Municipal Home Rule in Minnesota the Problem of Home Rule

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MUNICIPAL HOME RULE IN MINNESOTA†
BY WILLIAM ANDERSON*

I. THE PROBLEM OF HOME RULE

The constitutional amendment authorizing cities to adopt and to amend their own charters followed hard upon the heels of the sweeping denial to the legislature of the power to enact special legislation. In the circumstances, the one was the logical outcome of the other. The legislature of 1893, chosen in 1892 at the very election in which the voters ratified the present section of the constitution forbidding special laws, had not had time to forget the popular mandate. With all good intentions of observing the constitution, its members resisted practically all efforts of special groups to have their wishes enacted into laws. The flow of special laws was suddenly stopped. It was not until several sessions later that the legislators began to learn how they could, by shrewd classification, make laws which seemed to be general but were actually special. From the point of view of relieving the legislature, the result of the prohibition of special legislation was, at the outset, almost wholly beneficial. On the other hand, counties, cities, villages, and school districts, the principal recipients of

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SPECIAL LEGISLATION.—A CORRECTION. In the first part of my article on "Special legislation in Minnesota" occur several errors which should be corrected. Judge Daniel Fish of the Hennepin County Bar alone conducted the case for the courthouse commissioners in State ex rel. Board of Court House and City Hall Commissioners v. Cooley, (1894) 56 Minn. 540, 58 N.W. 150. My reference to counsel in the plural was inexcusable. In the published opinion the court states that when the case was first argued both parties admitted that the act in question was special, and very clearly implies that on reargument it was represented to the court as being general in fact. I am glad to say, however, that the printed briefs show no such radical shifting of ground on the part of counsel. In both his first and second briefs Judge Fish asserted that the act in question was of sheer necessity "plumply and unevasively" special. I regret to have been misled into giving a renewed currency to the court's misinterpretation of the argument. Author.

1Anderson and Lobb, A Hist. of Const. of Minn., 169-171, 220-223; Anderson, City Charter Making in Minn., 13-19; State ex rel. Getchell v. O'Connor, (1900) 81 Minn. 79, 83 N.W. 498.
special legislation in the past, were fairly amazed at the results. They found that section 33 had forbidden too much. The highly complicated special charters under which many cities and even villages had been operating were full of restrictive provisions which the legislature had formerly been able to amend from time to time as need arose. With the change in the constitution, no alteration of these charters could be made except by general laws. This was equivalent to saying that in many cases there could be no changes at all, since it was well-nigh impossible to devise general laws which would fit particular circumstances. The impasse which resulted, particularly for cities and villages, could be broken in either one of two ways. Either the power to amend charters by special law would have to be restored to the legislature, or else it would have to be lodged in some other place. A return to the old evils of special legislation was not seriously considered. Neither the legislators nor the voters desired it. The solution adopted was one which, first devised in Missouri in 1875, had spread before 1895 to California and Washington, and has now in various forms become a part of the constitution of a dozen states.\textsuperscript{2} The Minnesota legislature of 1895 proposed that cities and villages be permitted, by an appropriate constitutional amendment, to make and amend their own charters as cities, under certain limitations. This proposal was adopted by the voters in 1896 as section 36 of article 4 of the constitution. It was modified in some respects by a new amendment in 1897-98.\textsuperscript{3} No cities provided themselves with charters under the 1896 provision, but since 1898 sixty-five cities have adopted so-called “home rule” charters.\textsuperscript{4}

The constitutional provision under discussion nowhere uses the term “home rule.” It is the power to adopt and amend charters which is granted. “Any city or village in this state may frame a charter for its own government as a city consistent with and subject to the laws of this state.” Then follows a brief description of the procedure of charter commissions in drafting and submitting charters. Upon adoption by the requisite majority of the voters, such charter “shall...become the charter of such city or village as a city, and supersede any existing charter and

\textsuperscript{2}Missouri, California, Washington, Minnesota, Colorado, Oklahoma, Arizona, Oregon, Michigan, Ohio, Nebraska, and Texas. See McBain, The Law and the Practice of Municipal Home Rule, New York, 1916, the outstanding treatise on the subject.

\textsuperscript{3}Anderson and Lobb, A Hist. of Const. of Minn., 221-223, gives both provisions.

\textsuperscript{4}Anderson, City Charter Making in Minn., 17-20, 178.
amendments thereof." A home-made charter may also be amend-
ed locally, "but such charter shall always be in harmony with and
subject to the constitution and laws of the state of Minnesota." It
is the general rule, previously stated in these articles, that a state
legislature has all the legislative power of the state, except as it
is restricted by the federal and state constitutions. The legislative
power includes the power of charter-making for cities and villages.
In other words, a charter is itself legislation. Hence it follows
that a constitutional grant of powers to cities to make and amend
their own charters is a limited grant to them of legislative power.
Differently stated, it is a transfer of a definite part of the legisla-
tive power of the state away from the legislature to the munici-
palities themselves. A constitutional provision authorizing mun-
icipal home rule involves a fundamental change in the constitu-
tional law of the state, since, for charter making purposes, it
raises up a whole series of separate legislative authorities within
the state's domain.

Numerous and closely interwoven as are the constitutional
questions which arise in this connection, they fall more or less
definitely under three important heads. First, shall the grant of
power to cities to make their own charters be construed strictly
against the grantees, as are the charters of corporations, or shall
it be construed as having considerable elasticity, as in the case of
the grant of legislative power to congress in the federal constitu-
tion? Second, what relationship exists between the reserve legis-
lative powers of the state legislature and the powers conferred
upon cities to make their own charters? Third, how shall the
home rule provision of the constitution be construed in relation
to other sections of the constitution which touch upon related
matters? Is it superior to such provisions, or subject to them?
It is hardly necessary to say that in such a new field as this, there
are few general principles to guide us. We have little but the
intent of the framers, and the exact words of the amendment, to
show us the way.

II. Scope of a Home Rule Charter

A charter is defined as "an act of a legislative body creating a
municipal or other corporation and defining its powers and privi-

5Supra, p. 144-145, footnote 33.
6State ex rel. Luly v. Simons, (1884) 32 Minn. 540, 21 N.W. 750;
State ex rel. Freeman v. Zimmerman, (1902) 86 Minn. 353, 90 N.W. 783;
Grant v. Berrisford, (1904) 94 Minn. 45, 101 N.W. 940, 1113; Park v.
City of Duluth, (1916) 134 Minn. 296, 159 N.W. 627.
leges." It is "a written document constituting the persons residing within a fixed boundary, and their successors, a body corporate and politic for and within such boundary, and prescribing the powers, privileges, and duties of the corporation." In 1895, when municipal home rule was being proposed in Minnesota, the supreme court declared that:

"The charter provisions need not be comprised in a single act... Parts of the charter may be found in independent legislative acts, the charter not being named in their titles. If independent acts relate to the rights, powers, duties, and obligations of the city, they are to be regarded as parts of the city charter."

