Members Brief

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Limited Home Rule Townships

Townships with populations of 2,500 or more may adopt the limited home rule form of government, which provides a township with authority more similar to a municipal corporation's home rule authority, as opposed to a statutory township, which as a creature of statute has only the authority provided to it by law. Adopting the limited home rule form of government does not allow a township to modify the form or structure of township government. Rather, a limited home rule township has broader authority to regulate the health, safety, and welfare of its citizens, and may enforce its regulations via civil fines not exceeding $1,000. Currently, 34 of Ohio's 1,308 townships have adopted the limited home rule form of government. If the population of a limited home rule township is 15,000 or more, it is referred to as an "urban township."

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Eligibility for adopting a limited home rule government

Only townships with a population of 2,500 or more may adopt a limited home rule government. A township with a population less than 5,000 is required to appoint a township administrator, and must have estimated resources of at least $3.5 million; for townships with a population of 5,000 or more, there are no such qualifications.[1]

[1] R.C. 504.01.

Adopting a limited home rule government

There are three methods for adopting a limited home rule form of government: (1) via petition of the electors and subsequent vote, (2) via the board of township trustees and subsequent vote of the electors, and (3) via unilateral action of the township trustees.

All references to the population of a township, or to the electors of a township, mean the population or electors within the *unincorporated territory* of the township.

Via elector petition and vote. The electors of an eligible township may petition the board of township trustees, signed by 10% of the electors of the township. The board of township trustees must certify a resolution to the board of elections directing it to submit the question of adopting the limited home rule government to the electors of the township. The question is voted on at the next general election that occurs at least 90 days after the trustees certified the resolution to the board of elections.

Via township trustees and vote of the electors. The board of township trustees of a township with a population of 5,000 or more may adopt a resolution directing the board of elections to submit the question of adopting the limited home rule of government to the electors in the township. The question is voted on at the next general election that occurs at least 90 days after the trustees certified the resolution to the board of elections. In a township with a population of 15,000 or more, the trustees must hold at least one public hearing before adopting the resolution.

Via township trustees, unilaterally. The board of township trustees of a township with a population of 15,000 or more may adopt, by a unanimous vote of the trustees and after at least one public hearing, a resolution adopting the limited home rule form of government. The resolution takes effect 30 days after it is adopted. Within that 30-day period, the electors may petition (signed by 10% of electors) to submit the question to the electors. The question is then submitted to the electors at a special election to be held on the day of the next primary or general election that occurs at least 90 days after the petition is presented.

If, under any of these methods, the electors vote to adopt the limited home rule form of government, that becomes the government of the township on January 1 of the next year.[2]

Authority of limited home rule townships

Townships, like counties, are creatures of statute and have only the authority expressly provided to them by law, or impliedly derived from express authority.[3] Limited home rule provides a township with authority more similar to a municipal corporation's home rule authority, though not as extensive. A township's limited home rule authority exists only within the unincorporated area of the township.

[2] R.C. 504.01 and 504.02(C).

[3] *Trustees of New London Township v. Miner*, 26 Ohio St. 452 (1875).

Local self-government

Limited home rule townships may "[e]xercise all powers of local self-government within the unincorporated area of the township, other than powers that are in conflict with general laws."[4] This phrase is derived from the constitutional grant of home rule authority to municipal corporations.[5] The Ohio Supreme Court has categorized local self-government as dealing with the government and administration of the internal affairs of the municipality.[6] Some examples within the context of a municipal corporation include the control, use, and ownership of public property, and the salaries and benefits of municipal officers and employees.

However, unlike municipal corporations, townships are limited to local self-government matters that *do not conflict with statutory provisions*. For instance, while a municipal corporation sets the salaries of its elected officials, the salaries of elected township officials are set by the Revised Code;[7] a limited home rule township cannot deviate from them. The law also prohibits a limited home rule township from using this authority to enact taxes (other than those all townships may enact)[8] or to "encroach upon the powers, duties, and privileges of elected township officers or change, alter, combine, eliminate, or otherwise modify the form or structure of the township government," unless specifically allowed. For instance, a limited home rule township appoints a law director instead of utilizing the county prosecutor.[9]

Police power

Limited home rule townships also may "[a]dopt and enforce within the unincorporated area of the township local police, sanitary, and other similar regulations that are not in conflict with general laws." Also derived from the constitutional grant of home rule authority to municipal corporations, this generally is understood to include the authority to make regulations for the public health, safety, and morals and the general welfare of society.[10] For instance, limited home rule townships commonly use this broader authority to regulate noise and nuisances, or to impose a leash law or a curfew. Limited home rule townships cannot use this authority to adopt or enforce regulations that conflict with a general state law though – this is true for municipal corporations also.[11] And limited home rule townships specifically are prohibited from using this authority to: (1) establish regulations affecting hunting, trapping, or fishing, (2) alter the township's authority regarding agriculture or natural resources, (3) establish regulations

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[4] R.C. 504.04(A)(1).

[5] Ohio Constitution, Article XVIII, Section 3.

[6] *Beachwood v. Bd. of Elections of Cuyahoga Cty.*, 167 Ohio St. 371 (1958).

[7] R.C. 505.24 (trustees) and 507.09 (fiscal officer).

[8] R.C. 504.04(A)(1).

