing powers. There have been only a few instances of legislative preemption; the most important deal with licensing and regulation. A generally liberal series of Illinois Supreme Court decisions interpreting local exercises of home rule power, the majority upholding home rule taxing measures, stems from the exhortation of section 6(m): "Powers and functions of home rule units shall be construed liberally." This combination of legislative restraint and liberal judicial interpretation has meant that home rule units are now free to act in many areas previously governed by state constitution and state statute.

The home rule provisions of the constitution's local government article grant home rule status automatically to any municipality — city, village, or incorporated town — of 25,000 or greater population. A county achieves home rule status if its governmental structure includes an elected chief executive officer. Cook County, which had such an officer prior to the 1970 constitution, is the only home rule county to date.

Municipalities under 25,000 population can become home rule units if their voters approve this change by referendum. As of October 1974 there were seventy-five home rule municipalities, ten of which had held successful home rule referenda.<sup>1</sup> Approximately two-thirds of the state's population reside in home rule units, with the majority of these units located in the six-county Chicago metropolitan area.

Richard L. Day was a research assistant at the Institute of Government and Public Affairs at the time this paper was written. The paper reports on one aspect of the Illinois Home Rule Clearinghouse and Policy Analysis Project conducted by the institute in cooperation with the Illinois Department of Local Government Affairs (DLGA). The preparation of the report was funded in part by a comprehensive planning grant from the federal Department of Housing and Urban Development under an agreement with DLGA.

<sup>1</sup> Since that time, successful home rule referenda have been held in nine additional municipalities; two other municipalities have gained home rule status by passing the 25,000 population mark.

## Method of Study

The survey method was chosen because it offers a systematic and efficient means of obtaining answers to various pertinent questions. The survey questionnaire used in the present study was constructed by this writer, other members of the home rule project staff, and the Survey Research Laboratory of the University of Illinois. Respondents to the survey were the mayors or village presidents, attorneys, and managers or administrative assistants (for those units with such officers) of all seventy-five home rule municipalities. Attorneys who represent more than one home rule municipality were interviewed once for each unit they represent. One hundred eighty-four interviews were completed out of a potential 196. The interviews were administered by telephone between March and September 1974.

The survey sought to determine the amount and types of home rule use by dividing uses into seven categories: licensing, taxation, issuance of nonreferendum bonds, regulations, alteration of governmental structure, intergovernmental agreements, and other. Respondents were asked to describe home rule use by their units, if any, in each of these categories, and were also asked to supply the interviewer with copies of ordinances enacting the various measures taken. In analyzing the survey the categories were further divided into nine types of use. Respondents were also asked a series of questions dealing with their attitudes toward home rule, as well as other activities related to home rule in their municipalities.

In addition to information obtained from the survey, twenty-five other items of information were collected for each of the seventy-five municipalities. Items included the unit's median income, level of municipal indebtedness, type of attorney, form of government, major industry, population growth between 1960 and 1970, and region of the state in which the unit is located.

Both the responses to the questions and the additional information were coded onto cards and a series of analyses performed. The two most important factors considered were the amount and type of home rule use by each unit. All the other information was crosstabulated with the

amount and type of home rule use to determine whether any relationships linked these two factors with the other information.<sup>2</sup>

## Frequency of Home Rule Use

One of the most important variables examined in this study, the amount that each municipality had used home rule, was determined in several ways. Every official interviewed was asked about any home rule uses in his or her community. Local newspapers serving home rule units were reviewed for any mention of actual or potential home rule uses. Additional information was obtained from other sources, notably the Department of Local Government Affairs. Each municipality with any possible ordinances using home rule was asked to send copies of those ordinances or any others they considered to be home rule.

All ordinances that were received were examined twice to determine if they were home rule uses. An ordinance was considered home rule (1) if the authority to adopt the ordinance or procedure was not clearly delegated to the municipality by state statute, or (2) if no state statute existed in the area, or (3) if it was difficult to decide if home rule was necessary for a municipality to act in an area and the municipality cited home rule authority in the ordinance.

