

TO: Long Range Financial Planning Subcommittee

FROM: Joan Frazier

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SUBJECT: Commentary on Home Rule

As the Village of Northfield searches for solutions to its serious economic challenges, one avenue of relief meriting further consideration is adoption of home rule. Stacy Sigman has prepared a primer on Home Rule that succinctly describes some of the benefits and detriments flowing from its adoption. This paper does not repeat that information. Instead, I have set forth below some comments about the impetus for enactment of home rule in the 1970 Illinois constitution. I then look at the home rule experience in some neighboring communities, paying particular attention to the reasons why the home rule movement succeeded in Winnetka, but failed in Glencoe.

These comments are simply intended to facilitate the home rule conversation, without encouraging one course over the other at this time. Thank you to Stacy for use of her research.

I. The Rationale for Enactment of Home Rule in The 1970 Illinois Constitution.

The Illinois Constitution was revised and ratified for the fourth time in 1970, the previous revision and ratification having taken place 100 years earlier. During the 1970 constitutional convention in Springfield, there was much discussion about the role of government in modern society, and the relationship

between state and local government. Convention delegates resolved that the new constitution should shift more power to local government. The critical byproduct of that resolution was the enactment of home rule provisions in the Illinois constitution. It is considered the most innovative feature of the “new” constitution.

One of the primary movers behind home rule was Mayor Richard J. Daley, as represented by his proxies (including his son) in Springfield. Daley was willing to compromise on other issues if necessary to ensure enactment of home rule. Today, Cook County, which is the only Illinois county with an elected executive, is a home rule municipality.

The motivation behind the enactment of home rule provisions was threefold: First, as we know, Illinois has considerably more governmental units than any other state. Constitutional delegates recognized in 1970 that the overlapping nature of these governmental units was creating confusion in discerning who provided what service. This went hand in hand with inefficient service, duplication of administrative overhead, and attendant costs.

Second, the rapid growth of cities in Illinois in the years following ratification of the 1870 constitution created an ever-increasing demand for municipal services, including police and fire protection, mass transit, parks, and recreation facilities. In order to adequately address the need for these services, local authorities needed an efficient and flexible way of implementing change.

Third, prior to the enactment of the 1970 constitution, local government in Illinois was totally dependent on state government for power to act. This state of

affairs is known throughout the country as Dillon's Rule, named after an Iowa state supreme court justice who wrote a judicial decision and a highly regarded treatise enunciating the limited power of municipalities. Justice Dillon famously characterized the relationship between municipalities and states as akin to a child and parent relationship.

Under the terms of the 1870 constitution, the legislature was restricted from authorizing any local government to incur a debt in excess of 5 percent of its property value. The legislature was therefore hamstrung in its efforts to assist local government. We still live with the result today: the proliferation of more and more local government units created in order to circumvent previous constitutional debt limitations.¹

Ratification of the home rule Article drastically changed the relationship between state and local government. The General Assembly no longer reigns supreme over local government.² In Kalodimos v. Village of Morton Grove, 103 Ill.2d 483 (1984), the Illinois Supreme Court wrote that home rule is predicated

¹ The first proposed draft of the local government Article of the Illinois Constitution provided: "The purpose of this Article is to confirm the rights of the people to local self-government while preserving the sovereignty of the State; to provide for a system of local government in the state of Illinois which is independent, efficient, effective, and economical; *to deter proliferation of units of local government; to allow reduction of the present number of units; to minimize duplication and overlapping of taxing jurisdictions;* to promote intergovernmental cooperation, and to provide a flexible system for the exercise of government power and the performance of governmental functions at the local level which does not require prior recourse to the state. Powers granted to units of local government shall be construed liberally to achieve the foregoing purpose. (emphasis added)

² The Illinois home rule provisions were based on the model local government enabling acts developed by the U.S. Advisory Commission on Intergovernmental Relations, the National League of Cities, and the National Municipal League.

on the presumption that, “problems in which local governments have a legitimate and substantial interest should be open to local solution and reasonable experimentation to meet local needs, free from veto by voters and elected representatives of other parts of the State who might disagree with the particular approach advanced by the representatives of the locality involved or fail to appreciate the local perception of the problem.”

