



TO: Keystone Incorporation Committee

FROM: Jennifer Madsen

DATE: May 5, 2022

SUBJECT: Advantages and Disadvantages of Home Rule Municipality

I. Executive Summary

This memorandum outlines the pros and cons of incorporation as a home rule municipality. The memorandum assumes that the home rule decision will be made at the same time as the incorporation decision. In other words, the voters will decide the incorporation question and the home rule question at the same time and in the same election.

II. Background

Before discussing the advantages and disadvantages of home rule, background is provided on the different types of municipalities.

a. Home Rule Municipalities

Home Rule in Colorado is authorized in the Colorado Constitution and is a form of government that is under the control of local citizens rather than state government. Home rule municipalities' powers and authority are derived from the municipality's locally enacted charter and ordinances, rather than state statutes. Article XX of the Colorado Constitution reserves both structural and functional home rule powers to municipalities and "the full right of self-government in local and municipal matters" to citizens. Home rule affords cities and towns that adopt a local charter the freedom from the need for state enabling legislation and protection from state interference in "local and municipal matters."

b. Statutory Cities and Towns

A town is defined as a municipal corporation having a population of two thousand or less. A statutory town is required to have a mayor, board of trustees, clerk, attorney, judge, and marshal. and a city is a municipal corporation having a population of more than two thousand. Statutory towns and cities derive the authority to act from Colorado state law. The Colorado General Assembly has granted a number of powers to statutory municipalities which are generally located in Title 31 of the Colorado Revised Statutes. However, state law is a statutory municipality's only source of powers and a statutory municipality cannot act outside of those enumerated statutory sources of power.

III. Advantages and Disadvantages of Home Rule

Generally, home rule allows significantly greater flexibility in the exercise of governmental powers. That is because a statutory municipality can look only to state statutes and a few Constitutional provisions for its power and authority to act. In the situation where no power has been granted, the municipality cannot act or must ask the state legislature to adopt a statute granting the necessary power, a lengthy and uncertain process. Home rule municipalities, on the other hand, may draw from both the state statutes and specific and general grants of power found in Article XX of the Colorado Constitution.

Further, if a statute does grant statutory municipalities the power to act, the statute may require the municipalities to follow certain procedures and other limitations when acting. In other words, the state may control not only the question of whether the municipality has the power to act, but also the question of how that power should be exercised. Whereas, home rule municipalities are not required to follow procedures outlined in the statutes and may shape solutions for local problems to fit local needs.

Advantages of home rule municipalities:

- Within certain limits, create new tax sources to meet local financial needs.
- Collect tax locally and ability to enforce sales tax locally.
- Provide a method for the simple and expeditious transfer of funds amount municipal departments.
- Establish its own maximum debt limitations or have no maximum limit, as it desires.
- Establish its own time limitations for the repayment of municipal bonds.
- Create its own government form and administrative structure, such as the size of the government body; powers of elected and appointed officials; terms of office of the members of its governing bodies.
- Establish own procedure by which ordinances and resolutions may be adopted including codes by reference; determining whether actions will be taken by ordinance, resolution, or motion.
- Establish, within certain bounds, municipal court procedures.
- Home rule may enhance citizen control, interest, involvement and pride in municipal government.
- Some consider that home rule is the embodiment of the principle that the best government is the one that is closest to the people.
- Home rule has available broader and more flexible land use, zoning and planning powers.
- Home rule has greater authority over the qualifications of municipal offers and employees.
- Related to the simultaneous incorporation and home rule question, the petition for incorporation only needs to be signed by at least five percent (5%) of the registered electors of the territory embraced by the bounds of the new proposed municipality. There is no requirement that the person signing is both a registered elector AND a landowner for the petition if moving forward with incorporation as a home rule municipality. Whereas, if the decision is to incorporate as a statutory municipality, the petition must be signed by not less than one hundred fifty (150) of the registered electors who are (1) landowners and (2) residents.

Note: Based on Precedent, both Home Rule and Statutory incorporation petitions require 150 signatures of registered electors who are property owners.

Disadvantages of home rule municipalities:

- Restrictive charters may limit the potential flexibility of home rule.
- Dissatisfied citizens may adopt binding charter amendments which limit a home rule's authority to act (i.e., amendments which cannot be changed or repealed without a subsequent vote of the people).
- Legal uncertainties may arise when a home rule legislates in a relatively new area.
- Costs for adopting a home rule charter can burden the municipality (attorney's or other consultant's fees, expenses incurred from publication requirements, election costs, etc.).
- Unless restricted by the charter, a home rule municipality has the potential to exercise more governmental powers than are available to statutory municipalities, which some local citizens may see as a disadvantage.

IV. Conclusion

We are available to answer questions related to this overview of home rule and provide a presentation.

V. Attachments