

The State and the Cities: Working Out the Relationship



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There was a time when beginning to talk about state-local relations was considered to be the best way to clear out a room. No more. It is now one of the hottest topics in the land, perhaps because it has surfaced with such considerable heat in Arizona – including a 2016 law exerting state authority.

Tensions among federal, state and local governments are built into the intergovernmental system. One naturally finds different viewpoints simply due to where individuals sit in the hierarchy of governments. The late Jack DeBolske, who served as the colorful executive director of the League of Arizona Cities and Towns for 40 years until his 1997 retirement, once summarized intergovernmental relations with three axioms:

1. The level of government I am with is good.
2. Any level of government above me is putting it to me.
3. Any level of government below mine cannot be trusted and needs watching.¹

In other words, Miles' Law – "Where you stand depends on where you sit" – is fully applicable here. Where a public official stands on a particular intergovernmental issue may well depend on which level of government he or she represents.²

It also can be said: In the highly intricate intergovernmental system, state and local governments regularly bump into each other and with each bump "an opportunity is provided to challenge or affirm existing understandings regarding who should do what, on whose budget."³

Over the years Arizona's local governments have had a number of skirmishes with the state over finances and authority. Local concerns often have centered on cuts in the shared revenues they receive from the state and the divergence of highway user revenue funds (HURF) from local governments to help fill holes in the state budget.

In 2008, for example, Arizona local officials were caught off guard by a provision in the state budget package that required them to give nearly \$30 million in local funds – \$17 million from municipalities and \$13 million from counties – to the state general fund. A lobbyist for the city of Phoenix said: "It's not so much about the dollars. ... It's the principle that they can reach into our budget and take money."⁴

The Arizona Supreme Court, however, ruled in early 2009 that such a budget-balancing move was unconstitutional but it left room for the state to tap into local funds if different methods were employed. In other words, the problem was not that the state took local money but how it did it. (Later in the year a gubernatorial veto prevented the Legislature from directing the state's two largest counties – Maricopa and Pima – to transfer millions of dollars to the state.)

When it comes to authority, the powers of the state's home rule and charter cities come into play. Cities and towns without charters operate under the general laws of the state, meaning they must look to the state for general or specific authorizations to pass laws. However, 19 of the state's 42 municipalities with 3,500 or more residents – all the major cities in Arizona – have adopted charters, giving them greater authority than unincorporated jurisdictions.

Greater authority, however, does not translate into complete autonomy.

Most incorporated communities in the state are general-law cities or towns. Local officials and scholars value charter government for allowing citizens an opportunity to shape local government structures that best fit their specific needs, giving municipal governments more power to initiate action (relieving them from having to go to the Legislature for authority), and helping to restrict state interference in spheres of activity reserved to local governments. In the latter regard, the Arizona Supreme Court has recognized that charters give cities a certain independence from the state on matters of local concern but, like state courts elsewhere, has found it difficult to distinguish between what matters are of local concern and what matters are of state concern and has not been consistent in its rulings.⁵

In recent years, the natural tensions between elected officials at different levels have been widely viewed as having been greatly escalated by philosophical and partisan differences. In a number of states, including Arizona, the basic conflict is generally depicted as between conservative Republicans who control policy on the state level and municipalities controlled by progressive Democrats. The issue has largely centered on moves made at the state level to preempt or void measures adopted on the local level.⁶

Over the past few years the Arizona Legislature has considered and often overridden local laws or practices regarding elections (though some of these have been successfully challenged); firearms; the enforcement of federal laws regarding illegal immigration; smoking; paid sick leave; plastic bags; employee scheduling laws; fire sprinklers; puppy mills; sugary drinks; and the regulation of dark money in local elections.

Most controversial of state-versus-local conflict, at least from the local point of view, has been SB1487. Adopted in 2016, the law empowers any state legislator to require the Arizona Attorney General to investigate any claim that a municipal

Local Issues Challenged by State

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- elections
- firearms
- illegal immigration
- smoking
- paid sick leave
- plastic bag use
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- fire sprinklers
- puppy mills
- sugary drinks
- regulation of dark money

or county government has done something on the local level that violates state law. Should the Attorney General find such a claim to be true, the offending measure or measures must be repealed within 30 days. The penalty for not complying with the Attorney General's order is a loss of state-shared revenues. This is a major penalty since state-shared revenues amount from 30 percent to 50 percent of local government revenue.

