



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

May 12, 1980

FILE NO. S-1491

HOME RULE:
Exercise of Exclusive State
Power by the General Assembly

Honorable T. Jordan Gallagher
State's Attorney
DeKalb County Court House
Sycamore, Illinois 60178

Dear Mr. Gallagher:

I have your letter wherein you inquire whether section 12c of Public Act 81-212 (House Bill 21), effective January 1, 1980 (to be codified at Ill. Rev. Stat., ch. 43, par. 133a), which was adopted by the General Assembly by a simple majority, rather than a three-fifths majority, validly provides for the exclusive exercise of power by the State in the area of alcoholic regulation and prohibition, and therefore, whether a home rule unit may pass an ordinance establishing a legal age for the purchase, consumption or possession of alcoholic liquor different from that set in Public Act 81-212. You advise that the city of DeKalb is a home rule unit which,

Honorable T. Jordan Gallagher - 2.

pursuant to its home rule authority, desires to enact an ordinance establishing the minimum legal age for the purchase, consumption and possession of alcoholic liquor at 19, rather than 21.

For the reasons hereinafter stated, it is my opinion that the General Assembly may, by a simple majority, provide for exercise by the State of exclusive authority in the area of alcoholic regulation and prohibition laws; that Public Act 81-212 is effective; and that, therefore, neither the city of DeKalb nor any municipality, whether a home rule unit or not, may enact an ordinance establishing the legal age for the purchase, consumption or possession of alcoholic liquor.

Section 12c of Public Act 81-212 (to be codified at Ill. Rev. Stat., ch. 43, par. 133a) provides that:

"No home rule unit, as defined in Article VII of the Illinois Constitution, may amend or alter or in any way change the legal age at which persons may purchase, consume or possess alcoholic liquors as provided in this Act, and it is declared to be the law of this State, pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Constitution, that the establishment of such legal age is an exercise of exclusive State power which may not be exercised concurrently by a home rule unit."
(Emphasis added.)

Subsections 6(h) and 6(i) of article VII of the Illinois Constitution provide that:

Honorable T. Jordan Gallagher - 3.

"(h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (1) of this Section.

(i) 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.)

Public Act 81-212 specifically provides, as required by subsection 6(h) above, for the exercise of exclusive State power and specifically limits a home rule unit's concurrent authority provided in subsection 6(i). The establishment of a minimum legal age for drinking alcoholic beverages is not a denial or a limitation on the power to tax, nor is it a power or function of a home rule unit specified in subsection 6(1), which relates to powers to make local assessments and to levy additional taxes to provide for special services.

A three-fifths majority vote is required by subsections 6(g) to "deny or limit the power to tax and any other power or function of a home rule unit not exercised or performed by the State other than a power or function specified in subsection (1) of this section" and by 6(j) to limit "the amount of debt, other than debt payable from

Honorable T. Jordan Gallagher - 4.

ad valorem property tax receipts, which home rule municipalities may incur." None of these provisions is applicable here. Therefore, a simple majority is sufficient.

The language of the Constitution as it relates to the exclusive exercise by the State, of a certain power or function, is clear and unambiguous. A full discussion of the issues may be found in County of Cook v. John Sexton Contractors (1979), 75 Ill. 2d 494, and in opinion No. S-1238, 1977 Ill. Att'y Gen. Op. 61.

Very truly yours,

A T T O R N E Y G E N E R A L