All of this points to the conclusion – not often discussed in home rule discussion - that the delegates to the 1970 Illinois constitutional convention actually *wanted* municipalities to take charge of their own affairs. Apart from the historical background summarized above, the language of the Illinois constitution strongly points to this conclusion. First, the Illinois constitution automatically converted to home rule every county with a chief executive officer elected by the electors of the county. Ill. Const., Art. VII, Sec. 6 (a) (2009). As stated, Cook County is the only county that currently meets this description.

The Illinois constitution provides that any municipality with a population exceeding 25,000 is by virtue of that fact a home rule community. Ill. Const., Art. VII, Sec. 6 (a) (2009). Upon ratification, 67 cities and municipalities thereby gained home rule status.

The state constitution further provides that a village with a population of less than 25,000 may adopt home rule, or conversely, may rescind home rule by referendum. Ill. Const., Art. VII, Sec. 6 (b) (2009). Only four villages have repealed home rule, the last being Rockford in 1983. Thus, home rule is available to any municipality that wants it, although it may not be used by school districts,

park districts, and the like. The primary limitation on the exercise of home rule authority is that home rule units may not levy taxes on income, earning, or occupations without legislative authorization.

The delegates' intention to shift authority to local municipalities is further illustrated by the unambiguous language of the constitution's home rule provisions. (Exhibit 1) The constitution conveys home rule units broad and almost untrammelled power to manage their own affairs. Specifically, Section 6 (a) of the Article provides that "[e]xcept as limited by this Section, a home rule unit may exercise *any power* and perform *any function* pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt." (emphasis added). This mandate was intentionally written in broad language in order to allow local governments the freedom to solve their own problems without enabling statutes.

In addition, Section 6 (i) of the home rule Article provides that home rule units "may exercise and perform concurrently with the State *any power or function* of a home rule unit to the extent that the General Assembly by law does not *specifically* limit the concurrent exercise or *specifically* declare the State's exercise to be exclusive." (emphasis added) Again, the breadth of this mandate makes it clear that the constitutional convention delegates believed it appropriate to let local authorities solve local problems with local solutions, except where expressly preempted by the state legislature.

Furthermore, the state constitution gives the legislature the power to enact law giving municipalities the exclusive authority to exercise the power or functions of a home rule unit, with several enumerated exceptions. Art. VII. Sec. 6 (h) (2009). The three checks on a home rule unit's exercise of power are judicial review, abandonment of home rule through referendum, and preemption by the legislature.

Yet another strong indicator of the delegates' intent in enacting home rule is found in the express constitutional direction that the "[p]owers and functions of home rule units shall be construed liberally." Ill. Const., Art. VII, Sec. 6 (m) (2009). The Illinois Supreme Court accordingly has given home rule language a broad interpretation, setting a three-part test for courts to use in deciding whether a municipality has exceeded its home rule authority. First, courts must decide whether a municipality's exercise of power pertains to government and its affairs. Second, courts must determine whether the state legislature limited the local exercise of power at issue, or specifically declared the State's power exclusive. Third, if the exercise of home rule power is not limited by the State, courts must determine the proper relationship between the ordinance at issue and state law. County of Cook v. John Sexton Contractors, 75 Ill.2d 494 (1979).

Thus, in considering whether home rule is right for Northfield, it should be kept in mind that the delegates to the 1970 constitutional convention viewed decentralization of government authority in Illinois as a means to efficient delivery of government services. Indeed, some have aptly pointed out that the question

isn't why a municipality chooses to adopt home rule, but rather, why it chooses to forego that option.

One answer lies in the reluctance of citizens to entrust a small group of local authorities with broad spending and taxing authority. This is a concern that cannot be lightly discounted. Yet, according to Dr. James Banovetz, the foremost authority on Illinois home rule, the facts do not support this concern. By Banovetz's reckoning, Illinois is probably the penultimate test of home rule given the 1) (ahem) history of corruption in the state; 2) extraordinary breadth of home rule powers; 3) broad scope of municipal taxing powers under home rule; and 4) large number of municipalities in Illinois using home rule. In a 2002 study entitled "Illinois Home Rule: A Case Study In Fiscal Responsibility," Dr. Banovetz reached the following conclusions with regard to home rule:

1) Home rule is widely used for government functions other than taxation, such as regulation, licensing, and buying or selling property. Home rule is often used to lower the interest costs of government borrowing.