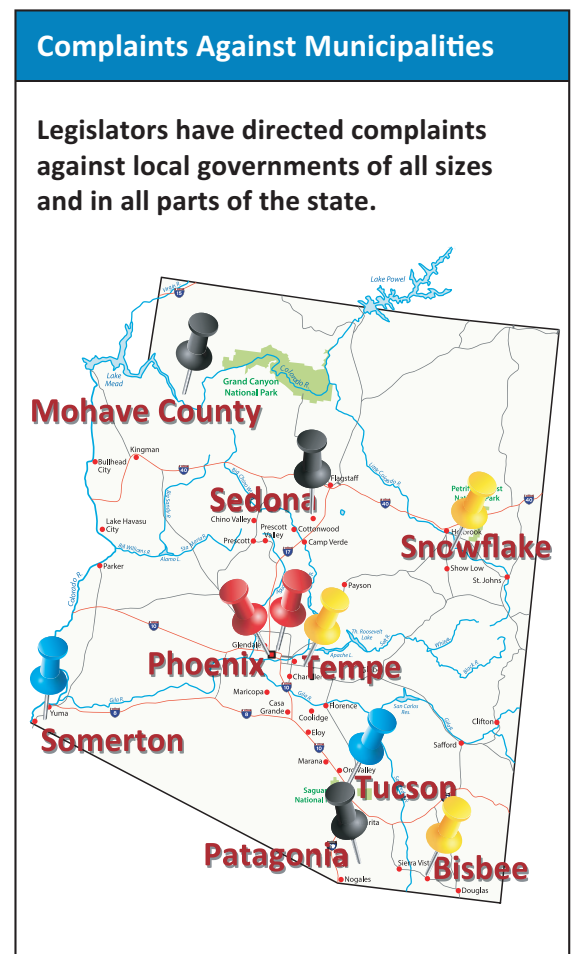
The measure's sponsor, then-Senate President Andy Biggs who is now serving in the U.S. House of Representatives, said SB1487 would target local ordinances that usurp state laws such as one adopted in Tucson regarding the destruction of seized guns and another adopted in Bisbee aimed at banning the use of plastic bags.⁷

Thus far the state Attorney General has been called upon to investigate 10 complaints under SB1487 - two of which were withdrawn, three that resulted in a finding of no violation of state law, three that resulted in a finding that state law had been violated, and the remaining two in a finding that state law may have been violated, depending on what the State Supreme Court decides.

Legislators have directed complaints against local governments of all sizes and in all parts of the state: Phoenix (twice), Tucson, Tempe, Sedona, Patagonia, Snowflake, Bisbee, Somerton and Mohave County.⁸ All 10 complaints were filed by Republican legislators. An analysis of the first eight complaints found only three of the legislators questioning the local laws represented those local areas.⁹

Tucson and Bisbee were among those municipalities whose laws were invalidated by SB1487.¹⁰ The city of Tucson in 2005 adopted an ordinance calling for the destruction of confiscated or seized firearms. In 2013 the Legislature attempted to halt this practice by passing a measure requiring that such firearms, if operable, must be sold to licensed gun dealers. The city continued to destroy weapons, contending that it had the right to do so as a charter city. From 2013 through 2016 the city's police department destroyed more than 4,800 guns.

SB1487 changed the dynamics of local-state disputes by adding the financial penalty. The Attorney General, acting on a complaint from a state legislator, declared the city ordinance violated state law and threatened to cut off shared revenues to Tucson if the city did not repeal the ordinance. Tucson at the time was receiving \$115 million a year in state-shared revenues.¹¹ The city temporarily suspended the ordinance but challenged the right of the state to take such action. The Arizona Supreme Court upheld the state law in 2017.¹²



Bisbee, a town of some 5,000 people, adopted a ban of plastic bags in 2012. The city was concerned about related littering and recycling problems. In response, an association representing grocers went to the Legislature in 2015 and got a measure prohibiting Bisbee and other cities and towns from banning plastic bags or regulating any kind of container used in transporting merchandise to or from a store. A leading legislative sponsor of the bill declared: "It's not the government's job to tell you whether or not you should use a plastic bag. ... Are we going to micromanage every decision of every consumer?"¹³

Like Tucson, Bisbee had charter government to back up its authority and believed it had the right to take action under local jurisdiction. Accordingly, Bisbee refused to repeal its plastic bag ban. Using SB1487, the state Attorney General, acting on a legislator's complaint, concluded that the ban on plastic bags violated state law. Bisbee officials decided not to undertake the cost of legally challenging the action because of the risk of its losing some \$2 million in state revenues. Bisbee suspended its local ordinance against plastic bags and replaced it with one making abandoning the use of plastic bags voluntary on the part of retailers. The mayor was quoted as saying: "The state was basically extorting us, saying that we either had to repeal this ordinance or lose our state-sharing revenues. ... That would have literally bankrupted the city."¹⁴

Supporters of SB1487 say it allows for uniformity of laws across the state and forces cities to comply with state law. State lawmakers' objections to local government actions often align with laws that would be opposed on the state or federal level – such as policies relating to firearms and labor reform.

Critics of preemption argue that SB1487 interferes with the ability of elected local officials to serve their local communities with local solutions instead of one-size-fits-all state legislation. They say it also creates an adversarial, hostile relationship between cities and the state government when, in the interests of all people, the two levels should be partners rather than rivals or adversaries.

