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Municipal Control of Liquor in Ohio

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NOTES

Municipal Control of Liquor In Ohio

Do Ohio municipalities have the power to control the consumption of and the traffic in intoxicating liquor within their territorial limits? Consider the recent experience of the City of Lakewood in attempting to exercise some measure of control over the location of a retail liquor outlet. The city passed an ordinance prohibiting the operation of such a business within 800 feet of a school, church, library or public playground.[1] Contrary to this, a permit holder began selling intoxicating liquor at a location situated approximately 650 feet from one of the above named premises, and the city promptly cited her for violating the ordinance. The permit holder then sought and was granted an injunction to restrain the enforcement of the ordinance,[2] and the injunction was upheld on appeal.[3] There was no finding that the City of Lakewood could not legislate on the subject of intoxicating liquor. The basis for holding the ordinance invalid was that it was in conflict with a general state law on the same subject.[4] The statute in question was nearly identical with the ordinance, with the exception that it provided for a minimum of 500 feet rather than 800 feet.[5] To one unacquainted with the history of liquor control in Ohio and who knows only that Ohio is a "home rule state,"[6] such a result may seem rather surprising. To the initiated, however, probably the only surprising thing is that Lakewood even attempted to exercise its constitutional home-rule power on this subject and in this manner.

In order to understand why this situation exists for Ohio municipalities, it is appropriate to consider briefly the basis for governmental control over intoxicating liquor and the application of that control within

1. Lakewood Ohio, Ordinance 97-56, Dec. 18, 1956, which provides: "That the location of such use shall not be within 800 feet of the boundary of a parcel of real estate having situated thereon a school, church, library or public park or playground."

2. Gozion v. City of Lakewood, Civil No. 717, 374, C.P., Cuyahoga County, Ohio, Feb. 20, 1959.

3. Gozion v. City of Lakewood, Civil No. 24, 885, Ct. App., Ohio, Dec. 18, 1959.

4. Gozion v. City of Lakewood, Civil No. 717, 374, C.P., Cuyahoga County, Ohio, Feb. 20, 1959.

5. OHIO REV. CODE § 4303.26, which provides in part that: "No permit shall be issued . . . if the business . . . is to be operated within five hundred feet from the boundaries . . . of real estate having situated thereon a school, church, library, or public playground until written notice . . . has been personally served upon the authorities in control of said school, church, library or public playground and an opportunity provided for a complete hearing upon the advisability of the issuance of said permit . . . ."

6. The term generally means or refers to powers of local self-government conferred upon municipalities by direct constitutional provision. 37 AM. JUR. *Municipal Corporations* § 102 (1941).

the State of Ohio. In conjunction therewith, the general and specific effectiveness of the home-rule provision of the Ohio constitution[7] must also be examined.

Some control over the liquor industry is essential and has long been accepted. At an early date it was said:

> By the general concurrence of opinion of every civilized and christian community there are few sources of crime and misery to society equal to the unregulated dramshop, where intoxicating liquor in small quantities, to be drunk at the time are sold indiscriminately to all persons applying. The statistics of every state show a greater amount of crime and misery attributable to the use of ardent spirits at these retail liquor saloons than to any other source.[8]

To these sentiments, most present day policemen, social workers, psychologists, criminologists, and clergymen will undoubtedly say amen. Who then shall exercise this necessary control and upon what legal basis?

FEDERAL AND STATE CONTROL

Generally, the sale or dispensation of intoxicating liquor is controlled through an exercise of the police power.[9] This concept is almost universally acknowledged. The federal government has powers in this area, but only those which are connected or associated with one of the powers expressly, or by necessary implication, granted to the federal government and which do not invade the police power inherent in the states.[10] It is not necessary to consider what these federal powers are or how they are used. The important thing is that the states retain all powers not expressly or impliedly given to the federal government. Ohio has, therefore, as a sovereign state, the power to limit and restrict by regulation the manufacture, sale and importation of intoxicating liquor by the exercise of its police power.[11] In order to enforce this power, the General Assembly has enacted legislation establishing machinery to control the liquor traffic.[12] The General Assembly has created a Department of Liquor Control, Board of Liquor Control and the position of Director of Liquor Control.[13] The Board of Liquor Control is empowered to issue, suspend, revoke and cancel permits and generally to adopt rules and regulations to carry out chapters 4301 and 4303 of the Revised Code.[14] The