Since a home rule charter, when properly adopted, supersedes "any existing charter and amendments thereof," it follows that the entire mass of legislation here described as constituting the actual charter, would be supplanted by the home made document. If this is the case, it would also seem to follow that the home rule charter may deal with all the subjects formerly dealt with in acts relating to the rights, powers, duties, and obligations of cities.

There is little question that in the days when the legislature made city charters it had an almost unlimited discretion as to the powers which it might confer upon cities by general or special law. Some of the charters which it conferred in early years were short and granted few powers. In later years, as the needs of urban communities multiplied, charters became longer and more comprehensive. Many new municipal functions were given legislative approval. Since the constitution itself does not name the subjects which may be dealt with in home rule charters, the question comes up as to what powers home rule cities may confer upon themselves and upon the local authorities. This question was left, by section 36, to the legislature itself. Before any city could adopt a home rule charter under the amendment, the legislature was to enact an enabling law, which was to "prescribe... the general limits within which such charter shall be framed." In enacting this law in 1899 the legislature saw fit to impose a debt limit on cities, and to provide for a few other restrictions, but with these exceptions it enacted that a home rule charter

"May provide for any scheme of municipal government not inconsistent with the constitution, and may provide for the establishment and administration of all departments of a city govern-

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7Webster, New International Dictionary.
8Cooley, Mun. Corps., 119.
9State ex rel. Arosin v. Ehrmantraut, (1895) 63 Minn. 104, 65 N.W. 251.
ment, and for the regulation of all local municipal functions, as fully as the legislature might have done before the adoption of section 33, article 4, of the constitution."

This exceedingly liberal provision, the substance of which has not been changed in over twenty years, besides clearly evincing the intent of the legislature, has served as a guide-post for the courts in numerous adjudications.

In the leading case of *State ex rel. Getchell v. O'Connor*, the supreme court had to consider whether the St. Paul charter of 1900 was valid, in view of the allegations that the enabling act under which it had been adopted was too brief and liberal and "insufficient to sustain a charter, because it does not include a general framework delegating powers within the limits of which the charter should be framed." The contention was that under section 36 the legislature is required "to prescribe general and uniform limits or a broad framework on each topic to which the charter may relate, prescribing in detail the powers and authority within which the charter must be framed." The court refused to concur in this view.

"To adopt it would wholly nullify the purposes intended to be subserved and secured by the constitution. A 'broad framework for each topic' pertaining to a city charter would in itself be a charter, and render the act of the city in framing one nothing more than adopting therefor the legislative grant of power, and, instead of exercising the right to 'frame their own charter,' cities would be confined to what the legislature saw fit to grant them, and nothing more. The general power and authority to frame city charters is granted by the constitutional amendment, and ex necessitate extends to all powers properly belonging to the government of municipalities,..."

10Minn., Laws 1899, ch. 351; Minn., Laws, 1921, ch. 343.
11(1900) 81 Minn. 79, 83 N.W. 498.
12But suppose the legislature had enacted a complete and elaborate municipal code and had required every home rule city to adopt it as a part of its charter. McBain asserts that it would have been impossible for the court to have dissected such a statute and to have held some parts invalid. In other words he considers the Minnesota grant of municipal home rule "a mere form of words, of no practical value." McBain, The Law and the Practice of Municipal Home Rule, 466-467, 484-485. It is certainly an unusual rule of constitutional construction which flouts the entire purpose of a grant of powers, and subordinates all the substance of such a grant to the subsidiary provision reserving certain power to the legislature. In endeavoring to stress the important reserve powers of the legislature, this writer has simply gone to the other extreme of denying that there is in Minnesota any real power of municipal home rule. An act fully defining the powers and organization of home rule cities, and requiring all home rule cities to adopt it as their charter without additions or subtractions, and forbidding them to amend it, would certainly violate the constitution.
And in a later case the court said:

"The people of a city in adopting a charter have not power to legislate upon all subjects, but as to matters of municipal concern they have all the legislative power possessed by the legislature of the state, save as such power is expressly or impliedly withheld."

Indeed home rule charters "have all the force and effect of legislative enactments," and "the rule which requires a statute to be so construed as not to infringe constitutional inhibitions, if reasonably susceptible of such construction, is equally applicable to such charters."

What are, then, some of the subjects which may be regulated in home rule charters? A summary of the cases will not supply us with any positive rule or test for determining these subjects, but it will at least provide us with pertinent illustrations as to the types of powers and functions which the court considers it proper for cities to exercise or perform. (1) A number of cases have dealt with the municipal police power. Thus it has been held that a department of health "very properly belongs and is incident to the government of municipalities;" that such a department may be provided for in a home rule charter; and that it may be authorized to require vaccination as a condition precedent to the admission of children to schools. In 1911 a fourth class city was held within its rights in regulating the liquor traffic in a manner slightly different from that provided for in the general law, and in 1916 Duluth was held to be exercising a proper municipal power conferred upon it by its charter in voting out the saloons without general statutory authority. In two cases involving the St. Paul charter it was apparently not questioned that a home rule city has as much police power over woodyards within its limits, and as complete authority to establish a building code, as any other city. (2) Another group of cases has dealt with various phases of the power of taxation. Home rule cities have been held

