

Illinois Home Rule: A Case Study in Fiscal Responsibility

James M. Banovetz*

Abstract. This article examines the popular notion that elected officials, particularly at the local level, can not be trusted with broad powers of taxation; that they are likely to use and perhaps abuse all of the powers of taxation they possess. The study looks at the use of tax powers, made over a 30 year period, by Illinois' home rule municipalities which have one of the broadest grants of tax powers given by any state to its local government officials. This study found only seven reasonably verifiable examples of unwarranted uses of home rule powers, only three of which represent unequivocal instances in which the voters, the courts, or the legislature voided uses of home rule powers. Available evidence produced neither a rational nor an empirical basis to support a reasonable probability that, given the opportunity, local elected officials will enact new or higher taxes without regard for the wishes of the voters. Indeed, the Illinois experience suggests that, with adequate safeguards, local officials can be trusted with broad based local tax powers.

1. Introduction

Perhaps one of the most common attitudes about American local governments is that their legislators are prone to abusing their power to tax. This attitude has its roots in the era of municipal corruption in the last decades of the nineteenth century, chronicled so well by Lincoln Stephens in his classic *The Shame of the Cities*, and attacked by the municipal reform movement of the last century launched by Richard S. Childs and the National Municipal League.

The attitude persists despite the fact that reforms produced by that movement (including the Australian ballot, nonpartisanship in local elec-

* James M. Banovetz is professor emeritus and director emeritus of the Division of Public Administration at Northern Illinois University. An internationally renowned expert on local government and local government management, Banovetz is recognized as the foremost authority on home rule in Illinois.

tions, the council-manager form of government, and, most importantly, the professionalization of local government workforces) has cleaned most corruption out of city and village governments, especially from the growing majority of mid-sized cities using professional city managers, and including most large city governments (e.g., Cincinnati and Kansas City).

This attitude continues to provide popular support for manifold constraints on the powers of local governments, especially their tax powers. Constraints range from the judicial standard of strict constructionism in the interpretation of grants of authority to local governments (Dillon's Rule), through statutory limits on taxing powers, to the more contemporary imposition of tax caps. All of these constraints are rooted in the presumed truism of Lord Acton's thesis that power corrupts and absolute power corrupts absolutely.

The persistence of this attitude has been demonstrated by the force of the so-called "Taxpayers' Revolt" of the last several decades. The growing use of property tax caps in Illinois attests to the attitude's continuing strength - strength that endures despite a dearth of empirical or other scholarly evidence examining it.

Illinois' experience with home rule offers a unique and interesting opportunity to test the proposition that it is inevitable, or indeed even probable, that municipal officials will abuse the authority to impose more and higher taxes on local taxpayers. This paper will exploit this opportunity; it will examine Illinois' experience with home rule tax powers, looking for evidence suggesting irresponsibility in their use. To do so, it will draw upon the limited available research on Illinois home rule and on the author's own 38 years of experience working with, and studying, Illinois' local government system. First, however, it will summarize the extraordinary home rule powers granted to Illinois cities and villages.

2. The History of Illinois Home Rule

With Chicago and Cook County's long histories of machine politics and political corruption, Illinois has provided fertile ground for popular scepticism about the fiscal responsibility of local municipal officials. The public's reaction to late 19th and early 20th century municipal corruption was an intense and continuing pattern of adding ever more restrictions and limitations on municipal taxing powers. Property tax limitations eventually reached a point at which they were so overlapping and confusing that they were barely capable of judicial interpretation, sometimes leading to implementation in an arbitrary and capricious fashion (Fisher and Fairbanks 1968). Indeed, Illinois students of local government routinely attribute Illinois' unusually large number of local governments to the need to evade statutory restrictions on municipal taxing powers so that services demanded by the public could be

provided.² Illinois has also had a history of strict and rigid application of Dillon's Rule to the interpretation of statutory grants of power. In effect, Dillon's rule holds that municipal corporations have only those powers specifically granted to them by statute and those *necessarily implied* from the granted power.³ Indeed, statutory grants of authority to cities were so restricted in their application that Chicago attempted, frequently and unsuccessfully starting in 1904, to secure some form of home rule (Banovetz and Kelty 1987a).

Despite the state's history of local government distrust, Chicago's home rule efforts ultimately proved successful in 1971 when voters approved the State Constitution drafted in 1970. That Constitution provided Illinois cities and villages with an optional home rule system that William N. Cassella of the National Civic League has called "the most advanced form (of government) as far as a flexible power system is concerned." (Banovetz and Kelty 1987b)

3. Illinois Home Rule Powers Defined

The 1970 Illinois Constitution provides a very broad definition of home rule powers:

"Except as limited by this Section, 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." (Art. VII; Sec. 6a)

Except for prohibiting home rule units from levying taxes upon "income, earnings, or occupations" without legislative authorization, the constitutional constraints upon home rule units are relatively few and have not proven to be significant.

The constitution permits the General Assembly to put specific limits on the use of home rule powers, but with restrictions: (1) it can provide for the exclusive exercise of a power or function by the state by a vote of a simple

² Depending upon the information source, Illinois has between 6,800 and 7,200 units of local government. It has more units of local government than any other state in the nation, leading the second ranked state, Pennsylvania, by nearly 50 percent. A large portion of these governments are fire protection, park, and library districts formed in part to get new access to property tax revenues to support these popular services.

