



FORUM

Sweet Home Alabama: Navigating Home Rule Status Through State Federalism

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Abstract. In the intricate mosaic of Alabama’s municipal governance, the echoes of the 1901 Constitution, etched in the tumultuous Jim Crow era, still reverberate through the corridors of legal power. This article navigates the complexities of the state’s non-Home Rule status and the implications of Dillon’s Rule, unraveling the intricate dynamic between municipal powers and taxation. This piece aims not just to dissect the challenges but to propose robust, precedent-backed alternatives to circumvent restrictive federal practices.

I. Historical Context: The 1901 Constitution and Non-Home Rule Status

Alabama’s municipal tapestry is woven with threads from the 1901 Constitution, which cast a long shadow over the autonomy of local municipalities, entangling them in a web of legislative intricacies. Its enduring legacy includes the absence of Home Rule status, or the allocation of governing power to local municipalities. The National League of Cities only identifies 10 Home Rule states, stripping local municipalities of the freedom to enact and enforce ordinances independently. Instead, legislative power is concentrated in Alabama’s State Legislature, giving rise to over 977 amendments and the passage of municipal ordinances centrally. This has led to a convoluted regulatory landscape.

Alabama’s non-Home Rule status fundamentally restricts the autonomy of local governments, relegating them to a subordinate role in the broader state governance

structure. The implications of this constitutional design ripple through various aspects of municipal governance, with taxation emerging as a focal point of contention.

II. Dillon's Rule and Municipal Powers: A Historical Lens

Dillon's Rule, named after Judge John Forrest Dillon, further complicates the challenges faced by Alabama municipalities. This doctrine dictates that local governments possess only those powers explicitly granted by the state, those necessarily implied, and those essential to the declared objects and purposes of the municipality. Historical decisions, such as *Mobile v. Moog*, 53 Ala. 561 (Ala. 1875) and *Best v. Birmingham*, 79 So. 113 (Ala. 1918), have set the stage for the challenges faced by local governments in Alabama, particularly in the realm of taxation.

In *Mobile v. Moog*, Justice Manning articulated the general rule that municipal corporations possess and can exercise only the powers explicitly granted or necessarily implied. This restrictive interpretation of municipal powers gained further traction in *Best v. Birmingham*, where the Alabama Supreme Court ruled that municipal corporations have no implied powers beyond taxation, leaving any outside powers to be pertinent to the creation of the corporation. The absence of explicit grants of power and a narrow interpretation of implied powers left municipalities in a precarious position, dependent on state-level approvals for even basic fiscal decisions.

III. The Nexus of Home Rule, Dillon's Rule, and Taxation

The challenges arising from the intersection of non-Home Rule status, Dillon's Rule, and taxation are most pronounced in the financial domain. Sources of revenue are tightly controlled by the State Legislature, as outlined in Section 104 of the Alabama Constitution. This provision prohibits the amendment or extension of the charter of any private or municipal corporation by the legislature.

The pertinent statutory authority for municipalities to tax businesses or trades is rooted in Title 11 Section 11-51-90 of the Alabama Code. Municipalities can only leverage this authority where not prohibited by the State Constitution or laws—yet, this implied power is constrained by Section 104 to levy taxes on corporations at the municipal level. Therefore, local governments are *de facto* dependent on state-issued amendments or approved legislation for changes to local property taxes. Even local property tax referendums must undergo a second vote by the entire state, exacerbating the challenges faced by local governments in generating revenue.

This intricate web of legal constraints forces local governments to rely on fees and charges, such as concealed pistol fees, vehicle registration fees, and court filing fees, to sustain their operations. In the Spring 2023 legislative session, state legislators passed roughly 60 bills pertaining to revenue generation in municipalities, exacerbating the reliance of government revenue on fines and fees rather than on taxes. In 2021 alone, the local property tax revenue per capita in the U.S. was \$1,837, over triple of the revenue garnered from Alabama at \$567. Conversely, the per capita local revenue from fees and general charges stood at \$982 for the U.S., with Alabama significantly surpassing it at \$1,346. Of the fees in Alabama, the favored methods are through vehicle registration and court filing fees, seen in the six bills introduced in the 2023 regular session. This reliance on a piecemeal revenue system, heavily intertwined with the criminal justice system in a relatively impoverished U.S. state (OTD 16.2% poverty rate), paints a fragile financial landscape for Alabama municipalities.

