

KENTUCKY

CONSTITUTIONAL AND STATUTORY PROVISIONS

Kentucky Constitution

- KY. CONST. § 156(b). General Assembly authorized to permit municipal home rule for cities.

The General Assembly may provide by general law that cities may exercise any power and perform any function within their boundaries that is in furtherance of a public purpose of a city and not in conflict with a constitutional provision or statute.

Kentucky Statutes

- KY. REV. STAT. ANN. § 83.410 (2017). Legislative finding and expression of legislative intent.

(1) This chapter is intended by the General Assembly of the Commonwealth of Kentucky to grant to citizens living within a city of the first class the authority to govern themselves to the full extent required by local government and not in conflict with the Constitution or laws of this state or by the United States.

(2) The powers herein granted shall be in addition to all other powers granted to cities by other provisions of law.

(3) The provisions of this chapter shall be broadly construed and considered in the light of the express legislative purpose set forth in subsections (1) and (2) hereof.

(4) The powers herein granted are based upon a legislative finding that the urban crisis cannot be solved by actions of the General Assembly alone, and that the most effective agency for the solution of these problems is the government of a city of the first class. This legislative finding is based upon hearings held by the General Assembly and the conclusion of its members that conditions found in cities of the first class are sufficiently different from those found in other cities to necessitate this grant of authority and complete home rule.

HOME RULE STRUCTURE, INCLUDING LACK OF IMMUNITY FROM STATE PREEMPTION

The Kentucky Constitution's home-rule provision is not self-executing. Therefore, home rule in Kentucky exists as a matter of legislative grace. Under the statute creating home rule, municipalities may act in furtherance of a public purpose, so long as the exercise of power is "not in conflict with a constitutional provision or statute."¹

¹ KY. REV. STAT. ANN. §§ 83.410, 83.420 (2017).

Kentucky courts have noted that it is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state. Hence, expressly preemptive laws will invalidate local ordinances.² State law may also impliedly preempt local law. Like some other states, the Kentucky courts separate “preemption,” meaning field preemption, and “conflict” into separate categories, either of which may invalidate an ordinance.³ State administrative rules may also preempt local ordinances.⁴ The courts have held that ordinances that duplicate state law may be preempted,⁵ but the mere presence of the state in a particular area of the law or regulation does not automatically eliminate local authority to enact appropriate regulations.⁶

Kentucky has a detailed statutory scheme for the merger of county and city governments.⁷ To date, two of the state’s largest cities – Louisville and Lexington – have merged with their surrounding counties – Jefferson and Fayette, respectively.⁸

² *Lexington-Fayette Cty. Food and Beverage Ass’n v. Lexington-Fayette Urban Cty.*, 131 S.W.3d 745, 752 (Ky. 2004).

³ *Boyle v. Campbell*, 450 S.W.2d 265, 268 (Ky. 1970). For more on field preemption, see *Com. v. Do, Inc.*, 674 S.W.2d 519 (Ky. 1984) (noting that preemption occurs where “(1)The subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality.”) (citing *In re Hubbard*, 396 P.2d 809 (1964)).

⁴ *Sheffield v. City of Fort Thomas*, 620 F.3d 596, 612 (6th Cir. 2010) (applying Kentucky law in holding that state administrative regulation “has preemptive force” and invalidates a local ordinance regulating deer feeding).

⁵ *Boyle*, 450 S.W.2d at 268 (citing *Pipoly v. Benson*, 125 P.2d 482 (Cal. 1942)).

⁶ *Lexington Fayette Cty.*, 131 S.W.3d at 750; see also *City of Ashland v. Ashland Supply Co.*, 7 S.W.2d 833, 835 (Ky. 1928) (“Concurrent local regulation is valid unless it is unreasonable and oppressive and conflicts with state regulation.”).

⁷ See KY. REV. STAT. ANN. § 67c.101-c.147 (2017).

⁸ Jeff Wachtler, *A Ten-Year Perspective on the Merger of Louisville and Jefferson County, KY: Louisville Metro Vaults from 65th to 18th in the Nation 1* (Sept. 2013), available at <http://www.abell.org/sites/default/files/publications/cd-louisvillemerger1013.pdf>.