

CONSTITUTIONAL RULES ON LOCAL LAWS

There are several provisions in Alabama's long Constitution that restrict the subjects which can be addressed through local legislation. In truth, one reason for the length of Alabama's Constitution can be traced to these limitations on local laws, because counties can and do avoid some of these prohibitions with the passage of a local constitutional amendment that, in effect, overrides certain limitations in the Constitution.

Under *Section 110 of Alabama's Constitution* (as amended by Amendments 375 and 397), a local law is a law which is not a general, special, or private law.

- A general law is a law which applies to the whole state or a class of municipalities.

Constitutionality of Local Laws

A local law which violates any of the constitutional prohibitions discussed here is unconstitutional.

Although a law enacted by the legislature is presumed to be constitutional until and unless ruled otherwise by a court of competent jurisdiction, counties should be careful not to pass local laws which may be subject to challenge. This is important because, in addition to the cost of defending a local law in court, a declaration that a local law is unconstitutional can "upset the apple cart" in numerous ways that could affect the county commission detrimentally, such as:

- Overturning an election held through unconstitutional legislation
- Requiring the county refund taxes or other revenues collected based on an unconstitutional provision
- Declaration that a program based upon an unconstitutional local law is invalid

An overview of the constitutional prohibitions regarding local laws is set out below. And copies of the constitutional provisions referenced are attached.

Specific Subject Matter Prohibitions

Section 104 of Alabama's Constitution prohibits the passage of local laws on certain enumerated subjects.

There are thirty-one specific prohibitions included in § 104, many of which are not related to issues counties generally attempt to address by local legislation (such as granting a divorce or allowing for a name change). However, there are several that are important to keep in mind, such as each of the following:

- Incorporating a city, town, or village
- Exempting an individual, corporation, or association from operation of a general law
- Changing or locating a county seat
- Providing for a change of venue in any case
- Fixing the punishment of crime
- Regulating the assessment or collection of taxes
- Authorizing issuance of bonds or other securities unless authorized by vote of people
- Increasing fees of constables
- Establishing separate school districts
- Creating, increasing, or decreasing fees, percentages, or allowances of public officers
- Exempting property from taxation or from levy or sale
- Remitting fines, penalties, or forfeitures
- Providing for the conduct of elections or designating places of voting, or changing the boundaries of wards, precincts, or districts
- Restoring the right to vote for convicted persons

Subjects Governed by General Law

Section 105 of Alabama's Constitution prohibits the passage of a local law where a general law exists on the same subject and has, in effect, "subsumed" the subject matter.

The intent of this provision is that a general law as defined in Section 110 referenced above cannot be altered by local law unless the legislature specifically authorizes local laws at variance from the general law. This is usually accomplished by language in the statute allowing for other laws on the issue – something like "except as otherwise provided by law".

Although frequently difficult to distinguish, this provision does not necessarily prohibit a local law on a subject covered by general law, provided it does not attempt to change, and does not conflict with, the general law.

A few examples:

Alabama law states the county commission takes office "at 12:00 a.m. on the second Wednesday following the general election". *Ala. Code § 11-3-1(d)*. A county cannot have a local law providing for the county commission to take office on January 1 following election.

Ala. Code § 11-3-1(b) establishes the process for filling a vacancy on the county commission. This section states that this process applies unless there is a local law allowing for a special election. Under this circumstance, the county can pass a local law to fill vacancies by special election. But the county could not pass a local law to fill the vacancy through appointment by the county commission.

Proper Advertising Required

Section 106 of Alabama's Constitution (as amended by Amendment 341) requires that the substance of any proposed local bill be advertised in a newspaper published in the affected county or counties at least once a week for four consecutive weeks.

- A bill that has not been properly advertised is unconstitutional.
- Additionally and in many respects, more importantly, a local law is unconstitutional if there is a material difference between the bill advertised and the bill passed.
 - *This in essence means you cannot amend a local law during the process!*
- A local bill must be re-advertised before it can be introduced in a new legislative session.
- Notice is also required to repeal or modify a local law (Section 107 of the Constitution).

Local Constitutional Amendments

As mentioned at the outset, one of the reasons Alabama's Constitution is so lengthy is that a local constitutional amendment is required to "supersede" a provision in the Constitution.

Examples:

- Alabama's Constitution prohibits elected officials from participating in a retirement program. The vast majority of counties have passed local constitutional amendments abolishing supernumeraries and allowing the local elected officials (including county commissioners) to participate in the Retirement Systems of Alabama program.
- Alabama's Constitution requires that all court costs in the state be uniform. A majority of counties have local constitutional amendments authorizing the legislature to alter court costs by local law.

Local constitutional amendments are also utilized to establish a "local law" that differs from a general law that has "subsumed" a particular area of law, thereby prohibiting the legal passage of a local law differing from the state general law.

Examples:

- State general law requires that all solid waste collection fees be utilized for administration of the county solid waste program. A few counties have passed a local constitutional amendment allowing these funds to be used for general fund purposes. This could not be accomplished with a simple local law.

SAMPLE LOCAL LAW PROBLEMS FROM 2013 SESSION OF THE LEGISLATURE

A quick review of local legislation introduced during the 2013 Regular Session of the Alabama Legislature revealed significant problems with many of the local bills introduced during the session. A sampling of some of the problematic bills might be helpful to better understand the constitutional "rules" on local laws – and hopefully will help counties avoid some of the pitfalls that frequently occur in this area.