19Park v. City of Duluth, (1916) 134 Minn. 296, 159 N.W. 627.
15State ex rel. Oliver Iron Mining Co. v. City of Ely, (1915) 129 Minn. 40, 151 N.W. 545.
17Thune v. Hetland, (1911) 114 Minn. 395, 131 N.W. 372.
18State ex rel. Zien v. City of Duluth, (1916) 134 Minn. 355, 159 N.W. 792.
to be fully within their rights in providing for local improvements
by special assessments, in levying such assessments without a
preliminary petition of the property owners affected, in distrib-
uting the burden of such assessments according to the frontage
rule, and also in dividing the city into sewer districts and levying
special taxes therein for relief sewers. The Duluth charter hav-
ing provided for a wheelage tax not authorized by general state
law, the supreme court not only declared it to be valid but broadly
intimated that it was competent for a home rule city to provide in
its charter for its own system of local taxation. (3) The St.
Paul charter provision authorizing the city to exercise the power
of eminent domain having been attacked, the court ruled in an
appropriate proceeding that this power “is essential and nec-
tary to the very life and well-being of city government, for upon
it its welfare and progress beyond question depend.” (4) A
home rule charter may regulate the subject of the presentation
of claims against the city, (5) it may require, and determine
the conditions of, bonds to be given by municipal contractors for
the benefit of laborers and materialmen, and (6) it may even
limit its own common law liability for torts arising out of the
negligent maintenance of streets and sidewalks, by requiring that
the city shall have had ten days written notice of the existence of
the defect before the injury was sustained as a condition precedent
to recovery of damages. In the latter case the court said there
could be “no serious question” as to the right to insert such a
provision in a home rule charter. (7) The home rule charter
may also regulate the conduct of local elections, even the election

20State ex rel. Ryan v. District Court of Ramsey County, (1902) 87
Minn. 146, 91 N.W. 300; Wolfe v. City of Moorhead (1906) 98 Minn.
113, 107 N.W. 728; State ex rel. Oliver Iron Mining Co. v. City of Ely,
(1915) 129 Minn. 40, 151 N.W. 545.

21Wolfe v. City of Moorhead, (1906) 98 Minn. 113, 107 N.W. 728.

22State ex rel. Oliver Iron Mining Co. v. City of Ely, (1915) 129
Minn. 40, 151 N.W. 545.

23In re Delinquent Taxes in Polk County, (1920) 147 Minn. 344, 180
N.W. 240.

24Park v. City of Duluth, (1916) 134 Minn. 296, 159 N.W. 627.

25State ex rel. Ryan v. District Court of Ramsey Co., (1902) 87 Minn.
146, 91 N.W. 300.

26State ex rel. Barber Asphalt Paving Co. v. District Court of St.
Louis Co., (1903) 90 Minn. 457, 97 N.W. 132; Peterson v. City of Red
Wing, (1907) 101 Minn. 82, 111 N.W. 840.

27Grant v. Berrisford, (1904) 94 Minn. 45, 101 N.W. 940; Standard
Salt & Cement Co. v. National Surety Co., (1916) 134 Minn. 120, 158
N.W. 802.

28Schigley v. City of Waseca, (1908) 106 Minn. 94, 118 N.W. 259.
of municipal judges,\(^{29}\) and (8) it may impose duties upon local courts and officials to any extent needed for its purposes.\(^{30}\) Finally, a home rule city may not only confer upon itself the power to regulate the service and rates of local public utilities,\(^{31}\) but may also empower itself, without statutory authority, to own and operate a coal and wood yard, and to buy and sell fuel.\(^{32}\)

Upon reading these cases, all of which have sustained the powers of the cities, one gets the impression that the supreme court has been no less liberal than the legislature toward the principle of local self-government. Within the field of true municipal functions, which is a rapidly growing domain, cities are given substantially the same power to confer authority upon themselves by home rule charters as the legislature formerly exercised. The fact that the cities charter themselves instead of receiving their powers directly from the legislature is a distinction without a real difference.\(^{33}\) It remains, then, to examine a small number of cases in which certain powers have been denied to cities under home rule charters.

### III. Non-Municipal Functions

**Establishment of Municipal Courts.** We called attention in a previous article to the decisions which have exempted acts relating to municipal courts from the prohibition against special legislation.\(^{34}\) The principal ground for this conclusion is that municipal courts are not municipal affairs. Other decisions have held that acts relative to such courts are not a part of the city's charter.\(^{35}\) Adhering closely to this line of reasoning the supreme court ruled in 1910 that the attempt of the city of Virginia to set up a municipal court under its home rule charter, to take the place of one already established by state law, was entirely void.


\(^{30}\)State ex rel. Ryan v. District Court of Ramsey Co., (1902) 87 Minn. 146, 91 N.W. 300; State ex rel. Barber Asphalt Paving Co. v. District Court of St. Louis Co., (1903) 90 Minn. 457, 97 N.W. 132; Minn., Laws 1921, ch. 343.


\(^{32}\)Central Lumber Co. v. City of Waseca (Minn. 1922) 188 N.W. 275.

\(^{33}\)State ex rel. Ryan v. District Court of Ramsey Co., (1902) 87 Minn. 146, 91 N.W. 300.

\(^{34}\)Supra, p. 144-148.

\(^{35}\)State ex rel. Shissler v. Porter, (1893) 53 Minn. 279, 55 N.W. 134; Gordon v. Freeman, (1910) 112 Minn. 482, 128 N.W. 834, 1118.
"The constitution required that all courts not specified shall be established by the legislature by a two-thirds vote. A vote of the electors of a city on the adoption of a charter is not the establishment of a court, as required by the constitution. A vote of the legislature with reference to other municipal affairs may be by a mere majority.... The powers and duties of the courts provided for are purely and exclusively judicial. They have neither administrative nor legislative powers in the affairs of the municipality."

The words here quoted imply that such courts may be municipal affairs in a certain sense, yet they may not be established or disestablished by home rule charters.

The decision is so explicit that it is perhaps useless to present the considerations on the other side. Many of them have been given in an earlier article already referred to. It must be admitted that the decisions in other home rule states are similar to those in Minnesota, although the municipal home rule provisions in California and Colorado expressly confer upon cities certain powers with respect to municipal courts. One may perhaps be forgiven for remarking that it is strange that the judicial function, which was so important in the early history of municipal incorporation in England, should be so rapidly passing out of the range of municipal functions in America. Fortunately this does not yet mean in Minnesota that home rule cities may not impose duties upon their local courts, nor that they may not regulate them in some important ways.

Established Equitable Doctrines. In the case of Laird Norton Yards v. City of Rochester, there was called in question a section of the city’s home rule charter which provided that:

"Any contract made in violation of the provisions of [this] chapter shall be absolutely void, and any money paid out on account of such contract by the city, or any department or officer thereof, may be recovered by the city without restitution of the property or the benefit received or obtained by the city thereunder."

