

# LEGISLATIVE GUIDE TO IOWA LOCAL GOVERNMENT INITIATIVE AND REFERENDUM



**Note to Reader:**

Research is conducted by the Legal Services Division of the Legislative Services Agency in an objective and nonpartisan manner. Although a Legislative Guide may identify issues for consideration by the General Assembly, nothing contained in a Guide should be interpreted as advocating a particular course of action. The reader is cautioned against using information contained in a Legislative Guide to draw conclusions as to the legality of a particular behavior or set of circumstances.

**About the Author:**

Susan Crowley, J.D., University of Iowa, 1988, is a Senior Legal Counsel with the Legal Services Division of the Legislative Services Agency. Ms. Crowley has been employed by the Agency since 1990. Ms. Crowley staffs the Ways and Means and Local Government Committees and drafts legislation in the areas of taxation, elections, and local government.

This Guide was updated by Michael Duster, J.D., Drake University, 2005. Mr. Duster has been a Legal Counsel with the Legislative Services Agency since 2007.

Mr. Duster can be reached by telephone at (515) 281-4800 or by e-mail at: michael.duster@legis.state.ia.us.

December 2008

## TABLE OF CONTENTS

<b>I. Introduction.....</b>	<b>1</b>
<b>II. Background Information.....</b>	<b>1</b>
A. Initiative and Referendum.....	1
B. Legislative Powers of Local Governments.....	2
1. Iowa Home Rule Amendments.....	2
2. Iowa Local Government Charters.....	3
<b>III. City of Clinton v. Sheridan.....</b>	<b>4</b>
A. Factual Background.....	4
B. Iowa Supreme Court Ruling.....	4
1. Constitutional Analysis.....	4
2. Election Law Prohibition.....	5
C. Attorney General Opinions.....	6
<b>IV. Analyses Relating to Action of the Legislature.....</b>	<b>7</b>
A. Constitutional and Statutory Analysis.....	7
B. Legislative Implications.....	8

# Iowa Local Government Initiative and Referendum



## I. Introduction.

During the 1990s questions were raised concerning the ability of local governments governed by a home rule charter, particularly cities, to provide their citizens with initiative or referendum power. This Legislative Guide reviews municipal corporation law in general, and Iowa case law and statutes on this issue with particular focus on the Iowa Supreme Court's rulings in *City of Clinton v. Sheridan*<sup>1</sup> and *Berent v. City of Iowa City*.<sup>2</sup>

Iowa has no state constitutional provision which allows for the exercise of statewide initiative and referendum powers and the Legislature has no power to allow the statewide electorate to legislate directly by popular vote.<sup>3</sup> However, the fact that the State does not have the authority to allow initiative and referendum on state legislation does not mean that local governments may not extend local initiative and referendum power to their citizens. In *City of Clinton*, the Iowa Supreme Court held that because the Iowa Constitution bestows home rule authority on cities and because state statute does not expressly forbid local initiative and referendum, it is permissible for a city that has adopted a home rule charter for its governance to extend the power of initiative and referendum to its electors.<sup>4</sup>

References to the Iowa Code in this Legislative Guide are to the 2009 Iowa Code.

## II. Background Information.

### A. Initiative and Referendum.

The initiative power has been generally defined as the "initiation of municipal legislation and its enactment or rejection by the municipal electorate in the event the proposed measure is not enacted by their elected representatives"<sup>5</sup> and "[the] power of the people to propose bills and laws, and to enact or reject them at the polls, independent of legislative assembly."<sup>6</sup>

The referendum power is defined as "the right of the people to have an act passed by the legislative body submitted for their approval or rejection"<sup>7</sup> or "the process of referring to the electorate for approval . . . a law passed by the legislature . . . ."<sup>8</sup> In other words, the referendum "provides a mechanism for the electorate to approve or reject legislation that has already been approved by the legislature."<sup>9</sup>

---

<sup>1</sup>City of Clinton v. Sheridan, 530 N.W.2d 690 (Iowa 1995). This Legislative Guide uses the term "local governments" to refer to both cities and counties. *City of Clinton* does not address the question of whether counties have express or implied authority to grant initiative and referendum to their citizens. However, based on the language of the county home rule amendment and the language in the County Code of Iowa charter provisions--both of which mirror the city provisions--it is reasonable to conclude that the reasoning used by the *City of Clinton* court would apply to a county home rule charter as well. Iowa Const. Art. III, § 39A; Iowa Code § 331.246 (requiring county charters to be in accordance with Iowa Code § 331.238, which states "[a]n alternative form of county government shall provide for the exercise of home rule power and authority . . .").

