



NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

March 11, 1983

FILE NO. 83-005

MUNICIPALITIES:
Abolition of Home Rule
Status

Honorable Daniel D. Doyle
State's Attorney, Winnebago County
Courthouse Building
Rockford, Illinois 61101

Dear Mr. Doyle:

I have your letter wherein you state that a referendum is to be held, pursuant to subsection 6(b) of article VII of the 1970 Illinois Constitution, on the question of whether the city of Rockford shall cease to be a home rule unit. You inquire regarding the effect which the passage of this referendum would have on the powers of the city of Rockford, and in particular, its power to tax and to raise revenue.

Honorable Daniel D. Doyle - 2.

Subsection 6(a) of article VII of the 1970 Illinois Constitution grants home rule powers to certain units of local government:

"(a) A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. Except as limited by this 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." (Emphasis added.)

The city of Rockford is a home rule unit by virtue of its population and has been such since the adoption of the 1970 Illinois Constitution.

As a home rule municipality, the city of Rockford is empowered to tax and to raise revenue, subject to the restrictions contained in section 6 of article VII, without specific statutory authorization. (See City of Rockford v. Gill (1979), 75 Ill. 2d 334.) You advise that the city of Rockford has adopted, pursuant to its home rule powers, certain tax levies and other revenue measures which either exceed the limitations provided by law, or which are not specifically provided for by statute. Clearly, this power is granted to home rule units. However, the issue here is what effect the abolition of home rule powers will have on actions which are authorized by the Constitution for home rule units, but which are not authorized for non-home-rule units.

Although the delegates to the Sixth Illinois Constitutional Convention provided a method for home rule units to abolish home rule status (Ill. Const. 1970, art. VII, § 6(b)), neither the Report of the Local Government Committee (7 Record of Proceedings, Sixth Illinois Constitutional Convention 1637) nor the debate with respect thereto addresses the effect of the abolition of home rule status on the powers of a former home rule unit. It appears clear, however, that the drafters of the Constitution contemplated that there would be two types of local governmental units, home rule and non-home-rule. Logic dictates that the result of the abolition of home rule is a return to non-home-rule status.

In this sense, the abolition of home rule is analogous to the repeal of a statute without a savings clause. In such a circumstance, a statute must be treated, except as to proceedings passed and closed, as if it had never existed. (People v. Carpenter (1916), 274 Ill. 103, 105; Holcomb v. Boynton (1894), 151 Ill. 294, 297.) Thus, the repeal of a statute takes away all right to proceed under the statute (Illinois and Michigan Canal v. City of Chicago (1853), 14 Ill. 334, 335-36), or to exercise powers granted by the statute. Therefore, by analogy, the abandonment of the grant of home rule power takes away all right to proceed under that grant of power, leaving the municipality with the status of a non-home-rule municipality.

Honorable Daniel D. Doyle - 4.

Section 7 of article VII of the 1970 Illinois Constitution (Ill. Const. 1970, art. VII, § 7) sets forth the powers of counties and municipalities which are not home rule units:

"Counties and municipalities which are not home rule units shall have only powers granted to them by law and the powers (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government; (2) by referendum, to adopt, alter or repeal their forms of government provided by law; (3) in the case of municipalities, to provide by referendum for their officers, manner of selection and terms of office; (4) in the case of counties, to provide for their officers, manner of selection and terms of office as provided in Section 4 of this Article; (5) to incur debt except as limited by law and except that debt payable from ad valorem property tax receipt shall mature within 40 years from the time it is incurred; and (6) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services."

Non-home-rule municipalities, therefore, possess only those powers granted to them by the Constitution or by statute, or those necessarily implied in or incident to the powers expressly granted. (Ill. Att'y Gen. Op. No. 82-032, issued September 15, 1982, at 4.) As embodied in section 7 of article VII of the Constitution, "Dillon's Rule" is still applicable to non-home-rule municipalities in Illinois.