A contract for the sale of coal to the city having been adjudged void as in violation of the charter, the lower court denied the

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38 (1912) 117 Minn. 114, 134 N.W. 644.
right of the company to recover, but the supreme court reversed the decision, holding that since "the complaint alleged both an express and an implied contract," plaintiff not being required to elect, "the learned trial court was not warranted in holding that the case presented only the issue of the validity of an express contract." It said:

"Much stress is laid on section 287 of the charter above quoted. Any city may frame a charter; but it must be in harmony with and subject to the constitution and laws of the state. We conceive this to mean, not only the statute law, but the common law...as well.³⁹ It cannot be that under the provisions of home [rule] charters municipal corporations may abrogate the common-law rule of estoppel, or other settled equitable doctrines, in the conduct of quasi municipal enterprises into which they may embark. The section mentioned, in so far as it gives the municipality the right to recover money paid on a void contract, while permitted to retain the benefits received thereunder, must be confined to contracts ultra vires in the primary sense. And as to contracts which the city or the utility board have power to make, but in the attempted making unintentional irregularities and non-compliance with the charter provisions have occurred, this section prevents a recovery thereon, or the enforcement thereof in court, and gives any taxpayer the right to enjoin its performance. It cannot, as to last-mentioned attempted contracts, abrogate established equitable doctrines, which in certain cases permit a recovery of the reasonable value of goods delivered in good faith thereunder to the municipality, and by it used for authorized and legitimate purposes."

The decision in this case could easily have gone the same way upon a mere construction of the charter, not unduly strained. The charter did not, in fact, expressly prohibit a recovery of the value of goods delivered to the city; the stress was upon the nullity of the contract as such and the denial of the right to sue thereon. But instead of merely saying that this home rule charter did not abrogate any established equitable doctrine, the court said that a home rule charter may not do this, which is a different matter. There is little reason to doubt that the legislature in enacting municipal charters before 1892 might have inserted just such limitations. There is no denying the fact that the rules under which contracts may be made with the city constitute a municipal affair.⁴⁰ Hence, if a home rule charter is legislation,

³⁹Compare Walter v. Greenwood, (1882) 29 Minn. 87, 89, 12 N.W. 145.
as has been so frequently asserted, it follows that the home rule charter may cover the same ground, and as fully as the legislature might have done so in the past.

We find an interesting contrast to this decision in the case of Schigley v. City of Waseca, noted above. In Minnesota the person injured as the result of defects in streets or sidewalks must establish the negligence of the city; no recovery of damages will be permitted without such proof. At the same time, however, the law permits the proof of constructive notice. Abrogating this rule as to itself, the city of Waseca in its home rule charter provided that it should not be liable for any such injuries unless it had actual notice in writing of the existence of the defect for at least ten days before the accident occurred. This charter provision was fully sustained, the court saying that there could be "no serious question as to the right to insert in a municipal home rule charter a provision prescribing the conditions under which any individual may maintain an action against the city for personal injuries caused by the failure of the authorities to keep the streets and highways in proper condition." Should the cities ever abuse the power to insert such provisions in their charters, the remedy is always in the hands of the legislature which may, by a proper general law, overrule any home rule charter provision.

Contempt of Council; Investigation of Monopolies. It is difficult to ascertain the exact point upon which the decision turned in the case of State ex rel. Peers v. Fitzgerald. Section 88 of the home rule charter of the city of Virginia attempted expressly to authorize the city council to punish a person for contempt for refusal to produce any books, papers, etc., demanded by the council. The latter body, having become interested in the high cost of meats, particularly as it was charged that there was a local monopoly in that business, proceeded to make an investigation, and one Robert Peers, a meat dealer, was ordered by the council to be imprisoned for his contempt in refusing to produce invoices showing how much he had paid for his meats. Two questions really arose: first, is it a municipal function to investigate a supposed monopoly in the necessaries of life, and second,
may a home rule charter authorize the council to punish for contempt. Answering the second question first, the court said it was willing to concede "for the purpose of this case, that by law administrative boards and officers, including the governing board or council of municipal corporations, may be invested with authority to punish a contumacious witness who refuses to respond to proper inquiries concerning a subject which such board, council or officer is required to act upon. But we do hold, in view of our constitutional guarantees and the trend of legislation, that such power is not to be implied or inferred. That the citizen shall not be deprived of his liberty without due process of law has always been a cherished idea of framers of constitutions and laws in this country. The legislature of this state has carefully defined what constitutes contempt of its own authority and limited the punishment it may inflict" and the same was true in respect to contempt of court.

"When the legislature has been so careful by explicit statutory provisions to guard the liberties and rights of the citizen as against its own power and that of the courts in matters relating to contempt, we cannot conclude that villages and cities were intended to have free hand to vest the great coercive power to punish for contempt, so readily converted into an instrument of oppression, in its councils, or administrative boards or officers, ordinarily composed of or being persons of limited legal knowledge and experience...Authority to punish for contempt should not be left to inference, but must be expressly granted."

This reasoning leaves the reader only partially satisfied. What the court is discussing is the general trend or policy of legislation in this state with reference to contempt, and not the question of the power of the legislature or home rule cities to make express provision upon the subject. The charter in this case was itself a law. It left nothing to inference. It was explicit. The question is: Could the legislature in chartering cities have authorized city councils to punish for contempt, whether by express language or otherwise? In fact, the legislature did expressly confer this power upon city councils in a general act for the incorporation of cities enacted in 1895, under which five cities are now governed. If this act is valid, so also must be the similar provisions in home rule charters, since such charters "may provide for the establishment and administration of all departments of a city government, and for the regulation of all local municipal func-

46Minn. Laws 1895, ch. 8, 124.
tions, as fully as the legislature might have done.” It is hard to understand just what the court means when it says that the power in question “should not be left to inference.” If it means that this power must be expressly conferred by the legislature upon home rule cities, it suggests that in addition to that class of municipal powers which a home rule city may confer upon itself, there is another group of powers closely related to municipal government but which, for some special reason, only the legislature may confer upon cities and that in express language. This view does not correspond with assertions in other decisions as to the wide scope of home rule powers.

The other question in this case is whether it is a municipal function to investigate monopolies with a view to prosecution. The decision might have turned upon this point alone. The statutes confer this power upon county attorneys and the attorney general. It is one which has not been customarily conferred upon municipal corporations.

Venue of Actions Involving Real Estate Titles. The city of St. Cloud lies in several counties. Section 275 of its home rule charter provides that:

“All suits or proceedings by or against said city not brought before a city justice shall be brought in the district court of said Stearns county, and no other court whatever shall have original jurisdiction thereof.”