³ Italics added to emphasize the interpretive practices of the Illinois courts. Dillon's rule is a legal concept first articulated by the Iowa courts and later applied by the courts in each state. The classic application of the rule was in *Trenton v. New Jersey*, 262 U.S. 182 (1923). Further clarification is found in *Kennedy* (1971) and *Braden and Cohn* (1969).

majority of both houses, or (2) it can prohibit the use of a home rule power, but only by a vote of a three-fifths majority of the membership of both houses.

The constitution further stipulates that:

“Powers and functions of home rule units shall be construed liberally.” (Art. VII, Sec. 6m)

The Illinois Supreme Court demonstrated its general willingness to construe the grant of home rule powers liberally in three early, landmark cases. In 1972 and again in 1980, the Court ruled that legislation passed before the effective date of the 1970 constitution did not limit home rule powers unless such legislation complied with constitutional requirements (the three-fifths majority vote) needed to impose a limit on home rule powers.⁴ In 1973, the Court held that statutes restricting the exercise of local government power did not apply to home rule units unless the statute explicitly indicated such an intent.⁵

In short, Illinois' grant of home rule powers to its cities and villages is, indeed, very broad.

4. Illinois Use of Municipal Home Rule⁶

When the 1970 Illinois Constitution took effect on July 1, 1971, a total of 67 cities and villages automatically gained home rule authority by virtue of meeting the constitution's standard of having a population of 25,000 or more persons.⁷ By the time of the November 2000 elections, that number had grown to 147 municipalities. In the intervening years, twelve more cities gained home rule by population growth, 72 had adopted home rule by referendum, and four lost home rule status by referendum.

Since the Constitution and its home rule system took effect thirty years ago, over seven million Illinois residents—well over half of the state's population C have lived in a local government exercising home rule powers. “Thus

⁴ *Kanellos v Cook County*, 53 Ill. 2d 161, 290 N.E.2d 240 (1972); *Sommer v. Village of Glenview*, 79 Ill 2d 383, 403 N.E.2d 258 (1980).

⁵ *Rozner v Korshak*, 55 Ill. 2d 430; 303 N.E.2d 389 (1973)

⁶ The discussion in this section is based upon “Illinois Home Rule: A Thirty Year Assessment,” *Policy Profiles*, Northern Illinois University Center for Governmental Studies, February 2001.

⁷ Home rule was also made available to counties in which a chief executive officer is elected by the voters at large. This structural requirement has resulted in a county experience with home rule very different from the municipal experience, but not necessarily in terms of financial powers, practices, or behaviors. Chiefly, this requirement has effectively limited home rule to just one county, Cook County. As a result, this paper does not deal with county home rule in Illinois.

it is safe to conclude that Illinois and its residents have had widespread experience with municipal home rule.”⁸

5. Home Rule Tax Powers

With significant exceptions, the broad scope of Illinois’ home rule power also extends to the power to levy taxes. Home rule freed municipalities from all legislative limitations on the levy and use of property taxes, and gave municipalities wide discretion to design new tax levies.

The principal exception is income taxes: the Constitution’s sole stated tax limitation prohibits home rule taxes levied on “income, earnings, or occupations” unless such taxes are specifically authorized by the Illinois General Assembly. No such authorization has ever been given or even seriously considered. A second major exception occurred in 1991 when the Illinois General Assembly preempted the power to impose retail sales taxes. Illinois had operated well before 1971 with a 5 percent state sales tax which went into the state’s general fund and an additional 1 percent tax, if locally authorized,⁹ which was rebated to the city or county in which the retail sale occurred. Functionally, the system produced a state-wide 6 percent sales tax.¹⁰ The state collected the entire sales tax and rebated to each local government its portion of the tax.

After home rule became effective in 1971, a number of cities and villages enacted their own sales taxes, applied over and above the 6 percent state tax. These local sales taxes sometimes were levied on different bases, usually designed to protect local merchants from out-of-town competition. Thus, for instance, some communities with significant farm service businesses exempted farm implement sales from the local, home rule sales tax; others limited the local tax to the first \$500 of price on any given item; still others used other tax definitions to raise money without harming the local economy. Tax rates, too, were set locally and the collection of these additional local sales taxes was the responsibility of the levying municipality.

The result was a pattern of local sales taxes that provoked opposition from statewide merchants who had to program cash registers differently in many communities they served. To assist the merchants, the General Assembly reserved to the state exclusive authority to enact sales taxes, thereby establishing a single, statewide retail sales tax base.¹¹ Simultaneously, the General Assembly protected home rule communities by authorizing them

⁸ *Policy Profiles, op. cit.*, p. 1.

⁹ And nearly all Illinois cities and counties have authorized the use of this local portion of the levy.

¹⁰ The tax was later modified so that the 5 percent state portion was not levied on the sale of food (except food served on the premises) and drugs.

¹¹ The sales tax in Illinois is technically known in law as the retail occupation tax.

individually to levy an additional sales tax, on the state's tax base, in amounts of .25 up to a total additional levy of 1.5 percent.