<sup>2</sup>Berent v. City of Iowa City, 738 N.W.2d 193 (Iowa 2007).

<sup>3</sup>Santo v. State, 2 Iowa 165, 203 (Clarke 1855).

<sup>4</sup>City of Clinton, 530 N.W.2d at 694.

<sup>5</sup>Eugene McQuillin, *The Law of Municipal Corporations*, § 16.51, at 383-84 (3d ed. 2004).

<sup>6</sup>Black's Law Dictionary 784 (6th ed. 1990).

<sup>7</sup>McQuillin, § 16.52, at 386.

<sup>8</sup>Black's Law Dictionary 1281 (6th ed. 1990).

<sup>9</sup>Iowa Legislative Service Bureau, "Initiative and Referendum: The Role of Direct Democracy" (1978).



# Iowa Local Government Initiative and Referendum

---

## B. Legislative Powers of Local Governments.

The power of a local government to enact ordinances is restricted to the exercise of those legislative powers delegated to it, either expressly or by implication, by the constitution, charter, or statute.<sup>10</sup>

### 1. Iowa Home Rule Amendments.

The home rule amendments of the Iowa Constitution give cities and counties authority to determine their own local affairs and government in a manner which is not inconsistent with state statute, except that home rule power and authority does not extend to the authority to levy a tax without the express authorization of the General Assembly.<sup>11</sup> An ordinance is inconsistent with the state statute when the ordinance prohibits an act permitted by a statute or permits an act prohibited by a statute.<sup>12</sup> An ordinance is also inconsistent with state statute when it invades an area of law reserved by the legislature to itself.<sup>13</sup> For example, the Iowa General Assembly has reserved to itself enactment of laws regulating the conduct of insurance companies operating within the state. Therefore, a local government in Iowa does not have the authority to adopt ordinances, by any means, regulating insurance companies operating within the borders of the locality.

The city and county home rule amendments were ratified by the voters in 1968 and 1978, respectively, to counter the Dillon Rule. The Dillon Rule is derived from an 1868 Iowa Supreme Court ruling which stated that local governments "owe their origin to, and derive their power and rights wholly from, the legislature," and could exercise only those powers expressly granted by the state and powers incident to or necessarily implied by that express grant.<sup>14</sup>

**a. City Home Rule Amendment.** The city home rule amendment, the twenty-fifth amendment to the Iowa Constitution, reads as follows:

*Municipal home rule. Sec. 38A. Municipal corporations are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the general assembly.*

*The rule or proposition of law that a municipal corporation possesses and can exercise only those powers granted in express words is not a part of the law of this state.*<sup>15</sup>

**b. County Home Rule.** The county home rule amendment, the thirty-seventh amendment to the Iowa Constitution, reads as follows:

*Counties home rule. Sec. 39A. Counties or joint county-municipal corporation governments are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the*

---

<sup>10</sup>McQuillin, §§ 16.5-16.6, at 282-83.

<sup>11</sup>Iowa Const. Art. III, §§ 38A, 39A.

<sup>12</sup>City of Council Bluffs v. Cain, 342 N.W.2d 810, 812 (Iowa 1983).

<sup>13</sup>Id.

<sup>14</sup>City of Clinton v. Cedar Rapids & Missouri River R.R. Co., 24 Iowa 455, 475 (1868).

<sup>15</sup>Iowa Const. Art. III, § 38A.