Municipal governments with charter government enjoy considerable discretion in local decision-making, especially in comparison to localities in other states, but there are limits. Local governments are the legal creatures of the state. Legally speaking, there is no doubt that the state government dominates the relationship with local units. In fact, there have only been two areas in which the Arizona Supreme Court have upheld municipal ordinances that directly conflict with state law - the method and manner of conducting elections and the method and manner of disposing of real estate property.¹⁵


Beyond the provisions of the Arizona constitution and court decisions, however, state intervention in local affairs has been met with resistance by a strong tradition of local self-government within a state renowned for that same philosophy. As one observer has suggested, there is a "natural negative reaction ... to state-imposed solutions of local problems."¹⁶

Who's Filing Complaints?

In a number of states, including Arizona, the basic conflict is generally depicted as between conservative Republicans who control policy on the state level and municipalities controlled by progressive Democrats.

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Despite recent court rulings upholding state authority, localism has been a considerable political force historically speaking, and state lawmakers from both political parties have generally shared in a cultural disposition that has put a premium on local self-government. There has long been an unspoken give-and-take coexistence between municipalities and the state, creating a considerable gap between what state lawmakers may be able to do legally and what they have actually done. Still, recent actions have opened the debate on whether the state has gone too far in departing from the tradition of restraint.

End Notes

¹ Quoted by David R. Berman, "Relating to Other Governments" in Charledean Newell, ed., *The Effective Local Government Manager*, 2nd ed. (Washington, D.C.: International City/County Management Association, 1993): 180.

² See: Rufus E. Miles, "The Origin and Meaning of Miles' Law," *Public Administration Review* 38 (September/October 1978): 399-403; and David R. Berman, Lawrence L. Martin, and Laura Kajfez, "County Home Rule: Does Where You Stand Depend on Where You Sit?" *State and Local Review* 17 (spring 1985): 232-34.

³ Thomas Anton, *American Federalism and Public Policy* (New York: Random House, 1989): 2.

⁴ Quoted in Mary Jo Pitzl, "New \$9.9 Billion Budget: Some Pain, Gain," *Arizona Republic*, July 6, 2008, B1.

⁵ See: John D. Leshy, *The Arizona State Constitution: A Reference Guide* (Westport, CT: Greenwood Press, 1993); and (David A. Bingham, *Constitutional Municipal Home Rule in Arizona* (Tucson, AZ: Department of Public Administration and Division of Economic and Business Research, the University of Arizona, October, 1978: 35. See also commentary in *State of Arizona v. City of Tucson*, No. CV-16-0301-SA filed August 17, 2017.

⁶ While much of the attention has been given to the preemptive activity of Republican legislatures and governors, it should be noted one can also find examples of preemptive activity in states like California and Rhode Island controlled by Democrats. For an overview see: Lori Riverstone-Newell, "The Rise of State Preemption Laws in Response to Local Policy Innovation," *Publius: The Journal of Federalism*, Volume 47, Issue 3, 1 July 2017, Pages 403-425; National League of Cities, *City Rights in an Era of Preemption: A State-by-State Analysis*, February 22, 2017); and Henry Grabar, "The Shackling of the American City," *Slate*, September 9, 2016.

⁷ Jeremy Duda, "Dukey signs bill to withhold revenue from cities that violate constitution," *Arizona Capitol Times*, March 17, 2016; Paulina Pineda, "Legislators' complaints of lawbreaking by cities on the upswing," *Arizona Capitol Times*, February 9, 2018.

⁸ A summary of AG activity under SB1487 from Investigations is found at <https://azag.gov/complaints/sb1487-investigations>

⁹ Pineda, "Legislators' complaints of lawbreaking by cities on the upswing."

¹⁰ Sedona was the third city to have its law invalidated, one involving the requirement of a business license.

¹¹ For background and contextual information see Staff writer, "Our View: Don't shut down municipal laboratories of democracy," *Arizona Daily Sun*, December 11, 2016; Joe Ferguson and Howard Fischer, "AG moves to cut off state aid to Tucson - Council votes 7-0 to fight order on confiscated guns," *Arizona Daily Star*, December 7, 2016; Howard Fischer, "Pull plastic-bag law or lose state funds, AG tells Bisbee," *Arizona Daily Star*, October 25, 2017.

¹² *State of Arizona v. City of Tucson*.

¹³ Quoted in Scott Rodd, "Banning the Bans: State and Local Officials Clash Over Plastic Bags," *Stateline*, January 29, 2018.

¹⁴ Scott Rodd, "Banning the Bans: State and Local Officials Clash Over Plastic Bags," *Stateline*, January 29, 2018.

¹⁵ *State of Arizona v. City of Tucson*.

¹⁶ John Stuart Hall, "State Local Relations in Arizona: Change, Within Limits," in E. Blaine Liner, ed., *A Decade of Devolution: Perspectives on State Local Relations* (Washington, D.C.: The Urban Institute Press, 1989), pp. 133-160, at 155. "Another source notes the ability of municipalities to define their own tax bases arises, in part from Arizona's strong tradition of local home rule." See: Helen F. Ladd and Dana West, "General Sales Taxes," in Therese J. McGuire and Dana Wolfe Naimark, *State and Local Finance for the 1990s: A Case Study of Arizona* (Tempe, AZ: School of Public Affairs, Arizona State University, 1991, pp. 117-148, at 139-140.



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