The plaintiff in *Hjelm v. City of St. Cloud* brought action against the city in the district court of Benton county for a parcel of real estate lying in that portion of the city situated in the said Benton county. His action was brought in accordance with the general statute which expressly provides for suits in the local forum in such cases, but the city demurred to the jurisdiction of the Benton county court, citing its own charter provision in its defense. While in no sense denying the right of a home rule city to make such provision in its charter, the court said that the section “should be held to apply to transitory actions and proceedings, including those arising in the carrying on of defendant’s governmental function, and should not control those actions which, in equally strong terms, the legislature by general law, have assigned to a local forum.” While this decision is primarily a construction of the charter provision concerned, yet it has also a

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47Minn. G. S. 1913, secs. 3782, 8973-8989.
48(1915) 129 Minn. 240, 152 N.W. 408; (1916) 134 Minn. 343, 159 N.W. 833.
broader significance. It practically decides that it is not a munici-

pical function to determine the venue of actions involving the
title to real estate where there is already express statutory provi-
sion upon the subject. The matter involved was only incidentally
a municipal affair. A city happened to be one of the parties. Dis-

trick courts are state courts; their jurisdiction is laid down in gen-
eral state laws; and there are strong reasons why there should
be uniform, state-wide rules upon such a subject matter as is here
involved. There can be little doubt as to the soundness of the
decision.

Exercise of Powers Beyond Boundaries. The constitutional
provision authorizing home rule charters provides that: “Any
city or village in this state may frame a charter for its own govern-
ment.” In 1900 Duluth adopted a home rule charter which pro-
vided among other things that the council might prohibit the
storage of certain named explosives and highly inflammable sub-
stances within the city or within one mile from the limits there-
of.49 The council having passed an ordinance embodying this
prohibition, one Orr was convicted in the local court of having
committed acts in violation of it within the one mile zone. Upon
appeal being taken, the supreme court held the ordinance invalid
insomany as it applied to areas outside of the city limits.50 The deci-
sion called attention to the fact that the constitution gave the city
the power to make a charter “for its own government,” and not
for the government of others. Furthermore the charter provision
was practically an extension of the boundaries of the city in
violation of an express provision of the enabling act. Such
extra-territorial powers, if sustained, would result in great con-
fusion and “innumerable conflicts in authority.”

This rule, which is undoubtedly sound, shows one point at which
the city’s power to make its own charter is more limited than that
of the legislature. It is possible to cite a number of cases in
which the legislature has conferred extra-territorial power on
cities. Duluth itself formerly had the power to enforce its qua-
rantine ordinances to a distance of three miles beyond its limits.51
A general act previous to the county option law of 1915 gave an
extra-territorial effect to a local option vote against saloons by
any “town or municipality” to a distance of one-half mile beyond

49Charter, 1900, sec. 64, Fortieth.
50City of Duluth v. Orr, (1911) 115 Minn. 267, 132 N.W. 265.
51Charter, 1887, ed. of 1895, sec. 86, Thirty-second.
its boundaries.\textsuperscript{52} Such acts have been sustained,\textsuperscript{53} but it is settled by the \textit{Orr case} that they must emanate directly from the legislature.

It is evident from what has been said that the courts have not as yet laid down any general rules as to what are proper municipal affairs. In a few states the constitution itself names certain functions as being appropriate for charter regulation. In Minnesota the supreme court has not had the benefit of any such guiding principles and hence it has been compelled to begin the process mentioned by Justice Holmes in \textit{Noble State Bank v. Haskell}, of pricking out the lines "by the gradual approach and contact of decisions on the opposing sides."\textsuperscript{54} With experiments in charter making going on in a large number of cities already, many cases will undoubtedly arise calling for decisions upon the question of what are municipal affairs, and we shall undoubtedly be able within a few years to make a long list of subjects which may be dealt with in home rule charters, and another list of those which are excluded from municipal control.

The process here mentioned has been somewhat hastened by the introduction into Minnesota of the principle of the short, sweeping grant of powers to cities. Duluth was the first city to take this step, adopting the following language in its charter of 1912:

"By and in its corporate name, it shall have perpetual succession; save as herein otherwise provided and save as prohibited by the constitution or statutes of the state of Minnesota, it shall have and exercise all powers, functions, rights and privileges possessed by the city of Duluth prior to the adoption of this charter; also all powers, functions, rights and privileges now or hereafter given or granted to municipal corporations of the first class having "home rule charters," by the constitution and laws of the state of Minnesota; also all powers, functions, rights and privileges usually exercised by, or which are incidental to, or inhere in, municipal corporations of like power and degree; also all municipal power, functions, rights, privileges and immunities of every name and nature whatsoever; and in addition, it shall have all the powers, and be subject to the restrictions contained in this charter."\textsuperscript{55}

In the case of \textit{Park v. City of Duluth},\textsuperscript{56} the court decided that

\textsuperscript{52}Minn., G. S. 1913, 3142.
\textsuperscript{53}State ex rel. Miller v. Carver, (1914) 126 Minn. 5, 147 N.W. 660.
\textsuperscript{54}(1911) 219 U.S. 104, 55 L. Ed. 112, 31 S. C. R. 186.
\textsuperscript{55}Charter, 1912, sec. 1.
\textsuperscript{56}(1916) 134 Minn. 296, 159 N.W. 627.
a city might by a single charter provision adopt and carry over into its new charter all the powers previously possessed by it.

"This sort of carry-all provision may not be the most approved form of municipal legislation, for it compels resort to an abandoned charter to determine the extent of existing municipal powers, but the language is clear and unequivocal, and we must give it effect according to its terms."

In the case of State ex rel. Zien v. City of Duluth,\textsuperscript{57} the court went even farther. This case involved the voting out of the saloons, and the contention of the state was that the charter conferred no power upon the city to take this step. It was conceded by the court that the charter contained no express power to this effect, and that the only provision of that document upon which this power could be made to depend was the clause declaring that the city should have "all municipal power, functions, rights, privileges and immunities of every name and nature whatsoever."

The court expressed its view as follows:

"The fourth clause grants 'all municipal power' of every kind and nature whatsoever. What is meant by 'all municipal power' is not defined, but as here used the expression is obviously broad enough to include all those powers which are generally recognized as powers which may properly be given to and be exercised by municipal corporations. That it is generally recognized that the power to prohibit the liquor traffic within their respective territorial limits may properly be conferred upon and be exercised by the subordinate municipalities of the state, is evidenced by the uniform trend of legislation and of judicial decisions both in this state and elsewhere; and we think that the grant of 'all municipal power' of every name and nature whatsoever conferred the power to prohibit the liquor traffic."