# Iowa Local Government Initiative and Referendum



*general assembly. The general assembly may provide for the creation and dissolution of joint county-municipal corporation governments. The general assembly may provide for the establishment of charters in county or joint-municipal corporation governments.*

*If the power or authority of a county conflicts with the power and authority of a municipal corporation, the power and authority exercised by a municipal corporation shall prevail within its jurisdiction.*

*The proposition or rule of law that a county or joint county-municipal corporation government possesses and can exercise only those powers granted in express words is not a part of the law of this state.<sup>16</sup>*

## 2. Iowa Local Government Charters.

**a. Constitutional and Statutory Authority.** A local government charter is similar in concept to a state constitution; that is, it sets forth the manner in which the citizens of the locality will be governed. The authority to govern by charter may be granted either by state constitution or state statute.<sup>17</sup> Iowa law recognizes eight forms of city government, including that established pursuant to a home rule charter.<sup>18</sup> Iowa Code provisions relating to county government also permit governance by home rule charter, along with other forms of government.<sup>19</sup> The Iowa Code also contains statutory provisions relating to procedures for adoption of city and county home rule charters, contents of the charters, and amendments to the charters.<sup>20</sup> Currently, no counties in Iowa have adopted a home rule charter form of government. Four Iowa cities – Clinton, Fort Dodge, Iowa City, and Marion – operate their city governments pursuant to a home rule charter. Both Clinton and Iowa City have charters that allow citizens initiative and referendum authority.

**b. Charter Amendments: *Berent v. City of Iowa City*.** The Iowa Supreme Court's decision in *Berent v. City of Iowa City*<sup>21</sup> examined several issues relating to the content of a city's charter and the procedure for amending the charter through public initiative.<sup>22</sup> Specifically, the court was asked to determine whether three proposed amendments to the charter of the City of Iowa City should be placed before the voters.<sup>23</sup>

Each of the three initiatives were submitted with the requisite signatures; however, the city's objections committee determined that the proposed amendments were legally flawed and, as a result, the City of Iowa City did not present the amendments to the voters.<sup>24</sup> The court held that the objections committee exceeded its statutory authority when it sustained objections to the charter proposals based on

---

<sup>16</sup>Iowa Const. Art. III, § 39A.

<sup>17</sup>See, e.g., *City of Clinton*, 530 N.W.2d at 691-92 (describing Iowa's statutory and constitutional municipal government framework).

<sup>18</sup>Iowa Code § 372.1.

<sup>19</sup>Iowa Code §§ 331.231, 331.246.

<sup>20</sup>Iowa Code §§ 331.238, 331.246, 372.3, 372.9, and 372.10.

<sup>21</sup>*Berent*, 738 N.W.2d 193.

<sup>22</sup>Iowa Code § 372.11 (establishing three methods for amending a city home rule charter, including petitioners proposing an amendment to be submitted to voters for approval).

<sup>23</sup>*Berent*, 738 N.W.2d at 196.

<sup>24</sup>*Id.*



# Iowa Local Government Initiative and Referendum

---

grounds other than "validity" under Code Section 362.4. For a petition to be "valid" and placed before the voters, the petition need only have the requisite number of signatures of eligible electors.<sup>25</sup>

Despite a finding that the city's objections committee exceeded its authority, the court further held that the city has standing to challenge the substantive legality of the proposed charter amendments and that the controversy was ripe for adjudication.<sup>26</sup> The proposed amendment calling for retention elections for city manager and police chief was invalid on its face based on its conflict with Iowa law regarding the appointment and removal process of city officials.<sup>27</sup>

The other two charter proposals were challenged on the ground that they do not contain proper charter material.<sup>28</sup> The *Berent* court held that an amendment to a city charter must, as a matter of law, relate to the "form of government," which means "basic structural proposals truly involving the form, not the substance, of government . . . ."<sup>29</sup> Based on this holding, the court found a proposed amendment establishing a permanent police citizens review board to be a permissible charter amendment.<sup>30</sup> However, the court also found that a proposed city charter amendment limiting police practices with respect to nonviolent misdemeanors was an impermissible charter amendment.<sup>31</sup>