2) Home rule is frequently used to raise tax revenues from sources other than property taxes, including taxes on retail sales, real estate transfer, hotel, restaurant sales, and so on. There has been a definite shift towards spreading the tax burden to nonresidents via taxes such as these.

3) Property taxes tend to increase more slowly in home rule communities, and as a corollary, home rule communities rely less on property taxes than do non-home rule units.

4) Less than 20% of home rule communities in Illinois have raised property

taxes higher than would be allowed under the tax cap.

Since Banovetz's study appears to be based largely on only two surveys – albeit, comprehensive surveys - his results cannot be regarded as unimpeachable. Still, the taxing trends identified by Banovetz clearly reveal marginal support at best for the proposition that institution of home rule inevitably leads to higher property taxes. Dr. Banovetz's article is attached hereto as Exhibit 2.

With this information as a backdrop, the next question is how home rule has been received by our neighboring communities. As discussed below, the results have been mixed.

II. The Home Rule Experience In Neighboring Communities.

Our more populous neighbors like Evanston, Glenview, and Northbrook, are home rule units simply by virtue of their population size. But other neighbors, like Winnetka, Glencoe and Kenilworth, have populations less than 25,000 and thus have had to decide for themselves whether to pursue home rule. These villages have addressed the question in different ways, with different results. Their experience may hold some lessons for Northfield.

1. Successful Adoption Of Home Rule.

A. Lake Forest

The City of Lake Forest undertook a study of home rule in 2003, prompted by adverse revenue trends and state-mandated pension costs. An independent Ad Hoc Finance Committee, composed of eight residents with financial expertise, was directed by the Lake Forest mayor to consider 1) how the city could maintain

its AAA bond rating and high quality service in light of adverse revenue trends; 2) what fiscal alternatives were available and appropriate for Lake Forest; and 3) whether the city council should consider home rule.

After meeting 15 times over a four-month period, the Ad Hoc Finance Committee presented its report to the city council and public at an April 2004 meeting. The Committee concluded, "Home Rule is the most flexible statutory tool to support long-term City fiscal planning, and we recommend that the Council proposes, and voters approve, Home Rule status for Lake Forest." The Committee noted that home rule would transfer significant power from state government to the city, but reasoned that, "given Lake Forest's unique character, we believe the City is better served with more control in the hands of the locally elected Mayor and Council." The Committee strongly recommended that home rule not be used to raise property taxes.

In June, 2004, the city issued a *Special Finance Edition of Lake Forest Dialogue!* This publication explained the work of the Ad Hoc Finance Committee, and appended the Committee's report. (Exhibit 3)

In response to residents' concerns, and prior to the home rule referendum, the Lake Forest City Council enacted an ordinance stating that if the city became a home rule unit, the city council would abide by property tax cap limitations. The ordinance stated two exceptions to this commitment: 1) if the city council determined that a bona fide emergency or legal requirement dictated the increase; or 2) if it was determined in an advisory referendum that the community supported an increase. (Exhibit 4) This ordinance passed unanimously, with

apparently no concern expressed over the fact that future boards would not be bound by the ordinance.

On November 2, 2004, Lake Forest voters approved the adoption of home rule by a margin of 52 to 48 percent. Yet, while the home rule referendum carried, voters narrowly defeated a real estate transfer tax referendum.

B. Winnetka

In 2004, the then-current Winnetka village president and five past Winnetka village presidents worked together to explore the concept of home rule, and to decide whether the subject warranted further consideration by the community as a whole. The presidents' study concluded that community consideration of home rule was warranted. The group issued its report as a "launching pad" for discussion.

In its 16-page report, the study group advocated adoption of home rule in Winnetka because it would widen village taxation powers, including lifting the tax cap; give the village greater leeway to plug an anticipated budget gap of \$250,000; allow the village to control contractors through licensing; give the village the authority to fortify zoning laws against the state's attempt to supersede them; and allow the village to form public-private partnerships for the planned redevelopment of post office property.