A third constraint upon home rule taxing power was also added by the General Assembly. One of the first¹² taxes levied by home rule municipalities was a real estate transfer tax. In the decades of the 70's and the 80's, which saw rapid escalation of real estate values, the real estate transfer tax produced a large windfall in revenues from taxpayers whose properties had become so inflated that sellers, who paid the tax, hardly noticed the amount. When the escalation in property values leveled off, however, the tax generated opposition. Thus, the General Assembly enacted legislation which allowed existing real estate transfer taxes to continue, but imposed a referendum requirement on any future levy of such a tax by a home rule municipality.

6. Hypothesis and Methodology

Given:

- Illinois' local government history,
- The extraordinary breadth of Illinois home rule powers,
- The broad scope home rule gives to municipal taxing powers, and
- The number of Illinois cities that have used Illinois home rule,

the Illinois experience might well be said to represent the most severe test possible of the hypothesis that, given sufficient discretion, local government officials will impose unwarranted taxation on their residents. This paper will examine this hypothesis by (1) examining the extent to which the authority has been used; (2) comparing home rule with non-home rule communities' uses of property taxes as a revenue producing measure; (3) reviewing home rule constraints on the misuse of home rule taxing powers to determine if, indeed, such constraints have been, and can be, used successfully; and (4) examining the nature of voters' reaction to the use of home rule powers. Since the term "unwarranted powers" is subjective, this paper will view only those uses as "unwarranted" which were subsequently constrained or voided by oversight agencies-the General Assembly, the courts, or the voters through a referendum.

Ultimately, in a society ruled by democratic principles, the reaction of the voters is the most nearly infallible test of the acceptability and utility of public policy, including the appropriateness of tax policies. Fortunately, for the purposes of testing this hypothesis, voter reaction is also the test with the best available information.

¹²New at least to Illinois.

1. Municipal use of home rule taxing powers

Two comprehensive surveys of the uses of home rule powers have been made. The first was undertaken in 1983 (with 95 communities responding) and updated in 1986 (with 60 communities responding; taken together in the two surveys, 105 communities responded to at least one survey) (Banovetz and Kelty). The second has just been completed (in spring, 2002), with 83 communities responding.

The most common uses of home rule powers in the two surveys are shown in Table 1. Three relevant conclusions can be drawn from this table. First, home rule is widely used for governmental functions other than taxation. While the use of home rule taxes is one of the two most common uses of home rule powers, home rule is used almost as frequently to promote economic development, strengthen regulatory authority, reduce debt costs,¹³ and facilitate the purchase, sale, and lease of real estate. Home rule, in short, is not used by government officials primarily as a method of raising more tax revenues.

Second, the use of home rule as a means of raising tax revenues from sources other than property taxes is clearly increasing and is widely employed for that purpose, although the frequency of such use is probably overstated by the survey. Well over half of the survey's non-respondents were small communities which make less use of tax and other home rule powers. Nonetheless, this significant increase in use makes the analysis in this study (a) more important, and (b) more likely to support the hypothesis.

Third, few home rule communities use their home rule power to levy higher property taxes. Fewer than one-fourth of home rule communities use home rule to increase property tax levies above the levels allowed by statute or to increase such levies above statutory tax caps.

¹³ Home rule is widely used to lower the interest costs of government borrowing. Because they are not limited in their borrowing to kinds of debt authorized by statute, home rule communities can negotiate better interest rates. Further, home rule communities can issue general obligation bonds (GO bonds which are secured with the government's property tax powers) without the need to secure voter approval through a referendum. The use of GO bonds lowers the interest costs of the borrowing. And, indeed, the shift in borrowing from revenue to GO bonds by home rule communities has been significant; it is used even when other revenue sources (e.g., utility bills) are used to raise the funds to repay the debt. Because debt secured with property tax powers can, if used unwisely, lead to substantial increases in property taxes, its indiscriminate use could have serious adverse effects on the property tax levies and credit ratings of home rule communities. Thus this home rule use has a direct relationship to the use of home rule tax powers.

Table 1. Uses of Home Rule Powers

| Function | 1983-86 in % | 2002 in %* |
|---|---------------------|-------------------|
| Communities Reporting | 105 or 95% | 83 or 57% |
| Economic Development | ** | 83 |
| Levy Taxes Based on Home Rule Powers | 57 | 83 |
| Regulation | 72 | 78 |
| Reduce the Cost of Borrowed Money | 90 | 74 |
| Buy, Sell, or Lease Property | 43 | 73 |
| Levy Sales Tax | 5 | 61*** |
| Regulatory Licensing | 61 | 55 |
| Intergovernmental Agreements | 58 | 52 |
| Change Structure of Government | 30 | 29 |
| Exceed Tax Caps | NA | 24 |
| Extend Property Tax Beyond Statutory Limits | 16 | 18 |

*Listed in order of frequency.

** Not tabulated, but incidence of use was second only to incurring debt.

*** Sales taxes reported in the first survey were based on home rule powers; in the second survey, they were levied based on special statutory authority.

Note: The lower survey participation in 2002 will cause some inflation in the percentages since the majority of the non-participants were small communities which, in general, make much less use of home rule powers. Two-thirds of communities over 25,000 responded while less than half of those under 25,000 responded.

