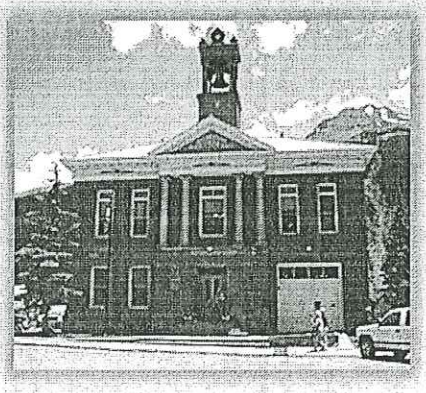
Home Rule Authority

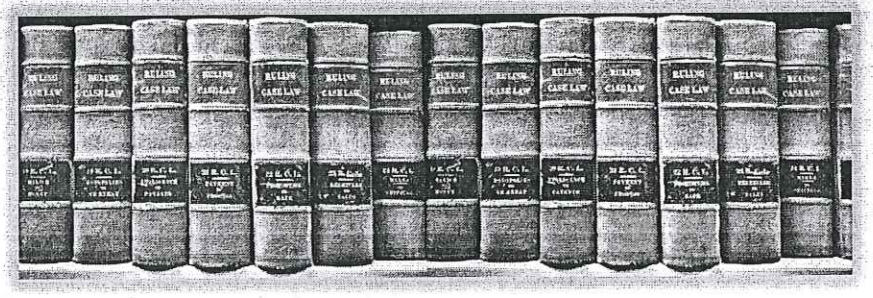
{ Article XX, section 6
of the Colorado Constitution

Art XX, Sec 6 of the CO Constitution authorizes the people of each city or town, with a population of 2000 or more, to make, amend, or replace the charter of the city or town through an election.



The charter is the city or town's "organic law" and **extends to "all its local and municipal matters".**

The **charter** and the **ordinances** that are subsequently made pursuant to the charter "**supersede … any law of the state in conflict therewith.**"



- Home rule for cities and towns provides "the full right of self-government in both local and municipal matters..."

- The constitution lists a number of powers that a home rule city obtains after voter approval, including "the assessment of property in such city or town for municipal taxation and the levy and collection of taxes thereon for municipal purposes. . ."

"Under this provision the city may assume exclusive control of all matters of a local and municipal concern, and where it has done so, state laws are not applicable as to such matters."

"What may be a 'local' concern is, in a measure, controlled by time and circumstances."

People ex rel. Stokes v. Newton, 106 Colo. 61, 65 and 66 (1940)

- In 1932 the Colorado Supreme Court held that this article does not deprive the state of its unquestioned power in declaring what the public policy of the state is in matters of taxation as well as in other matters of statewide importance.

People v. City & County of Denver, 90 Colo. 598 (1932).

"The right to levy a tax to raise revenue with which to conduct the affairs and business of the city is clearly within the constitutional grant of power."

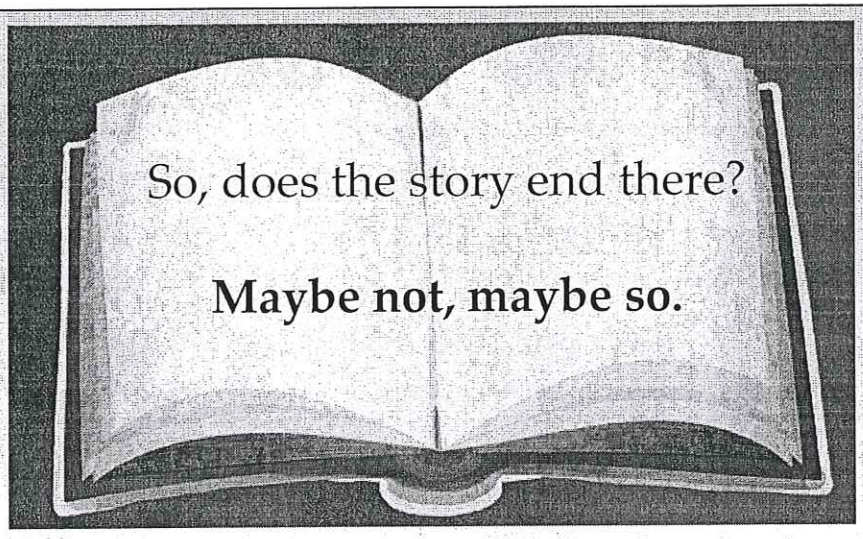
Berman v. City & County of Denver, 156 Colo. 538, 542 (1965)

"State taxation in the same field as that of a municipality can co-exist. . . . State sales and use tax statutes deal exclusively with state levies and have no application to **taxes levied by home rule cities**, which **are purely local and municipal**."