[9] R.C. 504.04(C). Except a township may contract with the county prosecutor to provide legal services to the township. R.C. 504.15.

[10] *Miami County v. Dayton*, 92 Ohio St. 215 (1915).

[11] For more information about what constitutes "conflict" or a "general law" for home rule purposes, please see LSC's Municipal Home Rule (PDF) *Members Brief*, which is available on LSC's website: lsc.ohio.gov.

affecting the possession, use, or sale of firearms, or (4) impose a fee, assessment, or other charge on auxiliary containers; on the sale, use, or consumption of such containers; or on the basis of receipts received from the sale of such containers.[12]

Other authority

Ohio law also provides limited home rule townships other specified authority, including:

- Authority to incur a higher percentage of net indebtedness (10.5% instead of 5%).[13]
- Authority to supply water and sewer services to users within the unincorporated area of the township.[14]
- Authority to adopt emergency resolutions that take effect immediately.[15]
- Citizens of a limited home rule township have general authority to file initiative and referendum petitions.[16]
- Authority to *adopt* building codes and other state codes, standard codes, or model codes. A limited home rule township cannot establish its own code or standard, and cannot revise a state code or a model or standard code. The township only has authority to *adopt* (and enforce) a code promulgated by the state or by a public or private organization that publishes a model or standard code (e.g., plumbing code).[17]
- Authority to adopt standards regarding soil erosion and water degradation from nonfarm development. A limited home rule township, though, is prohibited from establishing or revising subdivision regulations, road construction standards, urban sediment rules, or storm water and drainage regulations.[18]

[12] R.C. 504.04(B)(5), (6), and (8).

[13] R.C. 133.09.

[14] R.C. 504.04(A)(3), 504.18, 504.19, and 504.20. If the residents of the township already receive water or sewer services from another political subdivision, a limited home rule township may be required to undergo mediation in order to take over the services.

[15] R.C. 504.11. Townships are otherwise limited to specific emergency resolutions, including removal of snow/ice or obtaining services/materials/equipment necessary in response to an emergency without competitive bidding. R.C. 505.08 and 505.82.

[16] R.C. 504.14. Citizens of municipal corporations and charter counties have general initiative and referendum powers (Ohio Const., art. II, sec. 1f and art. X, sec. 3), while citizens of a statutory township have initiative or referendum authority only in specific instances, such as the regulation of adult-oriented businesses (R.C. 503.53).

[17] R.C. 504.04(B)(4). But a township within a county that has such a code already cannot adopt a code. Or, if a county does not have a code but later adopts a code, the township's code expires one year after the county adopts the code. R.C. 504.13.

[18] R.C. 504.04(B)(3) and 504.21.

- In an urban township, authority to lay out, establish, construct, maintain, and operate off-street parking facilities for motor vehicles.[19]
- Authority to hire an engineer to be in charge of the construction, reconstruction, resurfacing, or improvement of township roads. Or, with the approval of the county engineer, the board of township trustees can hire an independent professional engineer to assist the county engineer with the supervision of the township's roads.[20]
- In an urban township, greater authority to regulate access to township roads to promote traffic safety and efficiency and to maintain proper traffic capacity and traffic flow.[21]

Enforcement

A limited home rule township may exercise the above authority by means of adopting and enforcing resolutions, but those resolutions generally cannot create a criminal offense or impose a criminal penalty. Instead, limited home rule townships may enforce their resolutions by imposing civil fines not exceeding $1,000.[22]

A limited home rule township is required to provide police services to the township, either by utilizing township constables, contracting with another political subdivision, or establishing a police district or joint police district.[23] These peace officers enforce the township's resolutions by issuing citations for violations.[24]

If a township resolution conflicts with a municipal ordinance, the ordinance prevails. If a township resolution conflicts with a county resolution, the township's resolution prevails.[25]

Terminating the limited home rule form of government

The limited home rule form of government may be terminated by two methods: (1) via petition of the electors and subsequent vote, or (2) via the board of township trustees and subsequent vote of the electors. Ohio law does not authorize a board of township trustees to unilaterally terminate the limited home rule form of government.

Via elector petition and vote. At any time after a township adopts a limited home rule government, the electors may petition the board of township trustees, signed by 10% of the electors of the township. The board of township trustees must certify a resolution to the board of elections directing it to submit the question of terminating the limited home rule government to the electors of the township. The question is voted on at the next general election that occurs at least 90 days after the trustees certified the resolution to the board of elections.

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[19] R.C. 504.24.

[20] R.C. 5543.01(B), 5543.09(B), and 5573.01.

[21] R.C. 5552.02.

[22] R.C. 504.04(A) and (B)(1) and 504.05.

[23] R.C. 504.16.

[24] R.C. 504.06.

[25] R.C. 504.04(D).

Via township trustees and vote of the electors. After limited home rule has been in effect for three years, if the board of township trustees determines it is not in the township's best interests, they may adopt a resolution directing the board of elections to submit to the electors the question of terminating the limited home rule government. The question is voted on at the next general election that occurs at least 90 days after the trustees certified the resolution to the board of elections.

If, under either method, the electors vote to terminate the limited home rule form of government, the government is terminated effective January 1 of the next year. The board of township trustees must repeal all resolutions it adopted using its limited home rule authority. The township may not adopt, via any method, a limited home rule government for at least three years after that January 1 date.[26]

[26] R.C. 504.03.