Further insight into the kinds of taxes being levied by home rule communities in both the 1983-86 and 2002 surveys is found in table 2. It clearly shows that the years between 1986 and 2002 have witnessed a major expansion in the use of taxes levied with home rule powers. This can be attributed to a number of possible factors. Certainly the chronic need of local governments - like all governments - for more money to meet public service demands is a factor. So, too, was the loss of federal revenue sharing dollars which occurred during this period. Local governments typically reacted to this loss by maintaining services at or near existing levels and making up the revenue shortfall by some combination of greater operating efficiency and increased use of other revenue sources.

Two other factors also played a role. The first is the influence of the Home Rule Attorney's Association, a group sponsored by the Illinois Municipal League, which has met monthly since first being formed in 1971, to monitor home rule uses with the intent of discouraging uses that would be disapproved in court tests. As case law has developed, and the legality of more uses has been established, many powers have been more frequently used. The second has been the success of home rule itself: experimental uses of home rule powers that subsequently prove successful in achieving their purpose also tended to be copied. The hotel-motel tax is a good example of the latter phenomena.

Table 2. Home Rule Taxes, 1983-86 and 2002

| Tax Levied | 1983-86% use | 2002 % use |
|--------------------------------------|---------------------|-------------------|
| Communities Reporting | 105 or 95% | 83 or 57% |
| Retail Sales * | 5 | 61 |
| Hotel/Motel* | 35 | 60 |
| Real Estate Transfer* | 11 | 36 |
| Restaurant food & Beverage Sales* | 8 | 25 |
| Exceed Property Tax Caps | NA | 24 |
| Property Tax Beyond Statutory Limits | 15 | 18 |
| Gasoline* | 9 | 17 |
| Amusement* | 14 | 14 |
| Wheel Tax (on auto ownership) | 4 | 8 |
| Other | 3 | 7 |
| Sale of New Automobiles | 7 | 2 |

*Taxes which broaden the tax base to include non-residents of the community.

Note: The lower survey participation in 2002 will cause some inflation in the percentages since the majority of the non-participants were small communities that, in general, make much less use of home rule powers. Two-thirds of communities over 25, 000 responded while less than half of those under 25,000 responded.

The single most notable change in tax patterns has been the increase in the use of home rule retail sales taxes which became much more common after the Illinois General Assembly prohibited the use of home rule powers to levy sales taxes and permitted home rule communities to impose larger local sales tax levies on the state sales tax base. Historically, Illinois has imposed a 5% state sales tax and permitted local communities (e.g. cities, villages, counties) to add an additional 1% levy within their jurisdictions, which the state collects and remits to them. Now, home rule communities can levy up to an additional 1.5%, to a total of 2.5%, on the state sales tax base which the state will collect and remit to them. By eliminating the need to collect the home rule portion of their local sales tax, this change made the use of home rule sales taxes much more attractive to home rule governments.

Two additional points must be added to this. First and foremost, only seven, or 13%, of the fifty-three communities reporting the use of this tax levied the whole 1.5%. Of these, six were located in Cook County and one in a Chicago suburban county. Because of additional levies for metropolitan purposes, total sales tax rates in Chicago and suburbs are higher than in the rest of the state, making local tax additions a smaller percentage of the total levy. Second, non-home rule communities are restricted to the 1% local share. These differences produce total sales tax rates which vary widely throughout the state. No evidence has ever been offered that suggests that such differences have produced a detectable impact on consumers' shopping patterns in either the state or in the Chicago metropolitan area.

A second trend evident from a careful reading of the data is that the taxes levied with home rule power are predominantly those that spread the tax burden to non-residents of the community: retail sales tax, hotel/motel tax, real estate transfer tax, restaurant food and beverage tax, gasoline tax,

and amusement tax. The four most frequently used home rule taxes, and six of the top eight home rule tax uses, are taxes which spread tax burdens more broadly. In fact, some communities adopted home rule specifically to secure the authority to levy retail sales taxes so that community cost burdens could be transferred to non-residents.¹⁴

In short, then, taxation has been an increasingly common use of home rule powers, but it has been most frequently used to transfer local tax burdens from residents to non-residents of the community.

2. Comparison of home rule and non-home rule uses of tax powers

Home rule governments clearly levy a wider array of taxes than their non-home rule peers since, with one exception, non-home rule units are not authorized to levy any of the taxes listed in Figure 3. That exception is the hotel/motel tax.¹⁵ Indeed, only one of the taxes listed in Figure 3 has been challenged by opponents of home rule: the use of home rule to extend property taxes beyond the statutory limits imposed on non-home rule governments.¹⁶ Because this has been the focal point of home rule opposition, it also will be the focal point of this analysis of the hypothesis that, given sufficient discretion (as Illinois home rule surely provides), local government officials will impose unwarranted taxation on their residents.

Opponents of home rule regularly contend that the adoption of home rule will lead to rapid, and by implication unwarranted, increases in municipal property taxes. Two studies have been conducted over the years which compare home rule and non-home rule use of property tax powers; both have relevance for this opponents' contention.