7. OHIO CONST. art. XVIII, § 3.
8. Crowley v. Christensen, 137 U.S. 86, 91 (1890).
9. Kidd v. Pearson, 128 U.S. 1 (1888).
10. United States v. Constantine, 296 U.S. 287 (1935).
11. State *ex rel.* Zugravu v. O'Brien, 130 Ohio St. 23, 196 N.E. 664 (1935).
12. OHIO REV. CODE §§ 4301.01-.99, 4303.01-.99.
13. OHIO REV. CODE § 4301.02.
14. OHIO REV. CODE § 4301.03.

state then, is well equipped with both the power and the organization to control intoxicating liquor and the fact that it is authorized to do so is undisputed. The only question which remains is whether the state and federal governments are the *only* governmental bodies which have any control over the liquor industry in Ohio.

SOURCE OF MUNICIPAL POWER

Inasmuch as the state has the primary right and duty through its police power[15] to control intoxicating liquor, that police power must somehow be passed on to the municipalities or they will be impotent. This delegation may be accomplished by either a legislative or constitutional grant.[16] In Ohio and several other states, such a delegation of police power has been attempted by constitutional provision.[17] The common term applied to such provisions is "home rule" and, of course, it is not limited to liquor control.

A comprehensive study of home rule generally or in Ohio specifically, is not appropriate here.[18] However, a realization of the objectives of the system is essential to understand the position of municipalities in regard to liquor control. An enumeration of a few arguments urged for granting home rule to cities will suffice to show the theory behind such provisions. The reasons most commonly advanced are, to:

(1) Obviate the evil of unwise legislative intermeddling with the local affairs of municipalities;

(2) Foster and develop among the electors of the cities a sense of responsibility and a knowledge of local affairs;

(3) Allow the electors with the best knowledge of local affairs to legislate on such matters.[19]

The first of these reasons is perhaps the paramount one. At any rate, the purpose of home rule is clearly to allow municipalities to control matters which affect their own unique problems. Since Ohio was not a "home rule state" prior to 1912,[20] it necessarily follows that the people of Ohio had this result in mind when they approved Article XVIII of the Ohio constitution. It cannot be over-emphasized that this delegation of

15. This power is reserved to the states by the tenth amendment. United States v. Lanza, 260 U.S. 377 (1922).

16. 30 AM. JUR. *Intoxicating Liquor* § 26 (1958).

17. OHIO CONST. art. XVIII, § 3; CAL. CONST. art. XI, § 11; IDAHO CONST. art. 12, § 2; WASH. CONST. art. 11, § 11.

18. For an excellent and extensive discussion of home rule in Ohio, see Blume, *Municipal Home Rule in Ohio: The New Look*, 11 WEST. RES. L. REV. 538 (1960).

19. 37 AM. JUR. *Municipal Corporations* § 102 (1941).

20. Prior to 1912, Ohio municipalities had only such powers as were conferred upon them by the legislature. ELLIS, OHIO MUNICIPAL CODE § 1.1 (9th ed. 1955).

power is incorporated in the constitution and can only be taken away by constitutional amendment.[21]

Since the liquor traffic is controlled through the police power and the police power of Ohio municipalities stems from the home-rule provision of the Ohio constitution, an examination of that provision is necessary.

The Ohio constitution states:

> Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.[22]

This provision has generally been construed as making two separate grants of power. The first is "all powers of local self government" and the second is "local police, sanitary and similar regulations as are not in conflict with general laws."[23]

The phrase "local self-government" has given courts considerable trouble through the years. It is obviously too vague. The real problem results from the use of the word "local," which implies that there are two distinct classifications of governmental functions. Thus there would be, on the one hand, purely local operations and on the other, purely state operations. At least one authority feels that such a classification is unrealistic.[24] The weight of logic would seem to support that view considering the general purpose of the constitutional article. If it is held that there must be something purely local in nature to allow the city to act, home rule may well be dead for there is scarcely anything which is purely local in nature.

An alternative construction is possible. It can be argued that there are matters which are of either predominantly local or predominantly state concern. It has been suggested that this construction substitutes court rule for home rule.[25] Whether such a substitution is undesirable or not is immaterial. It may, in fact, be unavoidable regardless of the wording. It is probably fanciful to believe that the provision can be so worded as to avoid the necessity of interpretation.