This decision accomplished two things. In the first place it recognized the fact that cities do not need, as of yore, to specify in their charters, in detail, all the particular powers which they intend to exercise, but that they may by such brief, inclusive statements confer the broadest sort of municipal powers upon their local authorities. In the second place, though it is no longer of much importance, the power of cities to prohibit the liquor traffic was recognized as possibly existing even in the absence of express legislative grant. In other words, this was a "municipal affair."

With other cities copying the Duluth form of grant of powers into their charters, it is easy to see how new occasions for the use of this broad municipal power may arise, and how the courts will be called upon again and again to decide just what are

\textsuperscript{57}(1916) 134 Minn. 355, 159 N.W. 792.
municipal affairs. It is interesting to speculate as to what will happen to the old rule of strict construction of municipal charters, which led the legislatures in past years to load charters up with long enumerations of specific powers in order to be certain that no particular power had been omitted. The effect in the direction of shortening municipal charters is entirely evident.

IV. Power of Legislature to Overrule Home Rule Charters

We have dealt in the preceding section with the length and breadth of home rule powers. We must now consider their depth. It is obvious that there are very few governmental functions which are purely municipal. Most of the matters with which city governments deal have in them an element of general interest. The state at large is equally concerned with the city in such functions as police, health, and education, and but little less so in such matters as streets, parks, water works, libraries, and many others. Upon such subjects it is not surprising to find a growing body of state legislation of more or less general application. Consider also, in this connection, that home rule charters must be consistent with and subject to the laws of the state, and that section 36 expressly provides that “The legislature may provide general laws relating to affairs of cities, . . . which shall be paramount while in force to the provisions relating to the same matter included in the local charter herein provided for.” Difficulties immediately present themselves. May a home rule charter in no case, even as to a matter primarily of municipal concern, provide a different rule or arrangement from that laid down in general laws? In case of conflict must the charter always yield?

The question here propounded first arose squarely in the case of Grant v. Berrisford. The St. Paul home rule charter of 1900 required contractors to give bonds for the protection of laborers and materialmen in connection with all city contracts. There was a general state law upon the same subject, which contained the requirement, not included in the charter, that no action could be brought upon such bonds unless notice thereof was given within ninety days after the furnishing of the last item of labor or material involved. The action in this case was brought under the charter provision without the notice required by the general law and the defendants demurred to the suit. Their plea

58(1904) 94 Minn. 45, 101 N.W. 940.
was that the general law applied, and that the charter provision upon this subject was ineffective since it was not in harmony with the state law. The court’s reasoning and conclusion upon this point is worthy of extended quotation.

“If this limitation on the power of cities in framing their charters is to be construed as prohibiting the adoption of any charter provisions relating to proper subjects of municipal legislation and matters germane thereto, unless they are similar to and contain all the provisions of the general laws on the subject, then, as said by the learned trial judge: ‘All that the framers of a charter can do, where there is a law in existence at the time the charter is adopted, is to add such provisions as are not already contained in the law, and are not repugnant to it. If this is the extent of the power conferred upon cities to make their own charters, then the constitutional grant is a mere form of words, of no practical value.’ It is clear that such is not a proper construction of the limitation. This limitation forbids the adoption of any charter provisions contrary to the public policy of the state, as declared by general laws, or to its penal code—for example, provisions providing for the licensing of prize fighting or gambling or prostitution, or those which are subversive of the declared policy of the state as to the sale of intoxicating liquor. But it does not forbid the adoption of charter provisions as to any subject appropriate to the orderly conduct of municipal affairs, although they may differ in details from those of existing general laws. This is necessarily so, for otherwise effect could not be given to the constitutional amendment which fairly implies that the charter adopted by the citizens of a city may embrace all appropriate subjects of municipal legislation, and constitute an effective code, of equal force as a charter granted by a direct act of the legislature....It follows that if the provisions of the charter of St. Paul as to contractors’ bonds are germane to any proper subject for municipal legislation they supersede the provisions of the general law on the subject.”

And it was so held. Indeed, the general law could not be considered in this case as even supplementing the charter provision, since the latter constituted a complete regulation upon the subject. The ruling in the Grant case has been quoted with approval and followed in a number of subsequent decisions. In fact, upon municipal matters, home rule charters are construed very much as special laws were in the past. The special provision constitutes an exception from the general. The general law continues to stand but has no application to a locality regulated by a special law or home rule charter upon the same subject.59

59In Turner v. Snyder, (1907) 101 Minn. 481, 112 N.W. 868, the court said that "where the charter covers the entire subject matter, the inten-
What becomes then of that provision in the constitution, quoted above, under which the legislature may enact general laws relating to municipal affairs which shall be paramount to municipal charters while in effect? McBain, the leading authority upon the subject, appears to have reached an untenable conclusion upon this point. It seems to be his view that first the charter may overrule the general law and then the general law may be made to overrule the charter, and apparently that this process may continue indefinitely, or, in his own words, that the constitution "has merely established a game of shuttlecock between the city and the legislature." This is not the case. The provisions of the home rule section of the constitution are consistent with themselves upon this point, and so too are the decisions of the court. The intention of the constitution was to put the initiative in charter matters in the hands of the local citizenry while at the same time leaving a checking or overruling power in the hands of the legislature. The latter body may at any time overrule home rule charters by a general law, but it must be a law which expressly or by very clear implication is designed to supersede home rule charters. This rule was well stated in *American Electric Co. v. City of Waseca* where the court said:

"We have held in recent cases that the provisions of home rule charters upon all subjects proper for municipal regulation prevail over the general statutes relating to the same subject-matter, except in those cases where the charter contravenes the public policy of the state, as declared by general laws, and in those instances where the legislature expressly declares that a general law shall prevail, or a purpose that it shall so prevail appears by fair implication, taking into consideration the subject and the general nature of the charter and general statutory provisions."

In other words, statutes relating to municipal affairs in Minnesota fall into two classes, those which express or show an intention to overrule even home rule charters, and those which show no such intention. It may be difficult in some instances to decide into which of these two categories a particular law shall be placed, but once it has been put into the first of these groups by a final judicial decision, no home rule charter provision may supersede it. The game of shuttlecock ends then and there.