The first, undertaken by J. Banovetz and R. Albritton, compared the changes which occurred in all Illinois cities and villages over 10,000 population during the first ten years of home rule, 1971-81 (Banovetz and Kelty 1987). They found that both population size and geographic location (located inside or outside of Cook County) accounted for more of the variance

¹⁴ These tend to be communities with regional shopping malls - Oakbrook and Mt. Vernon are examples. Communities with large college student populations, such as DeKalb, or with busy hotel/motel industries, such as Rosemont, also utilize such taxes heavily.

¹⁵ That exception, however, is significant. The City of Rosemont, located adjacent to O'Hare Airport and with a night-time population several times its daytime population, first adopted home rule in 1972 for the express purpose of imposing a hotel/motel tax on the many large hotels within its boundaries. The tax proved so successful and devoid of local opposition, that it was widely copied by other home rule governments. The state legislature finally authorized the tax for use by non-home rule governments, but with a crucial difference: the statutory authorization permits home rule tax proceeds to be used only to promote tourism to the community. Home rule governments can use the tax proceeds for any public purpose.

¹⁶ Presumably, home rule opponents will also object to home rule governments' exemption from statutory property tax caps, but, in the author's experience monitoring home rule referenda, this consideration has not yet emerged as a major issue.

in property tax rates and the rate of increase in such rates than did home rule status. While home rule units showed a higher rate of increase in property tax levy amounts during the ten year period, the total amount of their tax levies, shown in Table 3, was not significantly different in 1981, the final year for which data for the study were available. Leaving aside the debate about whether the higher rate of increase was attributable to home rule status or simply a process of “catch-up,” and remembering that only 13.7 per cent of all home rule units (of whatever population size) were even levying higher property tax rates than they could have levied without home rule powers in 1983, only one conclusion from that study could be said to be relevant to this inquiry: *when controlling for population and location, the average property tax levy for home rule communities was the same as the average property tax levy for non-home rule communities after ten years of Illinois home rule experience.*

Table 3. Comparison of Property Tax Levy Rates of Home Rule and Non-Home Rule Communities After Ten Years of Illinois Experience with Home Rule

| Category of Municipality | Ave. Rate 1970 | Ave. Rate 1981 |
|---|----------------|----------------|
| I. Municipalities Over 25,000 | | |
| In Cook County (N=27) | .794 | 1.612 |
| Outside Cook County (N=35) | 1.114 | 1.612 |
| II. Cook County Municipalities 10,000-25,000 | | |
| With home rule (N=8) | .543 | 1.325 |
| Without home rule (N=38) | .812 | 1.303 |
| III. Non-Cook County Municipalities 10,000-25,000 | | |
| With home rule (N=6) | .659 | 1.002 |
| Without home rule (N=52) | .842 | 1.176 |

The second, much more contemporary study, by R. Dye and T. McGuire (1997) looked at the effect of property tax limitation measures in general, and specifically on the effect of tax caps on local government fiscal behavior. In studying such effects on Illinois cities and villages located in the six county Chicago metropolitan region, Dye and McGuire specifically evaluated the impact that the state’s tax caps, enacted in 1991, had upon the property tax rates of non-home rule communities (which are subject to the caps) when compared to home rule communities (which are not). This is shown in Table 4. They found that:

Table 4. Average Annual Growth Rates of Property Taxes

| Communities | Number | Growth Rate W/O Cap | Growth Rate W/Cap |
|---------------|--------|---------------------|-------------------|
| Non-Home Rule | 104 | 14.57 | 7.14 |
| Home Rule | 134 | 9.03 | 7.55 |

Source: R.F. Dye & T.J. McGuire (1997).

1. The 104 non-home rule communities had been experiencing a much faster rate of growth in property tax rates before the imposition of the tax caps than the 134 home rule communities.
2. The rate of increase in property tax levies decreased in both the home rule and the non-home rule communities after the imposition of the tax caps upon the non-home rule communities, but the rate of decline was less in home rule communities.¹⁷
3. The rate of increase in property tax levies for non-home rule and for home rule communities was comparable¹⁸ after the imposition of tax caps.

Nothing in the Dye and McGuire study would lead to the conclusion that home rule status results in significantly higher levels of property taxation. *In short, nothing in either study comparing home rule and non-home rule uses of the property tax supports the hypothesis that local government leaders, given the freedom from constraint that home rule provides, will impose significantly higher rates of property taxation.* In fact, Dye and McGuire's data on the rates of property tax increases prior to the imposition of the tax caps suggests exactly the opposite: that property taxes have increased more slowly in home rule communities.

Data in the 2000 survey adds further evidence that home rule communities rely *less* on property taxes than do their non-home rule peers. It asked communities what proportion of their total revenues in 2000 was derived from property taxes. The results are presented in Table 5 together with a comparison with the statewide average for municipal revenues from property taxes.