The following list is in no way exhaustive of "bad" bills filed – it is just a small sample of those problem bills with a brief explanation of what was wrong with the bill.

Not all of the bills listed became law – but many of them did (and some of you may recognize a few on the list!)

CONSTITUTIONAL ISSUES

SB 312 was a bill to establish qualifications for the office of sheriff and would require annual training for the sheriff.

-- The office of sheriff is governed by both the Constitution and state general law. There is no authority to establish by local act a separate set of rules for the sheriff in one county. Thus, this is likely unconstitutional.

SB 477 would have established residential restrictions for sex offenders in the county.

-- There is a state general law which sets out restrictions for where sex offenders can live. This law governs all aspects of sex offender notification and living restrictions. This bill would set up a different set of rules for certain offenders based upon where they live that would create not only constitutional problems as a conflict with Alabama general law, but probably U.S. Constitutional problems related to equal protection, due process, and the like.

HB 576 would authorize the county to bury or burn dead animals found on public or private property.

-- Section 93 of Alabama's Constitution prohibits the use of public funds, time, equipment, etc. for a private person or entity. Accepting responsibility for removal and destruction of dead animals found on private property is a clear violation of this provision and a local law authorizing these activities would almost certainly be deemed invalid by a court.

HB 652 and HB 689 would have exempted certain governmental entities from complying with the provisions of Alabama's public works law for some construction projects.

-- Clearly this is governed exclusively by the state general law and any local law purporting to exempt a local governmental body from the requirements of that law would be invalid.

HB 654 would have exempted a local agency from the payment of county and municipal sales taxes.

-- Alabama's general law requires that local sales taxes "parallel" the state sales tax regarding what is subject to taxation and what entities or persons are exempt from payment.

-- This may also violate *Section 104* of the Constitution which prohibits local laws from exempting property from taxation or regulating the assessment and collection of taxes.

BILLS REDIRECTING/EARMARKING MONIES

In addition to constitutional issues, many of the bills reviewed included language that would not be in the best interest of the county commission. In some instances, the county may have agreed to the language included but these bills illustrate very well how important it is for the county commission to carefully review all local bills affecting their county and make sure the language is acceptable – before the proposed bill is advertised and cannot be changed.

HB 359 would establish an impoundment fee for all vehicles transporting illegal drugs.

-- It is questionable whether a local law can impose a fee of this nature. In addition to general laws addressing the transportation of illegal drugs, counties are prohibited under *Section 104* of the Constitution from establishing punishment for crimes or for bills addressing the remittance of fines, penalties, or forfeitures.

-- Assuming this bill would be constitutional, it is still problematic for the county because it had language directing that all monies be paid directly to the sheriff and providing that the county could not diminish or allow this money to take the place of other monies appropriated to the sheriff.

-- ACCA staff has worked hard over the years to ensure that even when monies are earmarked for a certain office such as the sheriff, the monies are still paid into the county general fund.

-- And the county should probably always oppose language that prohibits the county commission from taking into consideration other monies available to an elected official's office when preparing the budget.

HB 510 would provide for recording fees to be paid directly to the probate judge and to not be included in general fund budget appropriations.

-- Similar to the problems set out above, this bill would direct money to a fund maintained by the probate judge and would prevent the county from considering these funds in making its budget appropriations.

HB 545 would provide that all proceeds from a sheriff's sale would be paid directly to sheriff.

-- This bill has the same problems related to earmarking as set out above.
-- This bill would also likely be declared unconstitutional if challenged because general state law governs the procedures for sheriffs' sales.

HB 623 would create a jail store with all proceeds paid to general fund but provided that the sheriff could request the funds at any time.

-- While the language in this bill provided that the money be paid to the general fund, it provided that the sheriff could request the monies at any time.
-- The monies in this bill were earmarked for deputy salaries but there was no provision that the county would not be required to supplement general fund monies to pay salaries in the event the store did not adequately provide for the salaries.
-- In addition to the other problems, this bill provided that the sheriff could contract for services related to the jail store. Alabama law (supported by several AG's Opinions) provides that the county commission is the contracting party for any contracts related to county property or county funds. This has particularly been determined when the contract relates to activities in the county jail.

AND THE WINNERS ARE!

My two favorite bills – as in the most egregious offenders of the principles at play in local legislation are:

HB 532 (which did become law) requires licensing of persons making door-to-door sales in the county. Additionally, it provides for the county license commissioner to have a county vehicle, and amends an existing local law addressing other business license issues in the county.

So what is wrong with any of that?

- *Section 45* of Alabama's Constitution requires that all laws contain but one subject. This new law contains three or four.
- The law provides that violation of the door-to-door licensing requirements is a misdemeanor. But, *Section 104* of the Constitution prohibits a local law "fixing the punishment of crime".
- And the bill introduced had language providing that it was not subject to *Amendment 621* of the Constitution (the prohibition against unfunded mandates) because it creates a crime which is one of the exceptions to the prohibition. But it failed to mention that ALL local laws are exempt from the provisions of Amendment 621!

HB 592 would repeal an earlier local law allowing the coroner to participate in the state retirement system.

This is perhaps the most distressing local bill reviewed.

- As already mentioned, the Constitution prohibits an elected official from participating in a retirement program. Any local law enacted to allow the coroner to participate in RSA would be unconstitutional.
- The law repealing the unconstitutional law would not be unconstitutional, but the county has now expended the monies to advertise an unconstitutional local bill and then expended monies to repeal something they couldn't legally enforce anyway

* And I'm guessing RSA told them this when the coroner tried to sign up!