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60 McBain, The Law and the Practice of Municipal Home Rule 493-495.
61 (1907) 102 Minn. 329, 113 N.W. 899.
62 The relationship here existing is similar to that between the federal and state governments in those fields where their powers overlap.
There have been several recent illustrations of the power of the legislature to enact laws superseding home rule charter provisions. It was entirely consonant with the laws upon the subject for home rule cities to prohibit the liquor traffic; that was a municipal affair. Upon the enactment of the county option law, however, the vote of a county to oust the saloons was the adoption of this state law locally and prevented even a home rule city within the county from re-establishing the liquor traffic within its limits. The whole purpose of the law would have been frustrated otherwise. Likewise, it is entirely proper for cities to provide for systems of local taxation, including wheelage taxes, but the recent statute limiting the amount of local wheelage taxes to one-fifth of the amount of the state tax was clearly designed to make uniform the burdens upon automobilists, and its effect was to prevent home rule cities as well as others from imposing more onerous taxes.

No doubt the recent statute establishing a per capita tax limit for all cities and villages in the state is of the same general type. There is every reason to believe that such laws will increase in number, and that their effect will be exactly what the constitution contemplates, namely a somewhat greater uniformity among our municipal institutions.

There is one phrase in the decision in *Grant v. Berrisford* and *American Electric Co. v. City of Waseca* which is likely to cause some trouble. The constitution declares that home rule charters must be consistent with and subject to the laws of the state, and must always be in harmony with and subject to the constitution and laws. The decisions referred to declare that such charters must not be contrary to the "public policy of the state, as declared by general laws," which may be an entirely different matter. This phrase really throws the doors wide open to judicial construction. Who shall say what is the public policy embodied in any general law? It is perfectly easy to see how a court inclined to look favorably upon home rule powers, as our su-

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There can be no doubt that, upon a matter falling within the scope of its powers, the congress has power to enact laws which will be the supreme law of the land. Whatever powers the states may have exercised within such a field before the passage of the act in question, no one can doubt that thereafter the more general act will prevail.

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*State ex rel. Smith v. City of International Falls, (1916) 132 Minn. 298, 156 N.W. 249.*

*Fairley v. City of Duluth, (1921) 150 Minn. 374, 185 N.W. 390.*

*Minn. Laws 1921, ch. 454; Fairley v. City of Duluth, (1921) 150 Minn. 374, 185 N.W. 390.*

*Minn., Laws 1921, ch. 417.*

*(1904) 94 Minn. 45, 101 N.W. 940.*

*(1907) 102 Minn. 329, 113 N.W. 899.*
The Supreme Court has generally been, might overlook actual violations of the letter of the law by cities so long as they did not violate the spirit or the policy of the law, as seen through the judges' eyes. At the same time it is not difficult to conceive of a court with a changed personnel taking just the opposite view and declaring charter provisions null and void which actually violated no law whatever on the ground that they were contrary to some supposed policy embodied in the laws. There is every reason to believe that the latter will not occur, since the legislature has such ample power to prevent excesses of power by cities that it is not really necessary for the courts to interfere in many cases.

V. THE CONSTITUTION AND THE LOCAL GOVERNMENT.

In general it may be said that the provisions of section 36 conferring charter-making powers upon cities and villages are inferior to other provisions of the constitution. Home rule charters must be consistent with and subject to the constitution as well as the laws. We have already seen that article 6, section 1, of the constitution, which provides that the legislature may establish courts by a two-thirds vote, is not considered to have been changed or overruled by the municipal home rule provision, since, according to the supreme court, municipal courts are not municipal institutions.\(^6\) The express provision as to courts is not repealed or modified by the more general provision as to municipal charters. On the other hand, while section 1 of article 9 is also specific where it says that "the legislature may authorize municipal corporations to levy and collect" special assessments for local improvements, yet it has been held that a home rule city may endow itself with the power of special assessment without legislative action.\(^6\) There appears to be some inconsistency in the decisions.

Several cases have come up concerning the form of the city government and the conduct of city elections which also involve a possible conflict of constitutional provisions. The constitution provides that every home rule city charter must provide, "among other things, for a mayor or chief magistrate, and a legislative body of either one or two houses." In a leading case\(^7\) it was argued by the attorney general of the state that the commission

\(^6\)Supra, pp. 144-48.
\(^6\)State ex rel. Ryan v. District Court of Ramsey County, (1902) 87 Minn. 146, 91 N.W. 300.
\(^7\)State ex rel. Simpson v. City of Mankato, (1912) 117 Minn. 458, 136 N.W. 264.
form of city government, which abolishes the separation of powers in city affairs by vesting both legislative and executive functions in one small body, of which the mayor is a member, was unconstitutional since both the words quoted above and also article 3 of the constitution require a separation of powers. The latter provision reads as follows:

"The powers of the government shall be divided into three distinct departments, the legislative, executive and judicial; and no person or persons belonging to or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the instances expressly provided in this constitution."

The answer of the supreme court to this contention was that article 3 applies to the state government only, and not to the local units, and that there is nothing in the municipal home rule provision to require the "mayor or chief magistrate" to be entirely separate from the council, nor to require the latter to be vested with all the local legislative power. A similar point was decided in an earlier case which sustained the St. Paul charter of 1900 in providing for a board of public works to exercise important local powers in addition to the council, and in a later case which upheld the initiative and referendum in the Duluth charter of 1912 as not in derogation of the constitutional requirement that a city must have a legislative department.71

Recent interest in this question has turned upon the requirement that a home rule city must have a "mayor or chief magistrate." In the city manager plan of government, now so much in vogue throughout the country, the mayor is the presiding officer of the council and the chief political officer of the city, but the actual administration of affairs is put into the hands of a business manager selected, appointed, and controlled by the council. It has been argued that this plan is unconstitutional in Minnesota for the reason that when the constitution uses the term "mayor" or "chief magistrate" it must imply that the mayor or chief magistrate must have the usual powers appertaining to the office and that there is no power in either the legislature or the home rule city to change the meaning of the term. The question of the validity of such a form of government has not gone to the courts, but the attorney general's office, still somewhat under the influence

71State ex rel. Otis v. District Court of Ramsey County, (1906) 97 Minn. 147, 106 N.W. 306; State ex rel. Zien v. City of Duluth (1916) 134 Minn. 355, 159 N.W. 792.
of the doctrine of the separation of powers in city government, has ruled as follows:

"Of course there may be a city manager as well as a mayor, but the point is that the duties customarily performed by the mayor may not be taken from him and reposed in another officer of the city government... There must be a mayor and he must be the chief executive of the city. There must be a legislative body and the legislative authority which properly belongs to that body may not be delegated to an administrative officer."\(^{7}\)