One of the problems associated with these criteria is that they cover instances in which municipalities cite home rule in an ordinance when they already have statutory authorization to act. However, some of the statutory authorizations are so vague that local governments are often reluctant to act without home rule authorization. For example, chapter 24, section 11-1-1, of the *Illinois Revised Statutes* states, "The corporate authorities of each municipality may pass and enforce all necessary police ordinances." In theory this could cover any type of regulatory ordinance. DeKalb's action allowing 19- and 20-year-olds to consume all types of alcoholic beverages could conceivably have been allowed by this broad statutory provision. Given the vagueness of the statute and the Dillon's Rule tradition of state-local relations, however, DeKalb cited home rule as authorization. For DeKalb and many other units, home rule is cited as authorization to act in areas that were otherwise questionable for local government.

Each municipality was given a score based on the number of uses determined under the above three criteria. During the first three years the number of home rule uses

<sup>2</sup> The strength of the relationships tested in this section was determined by the Gamma and Cramer's V statistical techniques. Relationships considered strong registered .30 or higher on both measures. Interested readers may communicate with the Institute of Government and Public Affairs for complete explanations of statistical tests used in this paper.

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Table 1  
HOME RULE USE  
July 1, 1971, through October 31, 1974

| Uses         | Municipalities |         |
|--------------|----------------|---------|
|              | Number         | Percent |
| 0-3 (low)    | 39             | 52      |
| 4-7 (medium) | 27             | 36      |
| 8-14 (high)  | 9              | 12      |
| Totals       | 75             | 100     |

by each municipality ranged from zero to fourteen. Table 1 shows a pattern that breaks roughly into three groups of use. Over half the municipalities are classed as low users, a third more are moderate users, and only 12

ship between the revision of form and structure and the likelihood of a unit's employing a full-time planner on its staff.

For some types of home rule use relatively few ordinances have been enacted, making it difficult to find factors that relate strongly to these types of use. Home rule ordinances that deal with intergovernmental relations, bond procedures without the issuance of bonds, and penal ordinances fall into this group, which comprise 14 percent of the total number of home rule ordinances passed. Units which have used home rule to enact ordinances pertaining to intergovernmental relations tend to have residents with considerably higher average incomes than do other home rule units.

Of all the characteristics that appear to be related to the various types of home rule use, attendance at Home Rule Attorneys' Committee meetings is clearly the most prevalent. Although there is no clear explanation for this on the basis of the data, it would seem logical that before a municipality embarks on new ground — as is the case in much home rule activity — its officials feel the need to consult with officials of other home rule units. In other words, those units that are predisposed to the use of home rule or are interested in using home rule to solve a particular municipal problem send representatives to meetings to benefit from the collective wisdom of their peers.

#### **Attitudes of Home Rule Officials**

Several attitudinal questions were asked as part of the survey administered to 184 home rule officials. These questions sought to determine whether there were any significant attitudinal differences among these officials based on either the positions they held (mayor, attorney, and manager) or on the number of times their municipalities had adopted home rule ordinances.

Each official surveyed was asked what he considered to be the greatest problem facing his municipality. He was also asked whether home rule could be used to help solve this problem, to characterize the way in which home rule had been used generally, why he would make this characterization, and whether he had done any lobbying on behalf of home rule with his elected state representatives.

Regardless of their positions or how often home rule had been used by their units, the officials overwhelmingly cited financial difficulties as the greatest problem facing their municipalities. Officials from the municipalities with high and medium use of home rule were confident that home rule could help solve their greatest problem. Officials from the units with relatively few uses of home rule were somewhat less sure about this point. Irrespective of the number of times their units had used home rule, officials felt that home rule was most effective in solving financial problems and in meeting special local needs.

When asked to characterize the use of home rule generally, 73 percent of the respondents from low use municipalities, 82 percent of those from medium use municipalities, and 100 percent from high use municipalities described the use of home rule to date as cautious. In explaining this response, the officials said either that they had been advised to be cautious or that they feared antagonizing members of the Illinois General Assembly.