The principle of law commonly referred to as "Dillon's Rule" (see 1 J. Dillon, Municipal Corporations 448-50 (5th ed. 1911)) was followed by the Illinois Supreme Court in Consumers Co. v. City of Chicago (1924), 313 Ill. 408, 411-12, in which the court stated as follows:

" * * *

A municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily implied in or incident to the powers expressly granted; and third, those essential to the accomplishment of the declared objects and purposes of the corporation,--not simply convenient but indispensable. (Huesing v. City of Rock Island, 128 Ill. 465; 1 Dillon on Mun. Corp.--5th ed.--sec. 237.) Any fair or reasonable doubt concerning the existence of the power must be resolved against the municipality and the power denied. (19 R. C. L. 769; City of Chicago v. M. & M. Hotel Co. 248 Ill. 264; City of Chicago v. Pettibone, 267 id. 573.) * * *

* * *

"

Illinois statutes contain numerous provisions authorizing municipalities to levy taxes and to incur indebtedness, and setting statutory limits on the amounts of taxes which may be raised or the amount of indebtedness which may be incurred. (See L. Ancel and S. Diamond, Illinois Municipal Handbook 102-107 (1980).) In the absence of specific limitations on the power of home rule municipalities in these areas, home rule municipalities may levy taxes in excess of statutory limitations (City of Rockford v. Gill (1979), 75 Ill. 2d 334, 339),

Honorable Daniel D. Doyle - 6.

or for purposes not specifically authorized by statute. Non-home-rule municipalities, on the other hand, can levy taxes only for purposes provided by statute, at rates not greater than the maximum established by statute or referendum. (Ill. Rev. Stat. 1981, ch. 120, par. 643.) A municipality which ceases to be a home rule unit will be subject thereafter to all pertinent statutory limitations on the exercise of taxing power.

As an example, section 11-80-23 of the Illinois Municipal Code (Ill. Rev. Stat. 1981, ch. 24, par. 11-80-23) authorizes municipalities having a population of less than 500,000 to levy a special tax not to exceed .02% of the assessed valuation of all taxable property in the municipality to pay the compensation of school crossing guards. A home rule municipality could levy a tax for this purpose without regard to the statutory limitation. If that municipality ceases to be a home rule unit, however, it will be governed by the statutory limitation of .02% of assessed valuation provided in section 11-80-23 of the Illinois Municipal Code. The fact that the municipality had previously levied a tax in a greater amount, pursuant to its home rule powers, does not thereafter permit that municipality to continue to levy taxes in excess of the statutory limitation after it ceases to be a home rule unit.

The only exception to this conclusion concerns debt service levies made for the purpose of paying principal and

Honorable Daniel D. Doyle - 7.

interest on bonds, notes and other obligations secured by ad valorem property taxes. In such cases, the levying of a tax occurs only once, even though taxes may be extended and collected over a number of years. (1981 Ill. Att'y Gen. Op. 72, 74.) Consequently, the act of levying and extending a tax under home rule powers for debt service purposes will not be affected by a subsequent return to non-home-rule status, because the levy will be complete before the municipality ceases to be a home rule unit.

Having addressed the general effect of the passage of a referendum abolishing home rule in a municipality, I will respond to the following specific questions which you have raised:

1. If the referendum as to home rule status passes, will the city of Rockford thereafter be limited in its power to levy taxes to those purposes and limitations specified by statute?
2. Will Rockford be subject to the legal principle commonly known as "Dillon's Rule"?
3. What effect would the passage of the referendum have on the extension of debt service levies imposed by the city under the grant of home rule powers?

In response to your first question, it is my opinion that if the referendum passes, the city of Rockford will be subject to all statutory limitations on the power of taxation generally applicable to non-home-rule municipalities. Because the city will retain no residual home rule powers, any levy or

Honorable Daniel D. Doyle - 8.

imposition of tax in excess of statutory limits, or in the absence of statutory authority, will be void.

In response to your second question, it is my opinion that the city of Rockford, should it elect to become a non-home-rule municipality, will be subject to the legal principle commonly referred to as "Dillon's Rule", as embodied in article VII, section 7, of the 1970 Illinois Constitution.

In response to your third question, it is my opinion that the city of Rockford will be precluded from imposing any taxes not statutorily authorized to be imposed by a non-home-rule unit, except for the extension of taxes under a debt service levy completed prior to the abandonment of home rule status.

Very truly yours,


A T T O R N E Y G E N E R A L