In the conclusion to their report, the presidents wrote:

As the Village Presidents for the last 25 years, we unanimously believe that Home Rule authority would have immediate and long-term benefits for Winnetka. We trust Winnetka's grassroots democracy. We trust our fellow Winnetkans to govern all of us and

believe that they will be better able to do so if they are given the additional flexibility of Home Rule. We fervently believe that Winnetkans are more qualified than the members of the State Legislature to determine what Winnetka needs and how those needs should be met.

The presidents suggested that the village board consider the issue and hold a formal public hearing.

The home rule movement that ensued in Winnetka was not unopposed. A Chicago group called The National Taxpayers United of Illinois distributed flyers urging voters to reject “tax-hungry politicians and municipal employees.” The North Shore – Barrington Association of Realtors distributed flyers stating its belief that “policy choices about municipal revenue and taxing authority should – to the greatest extent possible – be in the hand of the residents of that municipality.” A bullet list of reasons for voting “no” on home rule was made available to residents. (Exhibit 5)

On the flip side, home rule proponents distributed educational flyers, published letters in the *Winnetka Talk*, and gained the support of the League of Women Voters. (Exhibit 6)

At a public hearing held in Winnetka on November 12, 2004, Dr. James Banovetz gave a presentation to the village board explaining the advantages and disadvantages of home rule. Banovetz said the fear of skyrocketing property taxes drove numerous home rule referendums to fail around the state, but there was little evidence that home rule communities used their taxing powers

irresponsibly. Banovetz identified one key question as, “does the political history in Winnetka suggest [the village board] shouldn’t be trusted?”

In April, 2005, Winnetka voters approved home rule by a vote of 1,592 to 923. It was believed that the fact that past village presidents backed home rule sent voters a message of trust. Since adoption of home rule, Winnetka has used its home rule powers to: 1) give its community development department more decision-making power, enabling them to reduce the waiting time for homeowners to obtain minor zoning variations; 2) save money on training costs by using a new process for hiring police and fire department personnel from outside departments; 3) hire a consultant to brief the Post Office Committee on public-private partnership options; and 4) declare Winnetka exempt from the Illinois Affordable Housing Planning and Appeal Act, and begin study of a locally-tailored affordable housing plan

2. Unsuccessful Campaigns for Home Rule.

Local officials in Glencoe and Kenilworth undertook a study of home rule, but both campaigns were abandoned prior to referendum.

A. *Glencoe*

In 1988, a home rule referendum in Glencoe failed to carry by a margin of 3 to 1. In 2004, the Glencoe village board approved a resolution appointing a Home Rule Task Force to once again consider home rule. The village president believed that the time was right to consider home rule because of factors including unfunded mandates, tight budgets, the impact of tax caps, and the fact that several neighboring communities had since adopted home rule. The task

force was composed of 18 members, including four trustees. The task force's mandate was as follows:

- review what home rule is;
- review the difference between home rule authority and Special Charter authority;
- review the advantages and disadvantages of home rule;
- review 1988 referendum materials to evaluate community response;
- consider current trends in home rule authority;
- analyze community reaction to home rule; and
- recommend whether the village should adopt home rule.

The task force was directed to deliver its final report to the village president and board of trustees by October 31, 2005.

At that time, Glencoe was not experiencing any financial shortcomings. Property values were growing at a greater rate than taxes. The annual average of sales taxes in Glencoe between 1996 and 2000 was \$493,800, and by 2005, the net sales tax (less rebates) was over \$1.1 million. It was anticipated that net sales tax would increase approximately to \$1.5 million annually. It was also anticipated that revenues would grow 3.7% to \$16.0 million.

Despite this rosy picture, Glencoe officials anticipated that by 2012, annual operating expenses would likely outdistance revenues. It was also anticipated that there would be a continuing disparity between revenue and

personnel costs, including pensions. Proponents of home rule argued that its adoption would allow diversification of revenue sources, create opportunities for financial flexibility, allow for adoption of a real estate transfer tax (per referendum), and allow the village to pursue other revenue opportunities. In addition, village officials sought taxing flexibility to cope with the cost of fixing streets, sidewalks and sewers. Infrastructure work had been delayed in the past because of the tendency to balance the budget through infrastructure cuts. The village also wanted the capacity to share revenue with the schools, parks, and library, which is not permitted in non-home rule communities. Proponents noted that enactment of a real estate transfer tax of 0.5. percent had the potential to produce \$1 million annually.

