

Village Officer's Handbook

CHAPTER ONE: HOME RULE

5. Power to purchase, appropriate, or dispose of property - The decision to purchase, appropriate, or dispose of property is a power of substantive local self-government. However, the procedures used to purchase, appropriate, or dispose of property are matters of procedural local self-government and are regulated by State laws, unless the village has adopted a charter;
6. Compensation of employees and officers - This area is purely a matter of substantive local self-government. Statutes regulating many matters of compensation can be overridden by local ordinance. Recent court cases have held that the sick leave provision of Ohio Revised Code Section 124.38 does not apply to villages, and that sick leave benefits are a form of compensation. Therefore, the village may or may not provide sick leave benefits to its employees and officers;
7. Power to establish, locate, and vacate streets; and
8. Power to restrict the weight of vehicles using the village's streets.

VI. Police Regulations

Police regulations are laws enacted to protect the health, safety, and welfare of persons and property. They are aimed at matters of private conduct rather than matters of government. Unlike matters of local self-government, police regulations can never conflict with general laws.

- A. Conflict - This has been defined by the courts as permitting what State laws prohibit, or prohibiting what State laws permit. However, the mere absence of State law does not imply that a particular activity is permitted.
- B. General Laws - These are laws intended to have general application throughout the State. They are not of a local nature, but have Statewide significance. General laws regulate the conduct of individuals. The courts have held that State laws which attempt to regulate the actions of local government are not general laws. General laws include those enacted by the State legislature, or by State regulatory agencies with legislative authorization.

VII. Public Utilities

The power to operate public utilities has a separate and distinct source from the general home rule powers of Article XVIII, Section 3. Article XVIII, Sections 4 and 5 of the Ohio Constitution state that villages may provide public utility service for village residents directly or by contracting with others within specified limits. Article XVIII, Section 12 provides for financing the construction of public utilities by revenue bonds. Public utilities of the village are operated and managed by the board of trustees of public affairs or the village administrator, which operate under the same regulations. (Ohio Revised Code Section 735.271 to Ohio Revised Code Section 735.273)

- A. Powers under Article XVIII, Section 3; Regulations - The village's power to regulate private utilities is a police power under home rule. As such, it must not conflict with State regulation of private utilities.

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- B. Proprietary Function; Operation - The village's operation of a public utility is a "proprietary" function. This means that the defense of governmental immunity is not available to avoid liability for negligent village employees.
- C. Rate Fixing - The power to fix rates for village utilities is exercised by the board of trustees of public affairs, or by the village council if the village administrator has been appointed. Sewer rates are always fixed by village council; however, the village is given wide discretion in establishing rates for its utilities, and it is not subject to control by the State Public Utilities Commission. The only restriction is that rates must be reasonable. The courts have even approved rates which were below what was necessary to meet expenses, and rates which produced a profit. When the deficit or profit is so large as to impose what amounts to an "indirect" tax on those persons put in the position of paying the difference, the courts will likely find that the rate is unreasonable. The village cannot use its utility rates to provide revenues for other village departments, as this would undermine the State's authority to control village taxation. (Ohio Revised Code Sections 735.273 and 735.29)
- D. Utility Contracts - The village may contract for the supply of utility services to the village with other municipalities or public utilities. The village is given wide discretion in formulating the contract. The contract should contain a provision requiring a specific quality of service. It should also establish the rate and duration of the services provided. The courts have held that bidding procedures are not applicable to contracts for village utility services in other municipalities.
1. Termination - If a specific termination date is not provided, problems may arise as to when either party may terminate a contract for village utility services. The Supreme Court of Ohio has ruled that if no time is specified, utility contracts terminate after a reasonable time.
 2. Abandonment - State statute requires that no public utility may abandon its facilities without applying to the Public Utilities Commission. However, the village may sell the village utility without this application.