IV. Precedent-Based Legal Alternatives

While striking down clauses related to Home Rule in the Constitution might be an arduous task, exploring alternatives grounded in legal precedent offers a pragmatic route for reform. The following proposals draw inspiration from successful models in other states, providing a blueprint for a successful municipal framework. Tackling both the issues of (1) restricted revenue growth and (2) federal municipal legal authority, this two-pronged solution aims to pragmatically rectify federal rights in Alabama:

A. Redefinition of Fees as Taxes: Leveraging Colorado's TABOR Strategy for Alabama's Home Rule Challenges

Taking from Colorado's Taxpayer Bill of Rights (TABOR) strategy, the state could put in place limits on the revenue the state government can retain and spend. Although unsuccessful, the collection of medical provider fees known as Colorado Healthcare Affordability and Sustainability Enterprise (CHASE) fees was challenged in the Colorado Supreme Court on the basis that the imposition of hospital provider fees constituted a tax policy change under voter approval. Given the pervasiveness and proliferation of cumbersome fines and fees in Alabama, a TABOR model would allow greater discretion for Alabama citizens in the judicial process to assess the imposition of fees from criminal justice to vehicles.

Colorado's example demonstrates the effectiveness of this approach in lessening the impact of restrictive municipal fiscal regulations. By allowing appeals to certain

fees under the framework of taxes in TABOR, this would allow for excess revenue to be directly returned to tax-paying citizens. Additionally, by allowing a vantage point to contest cumbersome fines and fees, citizens would have the ability to circumvent them without going directly through the state legislature to renege state-approved bills. Alabama's adoption of such a strategy has the potential to navigate the intricacies of Home Rule challenges while strategically managing its fiscal landscape. Accordingly, by limiting the amount of revenue the state government can retain and spend, this would implicitly enable municipal powers to do more.

B. Granting Autonomy to Select Cities: Manipulating California's Municipal Charter Classifications

While Alabama municipalities have been sorted into various classes (1 through 8) based on population, this classification is specified only to appoint a council-manager government through the Council-Manager Act of 1982. This only serves as a liaison between the state and local level, not giving municipalities any concrete autonomy over specific local revenue issues. Addressing Alabama's Home Rule challenges can find inspiration in California's nuanced governance approach, where cities operate as either charter cities or general law cities. For instance, Los Angeles and San Francisco are prominent examples of charter cities, whereby through commissioning and drafting, they have state approval to exercise greater local autonomy. Having adopted their own charters that bestow them with increased local autonomy. These charters allow these cities to tailor their governance structures, enact local ordinances, and manage affairs independently within the bounds of the law.

In contrast, general law cities in California, such as Fresno or Sacramento, operate under the state's general laws without adopting specific charters. The distinction lies in the level of local autonomy granted—charter cities have broader powers defined by their charters, while general law cities operate under a more standardized framework outlined by state law. By considering the examples set by charter cities in California, Alabama can explore the feasibility of enabling municipalities to adopt charters, offering a legal avenue for increased local autonomy and flexibility in governance.

V. Conclusion

Alabama's municipal governance stands at a crossroads, grappling with historical legacies and contemporary challenges. The historical context of the 1901 Constitution, coupled with the constraints imposed by Dillon's Rule, creates a legal

landscape that demands careful navigation. By drawing on legal precedents and successful models from other states, Alabama has the opportunity to craft innovative solutions that balance local autonomy with state oversight. Without upending the long-standing Constitution, legal alternatives through fees redefinition and municipal classifications enable cities greater autonomy and authority without infringing the rights of the state. Accordingly, this would help resolve fiscal restrictions and desperately-needed municipal aid and planning often left ignored or in stalemate.