The opposition to home rule in Glencoe was pronounced, with opponents arguing that home rule was not needed because Glencoe was not in dire financial straits. Some alternatively suggested that Glencoe should pursue home rule only if the village board passed a restrictive ordinance (similar to the Lake Forest model) giving residents the right to vote on certain items, such as issuance of general obligation bonds.

One significant source of opposition to home rule came from Glencoe resident Harold Katz, a respected member of the Illinois House of Representatives from 1965 to 1983. Katz was a state representative – but not a convention delegate - when the state constitutional convention was held, and he followed its progress closely.

In his 1984 oral history, Katz called home rule “an interesting and useful experiment,” but said he had “mingled feelings” about it based on his belief that “if we give too much power over the citizens to [city councils] it could redound to the detriment of the citizenry.” Katz’s hesitation in 1984 regarding home rule seems to have been primarily rooted in his fear of giving Cook County (read: Chicago) too much power. Katz characterized the General Assembly’s authority to preempt the exercise of home rule power “more apparent than real,” given that an extraordinary majority was required to preempt that power, and given the large number of Chicago representatives in the legislature. Katz further opined that most people have little idea of what is going on in their villages, and little or no idea of what ordinances are enacted. In contrast, he said, state statutes are well-indexed and readily available to interested parties.

Katz was retired from the state legislature by 1988. He lived in Glencoe and was a leading opponent of home rule there. Katz commented after its defeat, “there was no reasonable necessity for people to give up their democratic rights to participate in the governing of the village.” The chair of a local committee promoting home rule said after the 1988 defeat, “Harold Katz is extremely popular and a well respected politician in Glencoe, And since he said it wasn’t right they (residents) believed it wasn’t right.”

By 2005, Katz’s opposition to home rule had crystallized even further. In an address to Glencoe’s home rule task force one month prior to issuance of its final report, he asserted that the home rule initiative was “being taken entirely by home rule proponents who urge you to permanently disenfranchise the voters of

Glencoe from meaningful participation in the making of important decisions concerning the Village.” Katz warned, “they want to take from you your historic right to make the final decision at the ballot box if a substantial policy issue arises in our community that may significantly affect the character of the Village. They totally ignore the fact that a vote of the citizenry as a whole has a validity that cannot be matched by Board action alone.” (Interesting perspective from a longtime elected representative!) Katz’s full comments, which are representative of the sort of inflammatory opposition that can coalesce against home rule, are attached hereto. (Exhibit 7)

One month after Katz’s appearance before the Glencoe home rule task force, its members were polled for their conclusions regarding home rule. Of the 17 task force members polled, two unconditionally supported home rule and four believed action should be deferred. No task force members outright opposed home rule, but 11 offered only conditional support. (The phrase “conditional support” was generally used to characterize those who favored a limiting ordinance akin to the Lake Forest ordinance.)

Those urging deferral of home rule reasoned that the benefits were “jumping at ghosts”, with no compelling need at that time to go forward with home rule; that home rule would shift taxes among Glencoe residents, but not export them; that the affordable housing issue was still maturing and required no immediate action; and that home rule might adversely affect the school district’s ability to raise funds.

One trustee said the village board should not launch a campaign for home rule until the need arose, because if there was an attempt to enact home rule when it was not really needed, then the village, having galvanized the opposition, would not be able to enact home rule when it wanted it.

Given the lack of support for home rule, the village president decided to table the matter.

B. Kenilworth

In 2006, a five-member Blue Ribbon Home Rule Study Group was formed in Kenilworth. The chair of the Study Group subsequently presented to the Kenilworth board of trustees a power point presentation entitled “Home Rule, An Evaluation, Village of Kenilworth.” (Exhibit 8). The Study Group’s report was also distributed to the community via the April/May 2006 edition of the *Village of Kenilworth Newsletter*.

