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Competing Local Regulations

Townships are only one level of local government in the State of Minnesota. When Minnesota officially became a territory in 1849, it followed the lead of other territories to the east and adopted county and township forms of government. This system of local governance was originally derived from England.[1] Of course as time went on, cities were added to this system as distinct legal entities with their own list of powers and duties.[2] Presently there are around 853 cities and 87 counties in the State of Minnesota.[3] This naturally provides ample opportunities for interaction, collaboration, and of course the occasional conflict for townships. This document will offer a broad outline of the relationship between townships and other forms of local government, along with offering examples of competing regulations.

Counties, cities and towns are "municipal corporations" created by authority of legislature and they derive all powers from source of their creation, except where the constitution of the state otherwise provides.[4] Thus townships are not subordinate to cities or counties.[5] Counties and cities cannot, absent a statutory grant of authority, simply impose their will upon townships.

In some cases, the legislature has given primary authority to one entity or another. For example counties are authorized to hear and decide in certain landowner complaints relating to impassible roads.[6] Further, counties, townships, and cities are authorized to engage in local planning and zoning activities.[7] However, the legislature has explicitly limited Township authority in this area by providing that Towns may not adopt official controls "inconsistent with or less restrictive than" the adopted by the county.[8] County zoning regulation provides a floor below which a township may not go, but which it is free to go above, if it so chooses.

This situation is almost exactly reversed in the case of liquor licenses. A county may not issue a retail license to sell any alcoholic beverages within a town unless the town board consents to the

[1] https://www.sos.state.mn.us/about-minnesota/minnesota-government/county-local-government/
[2] Minnesota further divides cities into "statutory cities" and "home rule cities." Minn. Stat. § 410.015
[3] https://assets.senate.mn/publications/topics/Structures_of_Counties_Cities_Towns.pdf
[4] *Laramie Cnty. Comm'rs v. Albany Cnty. Comm'rs*, 92 U.S. 307 (1875)
[5] "In subordination to the state each of these corporations [counties, cities and townships] are separate and independent organizations, though exercising similar functions. They all have the right to hold property, to make contracts, and to sue and to be sued, as well as to levy taxes. Though they exercise the functions of government under the constitution and laws of the state, and are a part of the state, they are separate corporate entities, each acting independently within its own sphere, and through its own officers." *St. Paul & S.C.R. Co. v. Robinson*, 40 Minn. 360, 367, 42 N.W. 79, 82 (1889)
[6] Minn. Stat. § 163.16
[7] Minn. Stat. § 462.357
[8] Minn. Stat. § 394.33 subd. 1

issuance.[9] Retail includes any sale for consumption.[10] This means it is possible for a town to prohibit the sale of alcoholic beverages within the town by refusing to consent to the licenses.

There are other restrictions on a county's issue of liquor licenses as well. For example, a county containing an urban town may not issue an off-sale license to an exclusive liquor store and a county that contains a non-urban town may not issue a combination off-sale and on-sale license, unless the town board adopts a resolution supporting the issuance of the license.[11]

Another way the legislature has divided authority between neighboring jurisdictions is what might be termed "backup authority." That is, one entity has the authority to regulate a subject matter if another has declined to do so. For example, under Minn. Stat. § 462.357, subd. 1, a city may adopt an ordinance to extend its zoning regulations up to two miles into the surrounding towns. However, a city may only extend its zoning regulations if neither the county nor the town has adopted zoning regulations. Another distinct example comes from Minn. Stat. § 326B.121, subd. 2(d); which provides that a city may adopt an ordinance and with the permission of the township board to extend its enforcement of the building code up to two miles outside of its boundaries. A city may not extend its enforcement of the code if the building code is already in effect for the area or if the town board does not give the city permission to extend the code.

Unfortunately, the legislature's scattershot and inconsistent approach to these issues has resulted in a situation in which it is difficult to give general recommendations about the nature of the division of authority between different political subdivisions. Townships should look closely at statutes related to the specific activity they intend to engage in, communicate regularly with their neighboring jurisdictions to see if any extraterritorial authority is claimed by someone else, and above all seek professional assistance when considering exercising a new set of powers.

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[9] Minn. Stat. § 340A.410, subd. 1.
[10] Minn. Stat. § 340A.101, subd. 26.
[11] Minn. Stat. § 340A.405, subd. 2(a) & (b).