The Ohio courts seem to have adopted the idea that there are matters which are purely local in nature.[26] This obviously gives rise to the neces-

21. OHIO CONST. art. II, § 1-a; art. XVI, §§ 1-3. In Akron v. Scalera, 135 Ohio St. 65, 68, 19 N.E.2d 279, 280 (1939), Judge Matthias said, "This view, as we have seen, entirely ignores the very essential fact that the powers of municipalities are now conferred by the constitution and not by the Legislature. Let it be clearly understood that the question here is not one of policy but one of power."

22. OHIO CONST. art. XVIII, § 3.

23. State *ex rel.* Lynch v. Cleveland, 164 Ohio St. 437, 132 N.E.2d 118 (1956).

24. ELLIS, OHIO MUNICIPAL CODE § 1.22 (9th ed. 1955).

25. *Ibid.*

26. State *ex rel.* Bindas v. Andrish, 165 Ohio St. 441, 136 N.E.2d 43 (1956).

sity for a determination of what matters are really purely local in nature. For understandable reasons, there has been no definite criteria established.[27] Although there have been a few attempts to establish a reasonable definition,[28] the courts have been compelled to resort to a process of judicial inclusion and exclusion. Short of a constitutional amendment containing an enumeration of powers to be considered within the scope of local self-government, the courts must inevitably continue on a case by case basis. In any event, liquor control has never been held by the courts to be a purely local matter. Nor has the legislature so considered it, as can be seen by the elaborate machinery it has created at the state level for liquor enforcement.

Therefore, the attempts by municipalities to control the liquor traffic have been based on the second grant of power contained in section 3, article XVIII. It states that municipalities may ". . . adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws."[29] This grant of power has been held to be limited by the phrase ". . . not in conflict with general laws."[30] Perhaps if the article had been adopted as it was originally proposed to the constitutional convention, the situation might not have been so unfavorable to the cities as it is today. The original form of the article was:

> Municipalities shall have the power to enact and enforce within their limits, such local police, sanitary and other similar regulations as are not in conflict with general laws affecting the welfare of the state as a whole; and no such regulations shall by reason of requirements therein, in addition to those fixed by law, be deemed in conflict therewith, unless the general assembly, by general law, affecting the welfare of the state as a whole, shall specifically deny all municipalities the right to act thereon.[31]

Had the provision so limiting and defining general laws been retained it seems logical to say that ordinances which are intended to confine liquor sales to a particular area of a city, for example, would be purely local in nature. Hence there would be no problem of conflict with general laws.

27. Chief Justice Weygandt has wisely pointed out that, ". . . a power that clearly is one of 'local' self-government to one mind is clearly contrary to another . . ." State *ex rel.* Lynch v. Cleveland, 164 Ohio St. 437, 438, 132 N.E.2d 118, 120 (1956). The Ohio Supreme Court also has recognized the undesirability of being forced to make never ending decisions construing the constitutional provisions. State *ex rel.* Toledo v. Cooper, 97 Ohio St. 86, 119 N.E. 253 (1917).

28. State *ex rel.* Lynch v. Cleveland, 164 Ohio St. 437, 438, 132 N.E.2d 118, 120 (1956); State *ex rel.* Arey v. Sherrill, 142 Ohio St. 574, 53 N.E.2d 501 (1944).

29. OHIO CONST. art. XVIII, § 3.

30. Fitzgerald v. City of Cleveland, 88 Ohio St. 338, 103 N.E. 512 (1913).

31. PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF OHIO 1439, 1441 (1913); see generally, Walker, *Municipal Government in Ohio Before 1912*, 9 OHIO ST. L.J. 1, 22 (1948).

Ironically, the reason this part of the proposed article was stricken was an apparent fear by the "drys" that it would work to the best interests of the liquor industry.[32] The effect has been a weakening of home rule and a resulting defeat for the cities who have tried to be *more* restrictive than the state. To their credit, the proponents of retaining the clause seem to have foreseen exactly the situation which has resulted.[33] However, the words were stricken, and today Ohio municipalities, if they desire to legislate on liquor, must avoid conflict with general laws.[34] When does such conflict arise?

