

FLORIDA

CONSTITUTIONAL AND STATUTORY PROVISIONS

Florida Constitution

- Art. VIII, § 1. Counties.

(c) Government. Pursuant to general or special law, a county government may be established by charter which shall be adopted, amended or repealed only upon vote of the electors of the county in a special election called for that purpose. . . .

(f) Non-charter government. Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

(g) Charter government. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances

- Art. VIII, §2. Municipalities.

(a) Establishment. Municipalities may be established or abolished and their charters amended pursuant to general or special law. When any municipality is abolished, provision shall be made for the protection of its creditors.

(b) Powers. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.

(c) Annexation. Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law.

Florida Statutes

- Municipal Home Rule Powers Act, FLA. STAT. § 166.011 et seq. (2017) (enacted in 1973)
- FLA. STAT. §166.021. Powers.

(1) As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

(2) "Municipal purpose" means any activity or power which may be exercised by the state or its political subdivisions.

(3) The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except

(4) It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter.

MUNICIPAL HOME RULE STRUCTURE, INCLUDING LACK OF IMMUNITY FROM STATE PREEMPTION

Home rule municipalities have broad initiative power, but no recognized immunity from state legislative override. The Florida constitution grants seemingly broad powers to municipalities “except as otherwise provided by law.”¹ The Florida Supreme Court has clarified that “except as otherwise provided by law” modifies the entire grant of power.² Thus, purely municipal decisions are not immune from preemption by general state legislation or even special legislation.³

To determine whether a city’s action is within its power, courts ask two questions: (1) whether the action was undertaken for a municipal purpose, defined broadly as “any activity or power which may be exercised by the state or its political subdivisions;”⁴ and (2) whether the exercise is “expressly prohibited by the constitution, general or special law, or county charter.”⁵ However, “expressly prohibited” does not require the legislature to be “explicit so long as it is clear that the legislature has clearly preempted local regulation.”⁶ For example, in *Tribune Co. v. Cannella* the court held that the state public records act preempted Tampa Bay’s policy of automatically delaying the release of personnel files after the filing of a records request.⁷ The state act did not explicitly address a local government’s ability to delay the release of records, but the court reasoned that the exemptions in the state act were the only allowable reasons for a delay because the act’s goal was to allow for the timely review of records.⁸

Florida courts view implied preemption as actually a decision by the courts to create preemption in the absence of an explicit legislative directive. Accordingly, courts imply preemption only when “the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by

¹ FLA. CONST. art. VIII, § 2(b).

² *Lake Worth Utils. Auth. v. City of Lake Worth*, 468 So. 2d 215, 217 (Fla. 1985).

³ FLA. CONST. art. VIII, §2(a).

⁴ FLA. STAT. § 166.021(2)(b) (2017).

⁵ *City of Boca Raton v. Gidman*, 440 So. 2d 1277, 1279 (Fla. 1981) (citing FLA. STAT. § 166.021(4) (1979)).

⁶ *Barragan v. City of Miami*, 545 So. 2d 252, 254 (Fla. 1989).

⁷ 458 So. 2d 1075, 1077-78 (Fla. 1984).

⁸ *Id.*

the Legislature.’’⁹
COUNTIES

The Florida constitution provides counties with the option of adopting their own charter, which makes them “home-rule counties.” Counties operating under charter are presumptively considered to have broad powers of self-government unless provided otherwise by general law or by special law adopting charter.¹⁰ Florida charter counties may preempt municipal law if specified in the county charter.¹¹ Nonchartered counties also have broad powers of self-government, but they lack the power to trump the ordinances of municipalities within the county.¹² Chartered counties are subject to preemption just like municipalities and nonchartered counties,¹³ although preemption of charter counties by special law must receive the approval of the county’s voters.¹⁴ Only 20 of Florida’s 67 counties have adopted charters,¹⁵ although the list of 20 includes many of the state’s largest counties, such as Miami-Dade, Broward, Palm Beach, and Orange.¹⁶ These 20 counties contain about 75 % of the state’s population.¹⁷

In sum, the current structure of home rule in Florida leaves cities completely vulnerable to preemption. Charter counties – and particularly, Dade County – have a better chance at immunity, but only if the preemptive law is special rather than general.¹⁸

⁹ Tallahassee Mem’l Reg’l Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc., 681 So.2d 826, 831 (Fla. Dist. Ct. App. 1996) (citing Tribune Co. v. Cannella, 458 So.2d 1075 (Fla.1984)).

¹⁰ Cross Key Waterways v. Askew, 351 So.2d 1062, 1065 n.7 (Fla. Dist. Ct. App. 1977).

¹¹ FLA. CONST. art. VIII § 1(g).

¹² Fillingim v. State, 446 So.2d 1099, 1102 (Fla. Dist. Ct. App. 1984).

¹³ Askew, 351 So.2d at 1065 (“The Florida Constitution does not forbid State reclamation of regulatory power from local government and its reassignment to State agencies.”).

¹⁴ FLA. CONST. art. VIII, § 1(g). The Florida constitution makes special reference to Dade county in a couple of provisions, potentially preserving its immunity to special laws, *Id.* § 6(e), and allowing it “to exercise all the powers conferred now or hereafter by general law upon municipalities.” *Id.* § 6(f).

¹⁵ Suanne Z. Thamm, *Charter Government in Other Florida Counties*, FERNANDINA OBSERVER, July 15, 2015, <http://fernandinaobserver.com/2015/07/15/charter-government-in-other-florida-counties/>.

¹⁶ See Orange County Comptroller, Florida Charter Counties, <http://occompt.com/wordpress/wp-content/uploads/2012/01/FL%20Charter%20Counties%20with%20Commissioners%20.pdf>.

¹⁷ *Id.*

¹⁸ The Florida constitution requires that “political subdivisions . . . be classified on a basis reasonably related to the subject of the law.” FLA. CONST. art. III, § 11(b).