On the basis of these and other responses, it appears that local officials see home rule as a valuable tool in helping to solve their particular problems. To date they

have used home rule sparingly — probably to ensure that it would not be weakened or lost through legislative preemption. Much of this caution has been at the behest of officials of the Illinois Municipal League. The league has advised its members to proceed slowly so that favorable legal precedents could be established and members of the General Assembly would have little reason to preempt home rule power. In addition, a municipality which waits until the courts uphold a given type of home rule use does not risk the trouble and expense of litigation.

#### **Conclusion**

On the basis of this early research it is possible to identify some of the characteristics associated with frequency and type of home rule use by municipalities. A municipality characterized as a high home rule user tends to be a north Chicago suburban or an urbanized downstate community which has not experienced dramatic changes in its population. Its population tends to be affluent and fairly well educated. It generally has a well-staffed municipal government, and these staff members are well aware of home rule and its potential uses. Many of the high users are represented at meetings and conferences, so they know what is being done with home rule.

The types of home rule ordinances adopted correlate with the opinions expressed by home rule officials in the interviews. The officials said that their greatest problems tended to be unique to their communities and of a financial nature. They generally felt that home rule could be used to help solve these problems. And, as we have shown, home rule has been used quite extensively in dealing with financial affairs. Uses related to indebtedness and taxation combined account for 37 percent of the number of uses to date. Many of the unique problems described by the officials may have been dealt with by the other types of use described in this paper — especially licensing and regulation.

It appears that in the first three years of home rule use the municipalities have proceeded cautiously. Apparently the cautious approach stems largely from advice given by Illinois Municipal League officials and from the reluctance to proceed too rapidly in this new area. During these three years home rule has been defined and strengthened by a large number of favorable court decisions. It would appear, then, that the coming years will see many more uses of home rule: home rule has been bolstered by experience, favorable court tests, and a legislature which does not appear to be particularly hostile.

Although home rule has not yet been used as extensively as it might have been, when one considers the many problems facing local governments it seems safe to say that this early stage has been more than a symbolic period. The first three years of home rule have been marked by a cautious but steady establishment of this new power, largely by units that have been acting with the knowledge and resources to support their innovative efforts. If home rule continues to follow this deliberate and somewhat controlled path, the Dillon's Rule mentality that has hampered local governments for so many years will steadily be eroded. Local governments in Illinois will thus be able to continue to discover unique solutions to solve their unique local problems.

types: licensing and regulation, debt, taxation, officers and employees, local procedures, form and structure of government, intergovernmental relations, bond procedures without actual bond issuances, and penal ordinances. In this section we describe the ways in which municipalities have used home rule and attempt to identify characteristics of the municipalities that distinguish them by the types of use. Those characteristics showing strong and moderate relationships to the nine types of use are indicated in Table 5.<sup>3</sup>

**Table 5**  
**CHARACTERISTICS OF HOME RULE USERS**

| Home Rule Use<br>(type and number)        | Relationship to Characteristics  |   |
|---|--|---|
|   | Strong   | Moderate  |
| Licensing and regulation, 45              | -Frequent attendance at attorneys' meetings<br>-Planner on staff<br>-High average income |   |
| Debt, 35                                  |  | -Frequent attendance at attorneys' meetings<br>-Slight population change, 1960-70 |
| Taxes, 24                                 | -Large population<br>-North suburban location  |   |
| Officers and employees, 22                |  | -Residential type city<br>-Frequent attendance at attorneys' meetings             |
| Local procedures, 20                      |  | -Frequent attendance at attorneys' meetings                                       |
| Form and structure, 16                    |  | -Frequent attendance at attorneys' meetings<br>-Planner on staff                  |
| Intergovernmental relations, 12           | -High average income   |   |
| Bond procedures without bond issuance, 12 |  |   |
| Penal ordinances, 3                       |  |   |

<sup>3</sup> Strong relationships were those that scored at least .36 in two of the three statistical measures used in this section ( $R^2$  in multiple regression analysis, Pearson's  $r$ , and Cramer's  $V$ ). Moderate relationships were those falling between .24 and .35 in at least two of the three statistical measures