As to the first of these propositions it is submitted that there is no such category as "the duties customarily performed by the mayor." There is, of course, a certain position of honor which comes to the person who occupies the office. Historically in England, in the American colonies, and in the early states, the mayor was little more than a figurehead. His duties were such only as the charter conferred upon him and these varied greatly. The council was the real government of the city, although out of deference to the office it was generally required that the mayor should be present at meetings. In the United States today, and even in Minnesota, mayors have the widest range of importance, having almost no power in some cities and very broad powers in others. Furthermore, the student will search the Minnesota supreme court decisions in vain to find any important powers set down as being inherent in the office of mayor, and even the leading authorities upon the subject will add little or nothing to his results. The second proposition in the opinion quoted above, that the mayor "must be the chief executive of the city" is equally open to criticism. The constitution itself does not make this statement. Not even the governor is called a chief executive in our state constitution. Even if the mayor were called "chief executive" it would help little toward an understanding of the office.\(^{7}\)

On the one hand it might imply that there could be other executive officers in addition to the chief, and on the other the use of the term would confer practically no powers upon the officer bearing the title. In conclusion it is an open question whether the words quoted from the attorney general's opinion are not directly contradictory to the supreme court decision in the Mankato case.\(^{7}\)

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\(^{7}\)Opinion by James E. Markham, Assistant Attorney General, Nov. 2, 1921; see 6 Minn. Munic. 163, Dec. 1921, for text of opinion and more extended discussion.

Another point of considerable importance has come up, involving the power not only of home rule cities but of the legislature itself to regulate the conduct of local elections. In its charter of 1912 the city of Duluth introduced the method of election by preferential voting. In a series of contested election cases which arose following the first election, the supreme court not only sustained the power of home rule cities to provide their own systems of election, but even permitted the application of such systems to the election of municipal judges and allowed a sort of compulsion to be used which resulted in the throwing out of ballots which had not been marked for as many candidates for the council as there were places to be filled. In these cases no questions of constitutionality touching the system of preferential voting were raised, but when that point was subsequently considered the court, in a four to one decision, declared the system contrary to the constitution on the ground that it violated the requirement of equality of voting right among all voters. The following provisions of the constitution were involved. Every qualified voter "shall be entitled to vote... for all officers that now are, or hereafter may be, elective by the people," and "all elections shall be by ballot." In the opinion of the majority of the court, these provisions absolutely guaranteed, beyond legislative power to interfere therewith, the principle of one man one vote, and one vote one value. Under the Duluth charter, one voter might vote first, second, and third choices and have all three choices counted, while another voted only first choice and had only that choice counted. In other words, one might vote for three persons for an office and have all counted, while another might vote for only one person. The court did not consider fully that, as a matter of fact, every voter was given the same right and that it was only his own negligence which could in any way militate against him, and that it is mathematically demonstrable that one who voted only first choice might actually be voting more effectively for his candidate than the one who voted all three choices. The fact that inequalities were possible was enough, in the court's opinion, to condemn the system.

In order to overcome inequalities in existing voting systems, inequalities which sometimes give the majority of voters less than a majority of the members of the council and sometimes give them

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proportionately more representatives in the council than they have voters in the constituency, various reform organizations have proposed the introduction of the Hare system of proportional representation, otherwise known as the single transferable vote system, into American municipal elections. Under this system, a number of aldermen would be chosen from a district and election would be by the quota system. Roughly speaking, if five were to be elected, each one-fifth of the voters who could agree unanimously upon one candidate would be entitled to that one. Instead of one party carrying off all the representatives from the district, therefore, each party would presumably get about the number of members to which it was entitled. This is supposed to be accomplished by permitting each voter to vote a first, second, third, and so on to an unlimited number of choices among the candidates who offer themselves, and by distributing the surpluses of ballots above the quotas received by the most popular candidates and by distributing all the votes of the weakest or least popular candidates received upon the first choice, to other candidates according to second and other choices until the correct number of candidates have been declared elected by having received their quotas. Under this system every voter's vote is counted just once, and for just one candidate, but if a voter's first choice is a very weak candidate, without prospects of election, by the system of transferring votes that voter's ballot will be counted according to his second choice, or even according to his third or some later choice. The question having come up as to the constitutionality of this method of voting, the attorney general has ruled that it is probably unconstitutional, following the reasoning in the Brown v. Smallwood case.\(^7\) As a matter of fact, the system of proportional representation is clearly distinguishable from that of preferential voting. The latter makes possible definite inequalities, whereas the former goes far toward ensuring equality of votes. The decision of the Michigan supreme court in the Kalamazoo case suggests another ground, however, upon the basis of which the system of proportional representation may be unconstitutional in this state. \(^7\) Under this system, no matter how many councilmen are elected

\(^7\)Wattles ex rel. Johnson v. Upjohn, (1920) 211 Mich. 514, 179 N.W. 335. The Ohio court of appeals for the 8th district has sustained the system in the Cleveland case. Reutener v. City of Cleveland, (May 6, 1922). The California district court of appeal for the 3rd district has declared the system invalid in the Sacramento case, and the state supreme

\(^6\)Opinion by Clifford L. Hilton, Attorney General, Dec. 1, 1921; see 7 Minn. Munic. 81. June 1922, for more extended discussion.
from a district, each voter's vote may be counted for only one candidate. The Minnesota constitution provides that each voter may vote "for all officers" elective by the people within his voting district. In the Michigan case the court held that if seven councilmen are to be elected from the city at large, it is the right of each voter to vote for seven and to have his votes counted for seven. It is very clear from the history of the Minnesota provision that this was not the intention of the framers of the constitution, but that this meaning can be read into the provision cannot well be denied.

Questions of home rule procedure and other incidental matters have not been touched upon in this brief review. The principal cases upon these points have been digested in another place. We cannot close, however, without remarking how much more satisfactory are the decisions upon home rule than are those upon the prohibition against special legislation. The latter deal with a limitation upon legislative power, and such limitations are always difficult to enforce. The cases on home rule construe a relatively simple grant of powers. In the cases on special legislation there is much confusion. One finds not a few contradictions. On the other hand, although they are not perfectly harmonious, the municipal home rule decisions follow a definite and self-consistent theory, a reasonably straight and not a zig-zag line. This is all the more gratifying in view of the fact that there were relatively few decisions in other states which could in any important sense serve the local court as a guide.

court has denied the petition for rehearing without vouchsafing any reason for its refusal. People ex rel. Devine v. Elkus, et al., (Cal. 1922) 211 Pac. 34. Hearing denied by supreme court, Dec. 22, 1922.

78 Anderson, City Charter Making in Minnesota 149-161.