Berman v. City & County of Denver, 156 Colo. 538, 544 and 545 (1965).

"That the **power to levy** and collect . . . **sales tax** is [a] **purely 'local and municipal' concern** was delineated clearly in Berman. **The state**, even when acting under its regulatory powers, **cannot prohibit home rule cities from exercising a power essential to their existence** (local taxation)."

Winslow Construction Co. v. City & County of Denver, 960 P.2d 685, 693 (1998).



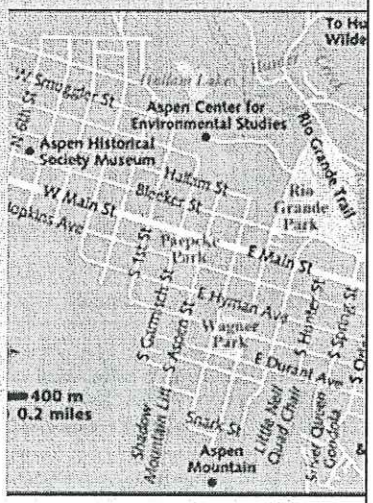
But since I have this time to fill, let's look at when conflicting state and municipal laws supersede one another.

"In determining the respective authority of the state legislature and home rule municipalities, we have recognized three broad categories of regulatory matters: (1) matters of **local concern**; (2) matters of **statewide concern**; and (3) matters of **mixed state and local concern**."

Denver v. State, 788 P.2d 764, 765 (1990).

Local Concern:

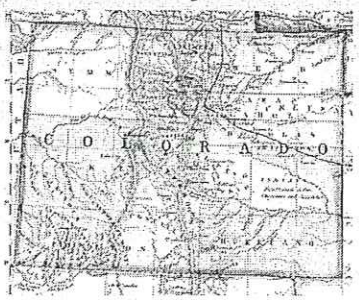
Both home rule cities and the state may legislate, but **when** a home rule ordinance or charter provision and a state statute **conflict**, the **home rule provision supersedes**.



Denver v. State, 788 P.2d 764, 767 (1990).

Statewide Concern:

The General Assembly may adopt legislation and home rule municipalities are without power to act unless authorized by the constitution or by state statute.



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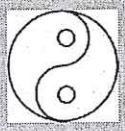

Mixed Local and State Concern:

A charter or ordinance provision of a home rule municipality may coexist with a state statute as long as there is no conflict, but **in the event of a conflict** the **state statute supersedes** the conflicting provision of the charter or ordinance.

Denver v. State, 788 P.2d 764, 767 (1990).

"We have not developed a particular test which could resolve in every case the issue of whether a particular matter is 'local,' 'state,' or 'mixed.' Instead we have **made these determinations on an ad hoc basis**, taking into consideration the facts of each case."

Denver v. State, 788 P.2d 764, 767 and 768 (1990).

The courts consider "the **need for statewide uniformity**, the **regulation's extraterritorial impact**, and finally, **other state and local interests**." Legislative declarations are given some weight, but are not binding on the court.

Walgreen Co. v. Charnes, 819 P.2d 1039, 1045 (1991).

- In Walgreen Co. v. Charnes, 819 P.2d 1039 (1991), the Colorado Supreme Court held that "appeals taken from locally imposed use or sales taxes are a matter of statewide concern and the General Assembly has defined appellate procedures necessary for uniform statewide appeals. . .".
- However, this decision was made considering another state constitutional provision that requires all laws relating to state courts to be uniform in their application.

"We have defined **extraterritorial concerns** as those involving the expectations of state residents. The General Assembly has stated that sales and use taxes have an extraterritorial impact, as they affect the flow of commerce within the state."

Walgreen Co. v. Charnes, 819 P.2d 1039, 1047 (1991)

"We have defined **other state [and local] interests** as encompassing historical considerations and constitutional provisions relating to matters of statewide and local concern."

Walgreen Co. v. Charnes, 819 P.2d 1039, 1047 (1991)

"Whether the subject matter is one traditionally governed by state or local government."

Voss v. Lundvall Bros., 830 P.2d 1061, 1067 (1992).

"Berman and Security Life stand for the proposition that the imposition of local sales and uses taxes is a matter of local concern; we will not overrule them."

Winslow Construction Co. v. City & County of Denver, 960 P.2d 685, 694 (1998)