As shown by the table, the most frequent use is in the area of licensing and regulation. This category covers a broad range of home rule uses, from the licensing of cats to the regulation of pollutants emitted by industries. It also includes all ordinances dealing with liquor control that vary from state statute. The second largest category, the use of home rule to pass debt ordinances, primarily involves the issuance of nonreferendum general obligation bonds, the mortgaging of public property, and similar uses. The third largest category is home rule taxation. When taxation, debt, and nonreferendum bond procedures are combined, over half of the home rule uses have involved municipal finance.

There is a strong positive relationship between the use of home rule for licensing and regulation and three characteristics of the municipalities: (1) the number of times a municipal attorney attended meetings of the Home Rule Attorneys Committee, (2) the presence of a planner on the city's staff, and (3) the average income of the residents of the municipality.<sup>4</sup>

The use of home rule to incur debt was frequent, but there were few characteristics that tended to distinguish the units incurring such debt from the units which did not. There was a moderate relationship, however, between the incurrence of home rule debt and attendance at Home Rule Attorneys Committee meetings. Municipalities with small population change between 1960 and 1970 tended to use home rule debt more than did the units which had experienced rapid population growth in that period.

Two factors tended to correlate strongly with the number of times home rule taxing ordinances were enacted. The larger the population of a home rule municipality, the more likely it was to use home rule to enact taxing ordinances. Units over 50,000 population and units located in the northern Chicago suburbs were most likely to pass ordinances dealing with new methods of taxation.

Home rule use in the category officers and employees generally involved the alteration of civil service regulations, the creation of a staff position, or the elimination of such a position. These ordinances are more likely to be passed by residential municipalities than by other types of municipalities. There is also a moderate, positive relationship between this type of home rule use and the frequency of attendance at Home Rule Attorneys Committee meetings.

Few characteristics distinguish the units which have used home rule to change their local procedures. These changes generally involve such matters as voting procedures in council meetings or the revision of the budgetary process. There is a moderate relationship, however, between attendance at Home Rule Attorneys Committee meetings and the introduction of local procedural changes under home rule.

Municipalities which have used home rule to revise the form or structure of their government show two characteristics that vary directly with the frequency of this type of use. There is a moderate relationship between this type of use and attendance at Home Rule Attorneys Committee meetings. There is also a moderate relation-

<sup>4</sup> A positive relationship means that as the value of one indicator (such as licensing and regulation) increases, the other indicator (such as mean income) also increases. In a negative relationship, one indicator either increases or decreases as the other indicator moves in the opposite direction.

percent are high users. The last group includes Chicago with the highest number of home rule uses, fourteen.

Twenty-five characteristics of each municipality were crosstabulated with the amount of home rule use. The characteristics that showed the strongest relationship with the amount of use were (1) attendance at meetings of the Home Rule Attorneys Committee of the Illinois Municipal League, (2) presence of a planner on the staff, (3) size of the municipality, (4) tax effort index, (5) income levels of the residents, and (6) region of the state.

Attendance by municipal attorneys at the Home Rule Attorneys Committee meetings was the strongest indicator of municipal home rule use. This committee, established by the Illinois Municipal League, meets to discuss the legality and advisability of enacting various kinds of home rule ordinances. Each municipality was given a score based on the number of times that its attorney attended the fourteen meetings held from January 1973 to November 1974 (see Table 2). Eighty-two percent of

**Table 2**

**ATTENDANCE AT HOME RULE ATTORNEYS' MEETINGS**

| Home Rule User | Number of Meetings Attended  |        |        |
|----------------|------------------------------|--------|--------|
|                | 0-5                          | 6-10   | 11-14  |
|                | Number of Municipalities (%) |        |        |
| Low            | 32 (82)                      | 4 (10) | 3 (7)  |
| Medium         | 16 (59)                      | 8 (30) | 3 (11) |
| High           | 2 (22)                       | 1 (11) | 6 (67) |

the low users had representatives at the meetings five or fewer times. The attendance of the medium users varies considerably. Of the nine units classified as high users, 67 percent attended between eleven and fourteen meetings.