Table 5 indicates that (1) the use of home rule powers to levy property taxes in excess of non-home rule statutory limits is very rare in communities smaller than 25,000, and (2) the percentage of total municipal revenues derived from property taxes by home rule units, even those home rule units levying property taxes in excess of what would be their statutory limits without home rule powers, is considerably less in communities larger than 25,000 population than the statewide averages. Since property tax levies tend to be higher in larger communities, all else being equal, the averages for large home rule communities should be considerably higher than the statewide average. That it is not suggests that home rule powers, at worst, have not driven up property taxes and, at best, have been a factor in keeping such

¹⁷ *Ibid.*, p. 8. Dye and McGuire did not control for differences in population size, but they did find evidence that location in Cook County or the collar counties did have an independent effect (p. 14).

¹⁸ The rate of increase was 7.14 % for non-home rule and 7.55% for home rule communities. The use of a percentage rate of increase, however, does not control for the impact on the percentage of the much higher rate of initial increase by the non-home rule group.

taxes down.¹⁹ Such data hardly support the hypothesis that, given the authority to do so, local government officials will increase property taxes in unjustifiable amounts.

Table 5. Municipal Reliance on Property Taxes: Percentage of Total Municipal Revenues Derived from Property Taxes

| Category | Average All Home Rule | Average All Home Rule Over Statutory Limits |
|-------------------------|--------------------------|--|
| Cook County <25,000 | 18% | 23% |
| Cook County >25,000 | 18% | * |
| Collar Counties <25,000 | 13% | 11% |
| Collar Counties >25,000 | 15% | * |
| Outside <25,000 | 15% | 16% |
| Outside >25,000 | 10% | * |
| Statewide Average** | 26% | *** |

* Too few cases for valid statistical comparison

** Source: *Statewide Summary of Municipal Finances*, Report of the Comptroller General of Illinois

*** Data not available

Note: Data from survey is for year 2000; statewide data is for most recent year available, 1998.

In short, there is no research-based evidence in the public domain which supports claims that, given either the authority or the opportunity, Illinois city officials will drive up property taxes.

3. The impact of constraints on the misuse of home rule authority

The 1971 Illinois Constitution establishes legislative, judicial, and electoral constraints on the use, and misuse, of home rule power. This section will deal with the first two; electoral constraints will be discussed in the next section.

Legislative constraints derive from the constitutional grant of authority to the General Assembly either to preempt home rule powers for exclusive use by the state or to deny certain powers to home rule units. The legislature has used both constraints, but in a way not necessarily intended to show disapproval of specific uses of home rule tax powers.

While the General Assembly seemed to disapprove of a home rule tax when it imposed a referendum requirement on new adoptions of property

¹⁹ The example of the City of Rockford, the state's only city above 25,000 population without home rule powers, adds further support for this possibility. When Rockford lost its home rule powers, it quickly sought and received both state legislative and local voter approval for a number of property tax increases which brought the city's property tax rate considerably above its former, non-home rule, statutory limit.

transfer taxes, its action was not as negative as it might seem since it neither denied home rule units the authority to levy such taxes in the future nor did it order that existing property transfer taxes either be repealed or submitted to the voters for approval. Its action, then, appeared to be more of a response to anti-tax pressures than disapproval of this use of home rule taxing power.

The legislature's 1991 action terminating local home rule powers to levy retail sales taxes was not intended ultimately to restrict home rule powers. The bill's sponsor, Senator Dawn Clark Netsch, was and remains a home rule supporter. Rather, her intent, articulated publicly, was to eliminate the problems for retail merchants caused by the varying, locally defined tax bases on which the local taxes were levied.²⁰ By including in the bill a provision allowing only home rule governments to impose an additional sales tax on the state's base, Senator Netsch and the General Assembly preserved home rule units' access to retail sales taxes as an alternative approach for raising revenues to support their service commitments.

Similarly, the General Assembly passed up other opportunities to restrict home rule taxing powers in 1991 and again in 1995 when it passed laws imposing caps on annual increases in local government property tax levies.²¹ The caps were made mandatory for local governments in the six county Chicago metropolitan area and in other counties when approved by a county wide referendum. In all cases, however, the General Assembly explicitly exempted home rule units from the tax caps. The tax cap legislation responded to statewide, anti-property tax sentiment and it is reasonable to assume that home rule units would not have escaped the limitations if the General Assembly had significant evidence that their tax increases were unwarranted.

The Illinois courts, acting in their capacity as the final arbiters of the meaning of constitutional language, including the language of the home rule provisions, also has not hesitated to use its powers to restrict abusive or excessive uses of home rule taxing powers. The Illinois Supreme Court, has heard 20 cases challenging the use of home rule tax powers; it supported home rule taxing power in 17, or 85 percent, of these cases.

²⁰ Senator Netsch, in conversations with the author, expressed her view that her action in sponsoring the bill was actually supportive of home rule taxing powers. Further, there have been other similar situations in which the General Assembly has exercised preemptive powers because the aggregate of otherwise reasonable local decisions created problems for the state as a whole. An excellent example was the action of the 81st General Assembly denying home rule governments the power to regulate minimum ages for the purchase and consumption of alcoholic beverages. In this instance, variations in local laws, all enacted for locally supported reasons, led to too many traffic accidents as young drivers drove to communities with more lenient regulations.

²¹ The tax cap program limited a local government's property tax increase in any year to a maximum of five percent or the increase in the cost of living, whichever was less.

