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Home Rule Authority is Not Unlimited

It is often said that the purpose of home rule status for a municipality "is to allow for local solutions to local issues and problems." Purpose of Home Rule, Illinois Municipal League https://www.iml.org/homerule#:~:text=Purpose%20of%20Home%20Rule&text=The%20purpose%20of%20home%20rule,doing%20so%20by%20state%20law (last visited Apr. 11, 2022). Under Article VII, Section 6(a) of the Illinois Constitution, "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 entities." The Illinois Constitution delineates the broad powers of a home rule municipality: "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." Ill. Const., art. VII, § 6(a). Further, "[h]ome rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive." *Id.* As of December 21, 2022, the Illinois Municipal League indicated that there are 221 home rule municipalities in Illinois. Home Rule Municipalities, Illinois Municipal League https://legal.iml.org/page.cfm?key=2 (last visited January 14, 2023).

Although home rule municipalities have "broad powers to perform any function pertaining to its government and affairs," such municipalities must be aware that such power is not unlimited. *Gurba v. Cmty. High Sch. Dist. No. 155*, 2015 IL 118332, ¶ 13 (internal citations omitted). A recent Illinois Supreme Court case provides an illustration of such limitation. In *International Association of Fire Fighters, Local 50 v. City of Peoria*, 2022 IL 127040 ("*Local 50*"), the Illinois Supreme Court held that a home rule municipality, the City of Peoria, exceeded its authority when it passed an ordinance that provided definitions of the terms "catastrophic injury" and "injury" because such definitions were contrary to and preempted by the Public Safety Employee Benefits Act, 820 ILCS 320/1, *et seq*. *Local 50*, 2022 IL 127040, ¶¶ 1, 5, 24, 27, 37.

The Act "requires that an employer 'who employs a full-time law enforcement, correctional or correctional probation officer, or firefighter, who … suffers a catastrophic injury or is killed in the line of duty shall pay the entire premium of the employer's health insurance plan for the injured employee, the injured employee's spouse, and for each dependent child of the injured employee.'" *Local 50*, 2022 IL 237040, ¶ 3 (quoting 820 ILCS 320/10). The Act "does not provide a definition for 'catastrophic injury'" within its text. *Id*. ¶ 4. In 2003 the Illinois Supreme Court defined the term "catastrophic injury" in *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 400 (2003) as "'synonymous with an injury resulting in a line-of-duty disability under section 4-110 of the [Illinois Pension] Code." *Local 50*, 2022 IL 237040, ¶ 4 (quoting *Krohe,* 204 Ill. 2d at 400).

In June 2018, the city passed an ordinance that provided definitions for the terms "catastrophic injury," "injury," and "gainful work," which were to be used for purposes of the Act. *Id*. ¶ 5. By its ordinance, the city defined "catastrophic injury" as "'[a]n injury, the direct and proximate consequences of which permanently prevent an individual from performing any gainful work,'" and the term "gainful work" as "'[f]ull- or part-time activity that actually is compensated or commonly is compensated.'" *Id*. ¶ 29 (*quoting* Peoria City Code § 2-350(b)). Shortly thereafter, the Firefighters Union,

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Local 50, filed a complaint challenging the ordinance and arguing "the City had defined the terms in a way that violates the Act." *Id*. ¶ 5.

Local 50 made its way to the Illinois Supreme Court after the trial court granted summary judgment in favor of the Union, which decision was affirmed by the appellate court. *Id*. ¶¶ 1, 6, 7. In affirming the lower courts' decisions and finding in favor of the Union, the Illinois Supreme Court found the city had exceeded its home rule authority in attempting to define the terms "catastrophic injury" and "injury" via ordinance. *Id*. ¶¶ 17-19, 24, 26-27, 35.

First, the court rejected the city's argument that "the ordinance represents a proper exercise of its home rule powers." *Id*. ¶ 14. The court explained that its definition of "catastrophic injury" as provided in *Krohe v. City of Bloomington*, 204 Ill. 2d 392 (2003), was binding on the city and the city exceeded its authority in trying to circumvent this definition previously established by the court. *Local 50, supra*, 2022 IL 237040, ¶¶ 16-19. The court explained that "'[w]hen a court construes a statute and the legislature does not amend it to supersede that judicial gloss, we presume that the legislature has acquiesced in the court's exposition of legislative intent. [Citations omitted.] "Furthermore, after this court has construed a statute, that construction becomes, in effect, a part of the statute and any change in interpretation can be effected by the General Assembly if it desires so to do." [Citations omitted.]'" *Id*. ¶ 17 (quoting *Village of Vernon Hills v. Hellan*, 2015 IL 118170, ¶ 19). In other words, the court's "'interpretation is considered part of the statute itself until the legislature amends it contrary to that interpretation.'" *Id*. ¶ 18 (quoting *Hellan*, 2015 IL 118170, ¶ 27).

Thus, the court reasoned that because the court had defined "catastrophic injury" in *Krohe* in 2003, and the Legislature had acquiesced to such definition by failing to amend the Act to address the court's interpretation or definition of "catastrophic injury," such definition was thereby "considered part of the [Act] itself." *Id*. ¶¶ 16-18. The court rejected the city's argument that it did not have to accept or follow the definition of "catastrophic injury" as provided in *Krohe* and its argument "that there was impermissible 'judicial preemption' of the city's home rule authority." *Id*. ¶¶ 16, 20.

Second, the court found that the city's attempt to define terms was inconsistent with and specifically precluded by the Act itself. The court explained that the exercise of concurrent authority by home rule units is specifically limited by the General Assembly enactment of section 20 of the Act:

> Home Rule. An employer, including a home rule unit, that employs a full-time law enforcement, correctional or correctional probation officer, or firefighter *may not provide benefits to persons covered under this Act in a manner inconsistent with the requirements of this Act*. This Act is a *limitation under subsection (i) of Section 6* of Article VII of the Illinois Constitution on the concurrent exercise of powers and functions exercised by the State.

Id. ¶ 24 (quoting 820 ILCS 320/20) (emphasis added by the court). On this point, the court concluded: "[t]hus, it is not our case law that preempts the City's definitions, but the Act itself." *Id*. ¶ 24.

The court then went on to find and explain how the city's definitions were inconsistent with the Act in various ways. The court first noted that the city's insertion of a causation requirement was inconsistent with the Act and case law. The court noted that under the city's definition, the disability or inability to work must be the "direct and proximate consequence" of the injury, and such a causation showing is not required under the Act or relevant case law. *Id*. ¶ 30. The court also noted that the city's definition expanded the term of "disability," in that, under the city's ordinance, "catastrophic injury" requires the eligible employee to be unable to "perform 'any gainful work.'" *Id*. Under the Act, the disability related to an inability to perform "service in the fire department." *Id*. Thus, the court reasoned that "the

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ordinance's definitions of 'catastrophic injury' and 'gainful work' operate to impermissibly disqualify those who would otherwise be 'persons covered under [the] Act.'" *Id*. (quoting 820 ILCS 320/20).

In conclusion, home rule municipalities must be generally aware that their power is not unlimited. *Local 50* is only one example of a home rule municipality exceeding its legal authority. Home rule municipalities need to be aware not only of statutes enacted by the legislature, but also of any case law interpreting such statutes, to effectively determine areas in which the municipality may legally act or not. In particular, home rule municipalities should determine whether any ordinances were passed to implement definitions similar to that of the city and take action accordingly to rectify any overstepping of authority.

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