### III. Home Rule Charters: *City of Clinton v. Sheridan*.

#### A. Factual Background.

In *City of Clinton*, the City of Clinton had adopted a home rule charter which included a provision allowing the citizens of Clinton the power of initiative and referendum. When the city council attempted to submit to a vote of the people certain ordinances adopted by the council, the county auditor refused to submit the referendum issue to a vote. The city petitioned the district court, asking the court to declare the initiative and referendum provisions constitutional and not inconsistent with state law and to require the county auditor to submit the referendum issue to the voters.<sup>32</sup> The district court ruled against the City of Clinton. On appeal to the Iowa Supreme Court, the district court's decision was reversed.<sup>33</sup>

#### B. Iowa Supreme Court Ruling.

##### 1. Constitutional Analysis.

The Iowa Supreme Court ruled that, although the Iowa Code mandates that the city council is the governing body of a city, it is not inconsistent with state law for the

---

<sup>25</sup>Id. at 197.

<sup>26</sup>Id. at 203, 205.

<sup>27</sup>Id. at 210.

<sup>28</sup>Id.

<sup>29</sup>Id. at 212.

<sup>30</sup>Id. at 213.

<sup>31</sup>Id.

<sup>32</sup>*City of Clinton*, 530 N.W.2d at 691.

<sup>33</sup>Id. at 695.

# Iowa Local Government Initiative and Referendum



home rule charter of a city to permit ordinances passed by initiative and referendum vote because state statute does not include an express prohibition against a home rule charter providing for initiative and referendum voting sufficient to override the constitutional home rule amendment.<sup>34</sup> "If the general assembly intended to preempt municipal initiative and referendum powers, it could have done so by express and unambiguous statutory language."<sup>35</sup>

The Court stated that not only does the home rule amendment require an express statutory prohibition in order to invalidate initiative and referendum voting, but the Iowa Code was amended to broaden the provision relating to the contents of a city home rule charter by removing language restrictive of the contents of charters.<sup>36</sup> Section 372.10 of the Iowa Code, part of the 1972 Home Rule Act enacted by the General Assembly, had provided as follows:

*372.10 CONTENTS OF CHARTER. A home rule charter must contain and is limited to provisions for:*

- 1. A council of an odd number of members not less than five.*
- 2. A mayor, who may be one of those council members.*
- 3. Two-year or staggered four-year terms of office for the mayor and council members.*
- 4. The powers and duties of the mayor and the council, consistent with the provisions of the city code.*

The words "and is limited to" were repealed in 1975.<sup>37</sup> The court averred that, "[t]he obvious purpose of this deletion was to allow the home rule charters to include the broad powers to determine local affairs and government as provided by the constitutional amendment."<sup>38</sup> This holding in *City of Clinton* was refined by the court's 2007 decision in *Berent*. In *Berent*, the court held that despite the 1975 amendment to Code Section 372.10, the legislature did not alter Code Section 372.9, which provides that a city may adopt a home rule charter "in which its form of government is set forth."<sup>39</sup> The *Berent* court further held that the 1975 amendment was designed only to permit more experimentation with respect to form of government, while not abandoning the preexisting form of government limitation.<sup>40</sup> Accordingly, the court's decision in *Berent* disapproves of *City of Clinton* "to the extent that [it] implies that material that does not relate to form of government may be included in the charter . . . ."<sup>41</sup>

## 2. Election Law Prohibition.

The Court also entertained arguments that the initiative and referendum provisions of Clinton's home rule charter were illegal because neither was an election

<sup>34</sup>Id. at 694.

<sup>35</sup>Id. at 695.

<sup>36</sup>Id. at 694.

<sup>37</sup>1975 Iowa Acts ch. 203, § 22.

<sup>38</sup>*City of Clinton*, 530 N.W.2d at 694.

<sup>39</sup>*Berent*, 738 N.W.2d at 211 (quoting Iowa Code § 372.9).

<sup>40</sup>Id.

<sup>41</sup>Id.