The leading case in Ohio on the problem of municipal conflict with state laws is *Village of Struthers v. Sokol.*[35] The test established in that case was that conflict occurs when the ordinance permits or licenses that which the statute prohibits, or when it prohibits that which the statute permits.[36] By implication, the court apparently meant to limit this rule to instances where the state had expressly allowed or prohibited specific acts. Other cases have held substantially the same and have reaffirmed the idea that the statute must say something or there can be no conflict.[37] The gist of the matter is that if the General Assembly does not specifically provide that act *X* is illegal (or legal), there is no possible way in which an ordinance which states act *X* is legal (or illegal) can be in conflict therewith.

However, the leading Ohio case concerning conflict between state and municipal control of liquor has disregarded this general principle. Apparently the problem of conflict is not to be treated in the same way in regard to liquor control as it is in regard to other subject matter. Significantly, no justification has been advanced for the distinction. In *Neil House Hotel Co. v. City of Columbus,*[38] the city had passed an ordinance forbidding the sale of beer or intoxicating liquor after midnight. The State Board of Liquor Control had stated that liquor could not be sold between 2:30 a. m. and 5:30 a. m. The Supreme Court of Ohio, in a four to three decision, held that the ordinance was in conflict with a general law and was therefore invalid. In so doing, the court adopted a negative implication doctrine. They reasoned that since the general law stated that operation after 2:30 a. m. was illegal, the law *implied* that

32. PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF OHIO 1439 (1913).

33. *Id.* at 1464.

34. It can be said that general laws are those which operate uniformly throughout the state applying to the people of the state generally. Note, 20 U. CIN. L. REV. 400 (1951).

35. 108 Ohio St. 263, 140 N.E. 519 (1923).

36. *Id.* at 268, 140 N.E. at 521; *accord,* City of Coshocton v. Saba, 55 Ohio App. 40, 8 N.E.2d 572 (1936).

37. City of Akron v. Scalera, 135 Ohio St. 65, 19 N.E.2d 279 (1939).

38. 144 Ohio St. 248, 58 N.E.2d 665 (1944).

operation prior to that time was legal. Consequently, when the city moved to cut the time for legal sales back to midnight, it was prohibiting that which the state permitted. The decision ignores the obvious implication in *Village of Struthers v. Sokol*[39] that the state must affirmatively assert itself in order for a conflict to arise. At the very least one can say that it would have been equally logical to find that the state merely set a minimum standard, leaving the city to restrict the hours further if it felt it necessary. For example, in the *Gozion* case,[40] why not say that the state merely established 500 feet as a minimum standard, allowing the city to be more restrictive if they so desire? Such an approach has been taken in other jurisdictions.

For example, the constitution of Idaho provides that:

> Any county or incorporated city or town may make and enforce within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with general laws.[41]

The courts of that state have held that municipal ordinances which merely add a further or additional regulation to the one imposed by the state are not in conflict.[42] In fact, in a case almost identical with the *Neil House* case,[43] the court held that where the only difference between the ordinance and the statute was that the ordinance went further in its prohibition, there was no conflict.[44]

Similarily, the constitution of California provides that:

> Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.[45]

It should be noted that California has removed liquor from local control by a specific constitutional provision.[46] However, their approach to the matter of conflict between general laws and local ordinances on other subjects affords a valid comparison. The municipalities have been allowed to legislate without being guilty of conflict where the local regulation has been more restrictive.[47] The courts have recognized that local

39. 108 Ohio St. 263, 140 N.E. 519 (1923).

40. Civil No. 717, 374, C.P., Cuyahoga County, Ohio, Feb. 20, 1959.

41. IDAHO CONST. art. 12, § 2.

42. State v. Brunello, 67 Idaho 242, 176 P.2d 212 (1946); State v. Musser, 67 Idaho 214, 176 P.2d 199 (1946).

43. 144 Ohio St. 248, 58 N.E.2d 665 (1944).

44. In Clyde Hess Distributing Co. v. Bonneville County, 69 Idaho 505, 210 P.2d 798 (1949), the city said no beer could be sold from midnight Saturday until Monday morning. The state had prohibited sale only from 1 a. m. to 7 a. m. Sunday. The court held that there was no conflict between the ordinance and the statute.