The distinction between full-time and part-time attorney also seems to be significant as an indicator of home rule use. Among the high users four of the nine, or 44 percent, retained part-time counsel, while five retained full-time counsel. Although retention of full-time counsel proved to be a strong indicator, an unusually large number of the high and medium users appeared to retain only part-time counsel. A closer look revealed that some of the attorneys who represent home rule units specialize in municipal law and represent more than one home rule unit. These attorneys were separated from others who are part-time and who maintain a general practice in addition to their municipal practice. When full-time attorneys are grouped with part-time attorneys with specialized municipal practices, the total accounts for 77 percent of the high users, 48 percent of the medium users, and 10 percent of the low users.

The presence of a full-time planner is one indicator of sophistication in city management. Seventy-eight percent of the high users employ planners, compared with 60 percent for medium users and only 26 percent for the low users of home rule.

Each of the seventy-five units was placed in one of five geographical regions (plus the city of Chicago). The results of this crosstabulation show that the high users tend to be either in the north suburban region of Chicago or in the more urbanized areas downstate. The latter is the largest and most diverse category. The low

users are located largely in the south Chicago suburbs and the more rural areas downstate (see Table 3).

**Table 3**

**LOCATION OF HOME RULE MUNICIPALITIES**

| Home Rule User | Number (percent) |               |                |           |                  |                 |
|----------------|------------------|---------------|----------------|-----------|------------------|-----------------|
|                | North Suburban   | West Suburban | South Suburban | Downstate | Chicago Rim Area | City of Chicago |
| Low            | 5 (13)           | 7 (18)        | 10 (26)        | 13 (33)   | 4 (10)           | 0 (0)           |
| Medium         | 8 (30)           | 5 (19)        | 4 (15)         | 8 (30)    | 2 (7)            | 0 (0)           |
| High           | 3 (33)           | 1 (11)        | 1 (11)         | 3 (33)    | 0 (0)            | 1 (11)          |
| Totals         | 16               | 13            | 15             | 24        | 6                | 1               |

Income was also studied as an indicator of the amount of home rule use. The income of residents of low use municipalities is fairly evenly distributed across the income range for home rule municipalities with a slightly greater concentration at the lower end. The high users, on the other hand, tend to be grouped into the upper half of the income range. The medium users are distributed in such a way as to yield little information.

The higher income municipalities tend to have a relatively lower local tax effort because of their concentrated wealth base and disproportionate share of returned state income and sales taxes. Our findings that higher income municipalities tend to be high users is complemented by our analysis of local tax effort. The high home rule users tend to have a lower tax effort than either the medium or low users (see Table 4).

**Table 4**

**TAX EFFORT INDEX  
July 1, 1974, through June 30, 1975**

| Home Rule User | Tax Effort Score |         |        |         | Number of Municipalities (%) |
|----------------|------------------|---------|--------|---------|------------------------------|
|                | 1-39             | 40-51   | 52-64  | 65-147  |                              |
| Low            | 9 (26)           | 12 (34) | 4 (11) | 10 (29) | 35                           |
| Medium         | 5 (22)           | 7 (30)  | 9 (39) | 2 (9)   | 23                           |
| High           | 5 (56)           | 1 (11)  | 3 (33) | 0 (0)   | 9<br>67*                     |

\* Eight of the seventy-five municipalities did not submit sufficient information to calculate their tax effort index for this period

The population of a municipality and the city type (retailing, industrial, residential) do not seem as significant to the amount of home rule use as the municipality's location, income, or the presence of full-time specialists such as attorneys or planners. Municipalities with populations in excess of 50,000 do seem to make somewhat more use of home rule powers, and small residential and manufacturing cities tend to be low users.

**Types of Home Rule Use**

In addition to reporting on the frequency of home rule use, a primary object of this study was to determine whether there are any differences in the ways in which municipalities have been using their home rule power. All instances of home rule use were divided into nine separate



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