## Iowa Local Government Initiative and Referendum

---

authorized by state law. The Court responded by saying that the preemption by the General Assembly of statutes pertaining to the conduct of elections in the state and the fact that the conduct of initiative and referendum elections is not specifically addressed in the Iowa Code does not mean such elections are not legal.<sup>42</sup> Indeed, McQuillin's Law of Municipal Corporations states that conduct of these elections is governed by the charter unless it has been addressed by state statute.

*[I]nitiative and referendum procedure is commonly governed by charter provisions or statutes which may be applicable only where there is no charter provision or to the extent that the procedure established by charter is incomplete.*<sup>43</sup>

Two Iowa Supreme Court justices joined in a dissent to the *City of Clinton* ruling. The dissent agreed that the city home rule amendment allows cities to exercise powers not inconsistent with state law. However, the dissent notes, Code Section 364.3, subsection 1, places an express limitation on the power of a city by requiring that the council must exercise a power "only by the passage of a motion, a resolution, an amendment, or an ordinance." It is the dissent's view that there is neither a provision in the Iowa Code nor a ruling in prior case law that overrides this limitation.<sup>44</sup>

### C. Attorney General Opinions.

In *City of Clinton*, the Court considered, and rejected, opinions issued by the Attorney General which addressed the constitutional question and the election law prohibition issue.<sup>45</sup> In several published opinions, the Attorney General opined that local governments may only authorize the presentation of questions to voters of matters that are specifically required or authorized by law to be placed before the electorate.<sup>46</sup> Furthermore, some of those opinions stated that since a charter provision authorizing initiative and referendum is inconsistent with state law, the commissioner of elections (county auditor) is authorized to refuse to conduct such an election.<sup>47</sup>

The Attorney General concedes that a charter may contain provisions in addition to those set forth in Code Section 372.10, "[however,] whatever is placed in such a charter cannot contradict or be in conflict with the constitution or a statute."<sup>48</sup> The Attorney General's opinions recounted two prior opinions which held that the type of election the charter proposes is not allowed by law, and that home rule does not give cities such authority.<sup>49</sup> The opinions also made clear that without a provision in the city code, or in the election laws allowing this type of election, a charter may not include these kinds of provisions.<sup>50</sup>

---

<sup>42</sup>City of Clinton, 530 N.W.2d at 695.

<sup>43</sup>McQuillin, § 16.58 at 439-40 (footnotes omitted).

<sup>44</sup>City of Clinton, 530 N.W.2d at 695.

<sup>45</sup>The opinions of the Attorney General cited in this Legislative Guide address only the authority of cities to grant initiative and referendum powers to its citizens. One opinion, 1995 Op. Iowa Att'y Gen. (11/22/95), concluded that counties, too, lacked this authority. However, that opinion concerned a county which had not adopted a charter form of government, but which had nonetheless attempted to submit by referendum certain questions to its electorate.

<sup>46</sup>1992 Op. Iowa Att'y Gen. 169 (10/2/92); 1976 Op. Iowa Att'y Gen. 681 (7/30/76); 1972 Op. Iowa Att'y Gen. 263 (10/15/71); 1972 Op. Iowa Att'y Gen. 520 (7/20/72).

<sup>47</sup>1992 Op. Iowa Att'y Gen. 169 (10/2/92); 1976 Op. Iowa Att'y Gen. 681 (7/30/76).

<sup>48</sup>1976 Op. Iowa Att'y Gen. 681 at 683 (7/30/76).

<sup>49</sup>Id. at 682; see also 1972 Op. Iowa Att'y Gen. 263; 1972 Iowa Att'y Gen. 520.

<sup>50</sup>1976 Op. Iowa Att'y Gen. 682.