45. CAL. CONST. art. XI, § 11.

46. CAL. CONST. art. XX, § 22.

47. Natural Milk Producers Ass'n of Cal. v. San Francisco, 20 Cal. 2d 101, 124 P.2d 25 (1942), *rev'd on other grounds*, 317 U.S. 423 (1943); *In re* Iverson, 199 Cal. 582, 250 Pac. 681 (1926); *In re* Hoffman, 155 Cal. 114, 99 Pac. 517 (1909).

conditions may require more stringent regulations than the state has imposed.[48]

These views are, of course, not binding on Ohio courts. However, they serve to point out another and at least equally logical approach to what is substantially the same problem. If home rule is to have substance in Ohio, the idea of negative implication must be abolished. Prior to the *Neil House* case,[49] it appeared that the holding in the *Sokol* case[50] and *Akron v. Scalera*[51] was sufficient to reject that doctrine. That was evidently an illusory hope for home rule proponents. Since the *Neil House* decision, the courts have followed the negative implication doctrine in situations involving liquor.[52] The *Neil House* case apparently stands as the law of Ohio today despite a recent trend by the Ohio Supreme Court toward liberality in regard to home rule.[53] If Ohio municipalities are to achieve any appreciable amount of control over the liquor industry within their limits, they must overcome this case. Whether they can accomplish this is natually a matter of conjecture. However, the recent case of *State ex rel. Canada v. Phillips*[54] offers encouragement.

In that case, the city of Columbus was permitted to make a civil service appointment in a manner different from that which the state statute prescribed. Caution should be exercised in attempting to apply this holding to municipal police regulations controlling traffic in or consumption of intoxicating liquor. It may well be that the decision will be limited to the administration of police and fire departments and will not be extended to police regulations relating to liquor control. The court did state that it considered:

> The authority of the General Assembly to enact laws pursuant to section 10 of article XV of the Ohio constitution, to be an authority to enact such laws to be applicable in cities only where and to the extent that such laws will not restrict the exercise by such cities of their powers of self-government.[55]

Such a statement clearly shows a sentiment by the court to give more life

48. Natural Milk Producers Ass'n of Cal. v. San Francisco, 20 Cal. 2d 101, 124 P.2d 25 (1942), *rev'd on other grounds,* 317 U.S. 423 (1943).

49. 144 Ohio St. 248, 58 N.E.2d 665 (1944).

50. 108 Ohio St. 263, 140 N.E. 519 (1923).

51. 135 Ohio St. 65, 19 N.E.2d 279 (1939). The court would not accept the idea that the city was limited to what the state expressly allowed it to do. The defendant had made the argument that since the statute was silent upon the subject of beer (as distinguished from intoxicating liquor) sales on Sunday, the implication was that it could be sold. This argument was rejected and the municipal ordinance regulating the sale of beer was upheld. *Contra,* Neil House Hotel Co. v. City of Columbus, 144 Ohio St. 248, 58 N.E.2d 665 (1944).

52. Kaufman v. Village of Paulding, 92 Ohio App. 169, 109 N.E.2d 531 (1951); Williams v. Jackson, 164 N.E.2d 195 (Ohio C.P. 1959).

53. Blume, *Municipal Home Rule in Ohio: The New Look,* 11 WEST. RES. L. REV. 538, 545 (1960).

54. 168 Ohio St. 191, 151 N.E.2d 722 (1958).

55. *Id.* at 195, 151 N.E.2d at 726.

to home rule. However, the court could well be inclined to distinguish a case involving an ordinance establishing earlier closing hours for bars on the grounds that civil service appointments are simply not comparable to such police regulations. But the language of the court indicates that it may be prepared to extend its more liberal outlook. Judge Taft said:

> It is undoubtedly true that the enforcement of laws in every part of the state is a matter of "statewide concern" . . . [But] the mere interest or concern of the state in providing similar police protection, will not justify the state's interference with such exercise by a municipality of its powers of local self-government.[56]

It should be noted that the court is speaking of matters of local self-government and not of police regulations. That police regulations are still limited by the non-conflict provision seems clear. And it is equally clear that there is still a problem of deliniating matters of local self-government from police regulations. A careful reading of the case indicates that as a weapon for reducing the scope of the *Neil House* case, it will be primarily of value to show a general "new look" in the Ohio Supreme Court's approach to home rule. The stumbling block of negative implication must still be removed.