The Kenilworth report was somewhat equivocal on the subject of home rule for reasons specific to that municipality. The report noted that Kenilworth was akin to surrounding villages with home rule with one important exception: that Kenilworth is a so-called “pure vanilla” residential community with “almost no commercial base.” The report observed that while in neighboring communities, property taxes represent less than 25% of village revenues because of access to other taxes and fees derived from their commercial base, Kenilworth’s ability to generate incremental revenues was “virtually non-existent” unless a commercial base was developed. Since Kenilworth has little recourse to alternative revenue sources, adoption of home rule would give the village the ability to raise property

taxes on as “an needed” basis without periodic referenda. The group suggested that if home rule were adopted, the village could go to referendum to seek approval of a real estate transfer tax.

The report of the Home Rule Study Group was accepted by the Kenilworth Village Board on May 8, 2006, and referred to its Community Affairs Committee. In January, 2007, however, the village decided that rather than go to referendum on the question of home rule, it would focus on completing the village’s first Comprehensive Plan. The Plan was approved in January, 2008. It mentions home rule as a goal, without giving it any particular emphasis.

3. Repeal of Home Rule.

A. *Rockford*

Rockford abolished home rule in 1983, one of only four home rule units to take that step.

During the years that Rockford was still a home rule community, Rockford officials let infrastructure work languish, then instituted a series of sharp property tax increases to fund belated infrastructure maintenance. Opponents of the property tax increases circulated a petition calling for the repeal of home rule, and the referendum carried. After home rule was repealed, property taxes were cut back to non-home rule level. That led to a loss of nearly \$8 million in taxes, and Rockford was forced to cut services and social programs. In order to make up for the lost revenue, the city held seven referenda to increase the tax rate back to the home rule level. Five of the referenda succeeded, with the ultimate

result that property tax increases rose considerably above the former, non-home rule, statutory limit.

The repeal of home rule in Rockford was considered a serious blow to the home rule movement, but no municipality has repealed home rule since.

B. Lisle, Lombard, Villa Park

Prior to the Rockford flameout, home rule was repealed in three other communities: Lisle (1977), Villa Park (1980) and Lombard (1981).

Opponents of home rule in Lombard and Villa Park petitioned for an abandonment referendum on the basis that repeal of home rule would lead to a decrease in property taxes. The repeal movement was supported in both villages by The National Taxpayers United of Illinois. The referenda carried and home rule was repealed. Yet, the predicted property tax decreases never occurred for the simple reason that village officials had not used home rule authority in the first place to levy or impose any taxes, including higher property taxes. Indeed, revocation of home rule in Villa Park ultimately resulted in a property tax increase.

In Lisle, repeal of home rule occurred as a result of local authorities' outright abuse of home rule authority. Lisle officials informed residents of plans to build a new village hall. An advisory referendum was held, at which Lisle residents expressed unambiguous opposition to the plan. Local officials announced that they were proceeding regardless with their building plans, and intended to issue general obligation bonds for that purpose. Voters promptly

petitioned for a referendum to abolish home rule, the referendum carried, and the new Lisle village hall was never built.

III. Conclusion.

If Northfield decides to pursue the possibility of going to referendum on home rule, careful thought must be given to the make-up of the group studying and presenting the issue. In Winnetka and Lake Forest, it appears that the involvement of highly respected village residents in studying home rule had a direct impact on the successful referenda that followed. In Glencoe, the group that studied home rule was criticized on the grounds that it did not include any anti-home rule representation. Composing a group to study home rule in Northfield would be complicated by the fact that the Village Caucus recently debated the issue at the direction of former village president John Birkinbine, but failed to come to any conclusions.

In addition, as part of any formal study of home rule in Northfield, it is suggested that staff identify with the greatest possible specificity how the village would use home rule power. We share to a perhaps lesser extent the dilemma Kenilworth faced, *e.g.*, that our relatively limited commercial base decreases our funding resources. Given that circumstance, how would we use home rule to generate revenue? What would be our position on increasing property taxes? Would home rule have any impact on our approach to the affordable housing issue? How would we use home rule as a regulatory device?

These are just some of the issues that should be considered in deciding whether to go forward with home rule.