The cases in which it did not support home rule taxing authority are particularly significant for the use of home rule authority and for this analysis. In the first, the court struck down a Chicago ordinance imposing a retail sales tax on sellers of services.²² Drawing on the ruling in this case, the court ruled a year later that home rule utility taxes, levied in amounts that exceeded the statutory maximums on such levies for non-home rule units, were a tax on occupations and thus in violation of the constitution.²³ Finally, the court ruled that a Chicago tax on memberships in health clubs was an impermissible occupation tax.²⁴

These examples demonstrate that the legislature and the courts have the power and the inclination to restrict or constrain the use of home rule tax powers if they feel a need to do so. That there are so few such examples, and none in the use of home rule's unlimited power to levy property taxes, suggest that they have not felt such a need; that they have not found significant patterns of misuse or excessive use that require imposing constraints on such tax powers. Of perhaps particular significance, the legislature did find, in 1991 and again in 1995, excessive use of property taxing powers by non-home rule units of government and did impose constraints on those governments, but did not impose similar constraints on home rule governments.

4. Voter reaction to home rule: electoral constraints

From the standpoint of democratic theory, the reaction of the voters is the ultimate test of whether Illinois' broad home rule taxing authority, including seemingly unlimited property taxing authority, has led to unwarranted tax increases.

This reaction can be measured by the referenda held on the question of whether or not a city, village, or county should have home rule powers. As of November, 2000, there had been 191 such referenda in Illinois.²⁵ As might be expected, these referenda convey a mixed message. In 97 cases, the voters approved the use of home rule; in the other 94 cases they did not. But these 191 referenda can be divided into three distinct categories—county adoption referenda, municipal adoption referenda, and municipal retention referenda—and each produces a different picture of voter support. These referenda results are reported in Table 6.

²² *Commercial National Bank of Chicago v City of Chicago* 89 Ill. 2d 45, 432 N.E.2d 227 (1982).

²³ *Waukegan Community School District 60 v City of Waukegan* 95 Ill. 2d 244, 447 N.E.2d at 233-35 (1983). This case also over-ruled a 1974 court ruling favorable to home rule.

²⁴ *Chicago Health Clubs, Inc. v Picur* 124 Ill.2d 1, 528 N.E.2d 978 (1988).

²⁵ "Illinois Home Rule: A Thirty Year Assessment," *Policy Profiles, op.cit.*, pp. 1-5.

Table 6. Home Rule Referenda Record 1971-2000

| Kind of Referenda | Voted for Home Rule | Voted Against Home Rule |
|----------------------------------|----------------------------|--------------------------------|
| County Adoption of Home Rule | 0 | 11 |
| Municipal Adoption of Home Rule | 72 | 79 |
| Municipal Retention of Home Rule | 25 | 4 |
| Total | 97 | 94 |

All referenda to adopt home rule by county governments were held after Cook County used its home rule powers to levy several new taxes; all failed, on average by a margin of 3-1. However, these referenda results are somewhat murky because they contained two separate issues, adopting home rule and restructuring county government.²⁶

On the question of whether or not a city or village should be a home rule unit, the results are mixed—an understandable outcome in a society founded on a legitimate concern for the misuse of government powers. Most of these are referenda in which voters who have not lived in a home rule government are deciding whether to adopt home rule. Given Illinois' history, the only surprise is that so many referenda supported home rule.

Of greatest interest for this analysis are the outcomes in elections in which voters currently living in a home rule city are deciding whether or not home rule should be retained. These are voters who have experienced home rule powers, including home rule taxing powers, and who have an opportunity to abolish those powers. In these elections, voters opted to retain home rule in 25 out of 29 elections, or in 86 percent of the cases. Equally interesting, the average electoral outcome in these elections was a 3-2 margin in favor of home rule.²⁷ “In short, *where home rule has been tried in Illinois, voters have been supportive of it.*”²⁸

Further support for this conclusion can be gleaned from the municipal adoption referenda. The county with the highest percentage of home rule adoptions is Cook County which has home rule powers and whose voters had, by the time they voted on adoption of home rule for their own city or village, experienced county home rule and paid Cook County's home rule taxes.

However, no analysis of these voting data and the hypothesis that elected officials with broad taxing power can and will misuse those powers

²⁶ See footnote 6. These referenda can be interpreted as voter rejection of Cook County's new taxes, but Cook County's own voters have never voted on home rule retention.

²⁷ There is a body of opinion among political scientists who specialize in analyzing election outcomes which holds that any outcome in which the margin of victory is 55 percent or more can qualify as a landslide victory.

²⁸ “Illinois Home Rule: A Thirty Year Assessment,” *Policy Profiles, op. cit.*, p. 5.

can be complete without an examination of the instances in which voters chose to abolish home rule powers. There were four: Lisle in 1977, Villa Park in 1980, Lombard in 1981, and Rockford in 1983.

The Lisle abandonment represented an instance in which elected officials announced their intention to proceed with a plan to issue general obligation bonds to build a new city hall despite voter opposition to the plan expressed through an advisory referendum. Voters promptly petitioned for a referendum on the abolition of home rule; the referendum carried; home rule powers were lost; and the city hall was never built.