A subsequent 1992 opinion confirmed this view:

*[W]e conclude that political subdivisions may only authorize the presenting of questions to voters on matters that are specifically required or authorized to be placed before the electorate by statute or by Constitution. . . . The commissioner of elections does not have the authority to conduct an illegal or unauthorized election, and, therefore has the authority to refuse to conduct an election if the election is not specifically authorized or required by statute or by the Constitution.*<sup>51</sup>

The Court in *City of Clinton*, of course, rejected the legal conclusions expressed by the Attorney General in these opinions:

*To require specific statutory authority to permit an initiative or referendum vote is contrary to the intent of the [state's constitutional home rule] amendment that rejected the Dillon rule. Cities no longer have only those powers granted by the legislature.*<sup>52</sup>

## IV. Analyses Relating to Action of the Legislature.

### A. Constitutional and Statutory Analysis.

The ruling in *City of Clinton* is consistent with a more general view of the law on initiative and referendum authority of local governments as expressed in McQuillin's Law of Municipal Corporations and cited throughout this Legislative Guide. McQuillin's also states that, "[h]owever, any grant of the power of initiative and referendum and its exercise are subject to, and must be consistent with, governing constitutional and statutory provisions."<sup>53</sup> The Court in *City of Clinton* noted that a city which granted its electorate initiative and referendum power via a home rule charter is not in contravention of a statute placing legislative authority solely in the city council because Code Section 372.10 allows cities broad discretion pertaining to the contents of a city home rule charter and that same statute does not expressly prohibit the grant of initiative and referendum power.<sup>54</sup> Furthermore, as the Court in *City of Clinton* stated, a constitutional provision which allows the legislature to override certain exercises of the constitutional power cannot be overridden other than by express and unambiguous statutory provisions.<sup>55</sup>

The Attorney General argued that preemption by state statute of local election law procedure implies that constitutional home rule authority is overridden simply because the procedure for implementation of a constitutionally based power, such as initiative and referendum elections, has not been addressed by state statute.<sup>56</sup> The Court deduced, however, that this argument for preemption of local election law provisions is a case of the tail wagging the dog because the argument, in effect, advocates that a constitutional provision, the municipal home rule amendment, can be overridden and its effect negated by statutory omission of the procedure to implement the provision. The integrity of a

<sup>51</sup>1992 Op. Iowa Att'y Gen. 169, 170-71 (10/2/92).

<sup>52</sup>City of Clinton, 530 N.W.2d at 695.

<sup>53</sup>McQuillin, § 16.49, at 377 (footnotes omitted).

<sup>54</sup>Cf. Berent, 738 N.W.2d at 211 (acknowledging broader discretion for the contents of a city charter so long as it relates to "form of government").

<sup>55</sup>City of Clinton, 530 N.W.2d at 695.

<sup>56</sup>1992 Op. Iowa Att'y Gen. 169 (10/2/92).





## Iowa Local Government Initiative and Referendum

---

constitutional provision conferring broad home rule authority to local governments cannot be challenged by mere statutory implication nor by statutory omission.

### **B. Legislative Implications.**

In accordance with Iowa Supreme Court jurisprudence, cities, by means of a home rule charter authorized in Code Section 372.3, may grant to their citizens initiative and referendum power. A strong argument can be made that counties, too, have this authority by virtue of the county home rule amendment of the Iowa Constitution and statutory provisions relating to charters and the legislative powers of the boards of supervisors which are similar in scope to the current statutory provisions relating to cities and city councils. However, to grant to cities and counties the authority to allow initiative and referendum by their citizens without the necessity of adopting a home rule charter would require the enactment of legislation.

The grant of initiative and referendum power has limitations inherent in any intergovernmental grant of power. Initiative and referendum power is limited to legislation within the power of the local government to enact. "The electorate has no greater power to legislate than the [local government] itself."<sup>57</sup> "An invalid ordinance is defective no matter which body attempts to enact it" and "[a] defective ordinance cannot be cured by having it submitted to and approved by the electorate."<sup>58</sup> Likewise, an ordinance is not subject to referendum if its adoption is required by state law.<sup>59</sup> In other words, an ordinance required to implement a state mandate is not subject to referendum.

0808RR

---

<sup>57</sup>McQuillin, § 16.48, at 375-76.

<sup>58</sup>Id. at 376.

<sup>59</sup>Id. § 16.53, at 395-96.