A very recent case has thrown yet another such impediment in the path of the cities. In *City of Lyndhurst v. Compola,*[57] the court of appeals flatly stated that the regulation of the manufacture and sale of liquor in Ohio has been completely preempted by the state. If this statement is upheld by the Ohio Supreme Court, the controversy over negative implication will become a moot point. It should be noted that the zoning ordinance in this case was such that the permit holder simply could not use his permit anywhere in the city. The result, of course, was to enable the city to veto actions by the State Board of Liquor Control. This would be a conflict even under the *Sokol* case[58] since the ordinance would prohibit that which the state permits. It is to be hoped that if the case is appealed, the Ohio Supreme Court will limit it to its facts. If the statement that the state has preempted the field is allowed to stand, it will be the final blow to any meaningful control over liquor by municipalities.

LOCAL OPTION

If municipalities cannot force liquor establishments to close at certain hours[59] and cannot prohibit them from being located within certain

56. *Id.* at 200, 151 N.E.2d at 729.
57. 169 N.E.2d 558 (Ohio Ct. App. 1960).
58. 108 Ohio St. 263, 140 N.E. 519 (1923).
59. Neil House Hotel Co. v. City of Columbus, 144 Ohio St. 248, 58 N.E.2d 665 (1944)

distances of churches, schools, etc.[60] and cannot prohibit the sale of "3.2 beer" on Sunday,[61] what can they do about intoxicating liquor? The answer is that they can vote the business right out of existence. The Revised Code grants the privilege of local option to municipal corporations, to residence districts within a municipal corporation consisting of two or more contiguous election precincts and to townships.[62]

This course of action has obvious drawbacks. It is costly and cumbersome. It also has the practical disadvantage that the people of a community may very well be unwilling to eliminate liquor entirely whereas they may desire to limit the time and place of its consumption and sale. Under the local option provision, they are not permitted to express their views on this but are faced with almost an "all or nothing" type of proposition.[63] Despite these deficiencies, local option remains as a measure which can and has been used to control intoxicating liquor.[64] If the present record of frustration of municipal desires is continued,[65] we may expect to see more of this in subsequent local elections.

CONCLUSION

Ohio municipalities have ostensibly had home rule since 1912. The path to full realization of the purposes of home rule has been twisting and arduous and at times an "unhappy business."[66] And in no area has it been more frustrating to the cities than in liquor control. The municipalities have only three avenues open to them to control intoxicating liquor within their limits. They can proceed under their police power as granted them by the Ohio constitution.[67] In this, they have been notably unsuccessful, due mainly to the doctrine of negative implication. Failing in that, they can attempt to influence the legislature and thereby the Board of Liquor Control, to enact legislation and regulations to suit

60. Gozion v. City of Lakewood, Civil No. 717, 374, C.P., Cuyahoga County, Ohio, Feb. 20, 1959.

61. Williams v. City of Jackson, 164 N.E.2d 195 (Ohio C.P. 1959).

62. OHIO REV. CODE § 4301.32. Such provisions have been held constitutional as long as all parts of the state have equal opportunity to take advantage of them.

63. The electors can eliminate certain types of permits while retaining others. OHIO REV. CODE §§ 4301.36, .38.

64. In the recent elections, four areas in the Akron vicinity balloted on local option and all went "dry." Akron Beacon Journal, Nov. 10, 1960, p. 28, col. 3.

65. There has been an increasing amount of newspaper agitation in recent months over the liquor situation. The principal complaint has been that the State Board of Liquor Control is virtually ignoring local zoning boards. Akron Beacon Journal, Dec. 5, 1960, p. 25, col. 7; Cleveland Press, Dec. 1, 1960, p. 14, col. 1. However, it is not always the Board of Liquor Control which thwarts local desires. Apparently, it is often the Franklin County court, in overruling the Board of Liquor Control, which does so. Cleveland Press, Nov. 22, 1960, p. 14, col. 1.

66. Fordham and Asher, *Home Rule Powers in Theory and Practice*, 9 OHIO ST. L.J. 18 (1948).

67. OHIO CONST. art. XVIII, § 3.