Villa Park and Lombard represented a different scenario altogether. In those communities, voters petitioned for an abandonment referendum and the issue was placed on the ballot. In each election campaign, supporters of abandonment asserted that abolition would reduce taxes by negating the taxes passed with home rule powers. The referendums passed, but tax reductions did not occur because neither community had used its home rule powers to levy or impose any taxes, including higher property taxes.

The Rockford case presented a still different scenario. In that city, after years of delayed maintenance of the city's infrastructure, officials instituted a series of sharp property tax increases to upgrade and repair public facilities. The council could have raised the needed money without resorting to home rule powers by imposing local utility taxes, but it chose not to do so.

Opponents of the property tax increases circulated a petition calling for a referendum on abandoning home rule. The referendum was held and home rule was abandoned. Shortly thereafter, a series of seven referenda were held to raise the city's property taxes above the statutory limit. Six of the seven referenda passed.

These cases demonstrate that concerned citizens can, when alarmed about local home rule uses, effectively prevent misuse by placing the fate of home rule powers in the hands of the voters.

Summation: Analysis of the Hypothesis

This paper seeks to validate the popular belief, expressed constantly in election campaigns concerning home rule in Illinois, that, given sufficient discretion, local government officials will impose unwarranted taxation on their residents. The strongest case that can be made in support of this view is with reference to specific instances of home rule powers being used in unwarranted ways, and subsequently being overturned by the Illinois General Assembly, by the Illinois courts, or by local voters.

The best case: examples of unwarranted use of home rule powers

The clearest example of an unwarranted home rule use was Lisle's attempt to issue bonds to build a new city hall after voters had expressed their

opposition to the plan in an advisory referendum. Rockford's use of home rule powers to levy large property tax increases can also be cited in this category. The abandonment of home rule in Lombard and Villa Park is not a relevant example since assertions made to the voters regarding home rule taxes subsequently turned out to be false.

A second example has been the rapid increase in the use of home rule taxes. This suggests that local officials make unwarranted use of their broader tax powers. The widespread use of these non-property taxes, have produced several instances of action to curb the use of home rule powers.

Three relevant examples of possible unwarranted home rule uses were those taxes constrained by court decisions voiding Chicago's retail sales tax on services, on Chicago's tax on health club memberships, and utility taxes levied by Waukegan and several other home rule communities in excess of statutory maximums. The two home rule taxes subsequently altered by legislative action-the retail sales tax and the real estate transfer tax - might also be considered in a best case scenario.

In this best case analysis, then, there have been seven examples of unwarranted use of home rule powers during Illinois' thirty year experience with very broad grants of taxing power.

Weaknesses in the best case

Even this best case, however, has obvious weaknesses. With the exception of the unwarranted uses by Lisle (bond issue over voter opposition) and Chicago (sales tax on services, health membership tax), each example has mitigating circumstances. Rockford's voters, by approving six of seven property tax increase referenda after home rule's abandonment, gave evidence that they were less opposed to the higher taxes (policy use) than to the home rule decision process (policy procedure). The specific utility taxes voided by the courts were subsequently reinstated by the General Assembly. In the real estate transfer tax case, existing taxes were permitted to continue unaffected by the legislation. In the sales tax case, the General Assembly gave home rule municipalities special statutory power to access the state sales tax base and home rule use of retail sales taxes has actually increased as a result.

Evidence disproving the hypothesis

The strongest evidence disproving the hypothesis comes from two disparate sources. One is the empirical research undertaken by Banovetz and Albritton, who failed to find evidence that home rule communities increased property taxes at a faster rate than non-home rule communities, and by Dye and McGuire, who found that non-home rule communities were raising property tax rates faster than home rule communities. Both findings undercut the central premise of the opposition to Illinois' home rule system: that

home rule's unlimited property taxing powers will lead to higher increases in property tax levies. The 2002 survey of home rule use added further data which undercuts the hypothesis.

The second, strongest source of evidence comes from Illinois voters. While county home rule voters have been clearly negative, and voter support for home rule adoption has been mixed, the voters who were asked if they wish to continue a home rule system already in use have been strong in their support for home rule. In other words, voters who have home rule want to retain it; they do not feel victimized by unwarranted use of home rule taxing powers.

The Anti-tax Hypothesis Evaluated

As noted earlier, the Illinois experience with municipal home rule might well be said to represent the most severe test possible of the anti-tax hypothesis that, given sufficient discretion, local government officials will impose unwarranted levels of taxation on their residents. This review of that experience finds inadequate support for the hypothesis.

Despite an extensive pattern of municipal use of home rule over the past thirty years, this study found only seven reasonably verifiable examples of unwarranted uses of home rule powers, only three of which represent unequivocal instances in which the voters, the courts, or the legislature voided uses of home rule powers. Further, given the paucity of such unwarranted uses, it might reasonably be concluded that these examples are more impressive as evidence that home rule abuses can be, and are, adequately constrained. Finally, the empirical and scholarly evidence against the hypothesis is compelling. Thus neither a rational nor an empirical basis could be found to establish a reasonable probability that, given the opportunity, local elected officials will enact new or higher taxes without regard for the wishes of the voters.

Indeed, the Illinois home rule experience suggests that city councils and village boards have demonstrated impressive, although not complete, responsibility in the use of local taxing powers.

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