Preemption of Municipal Regulation by the Commonwealth

As discussed previously in this publication,[1] under Dillon's Rule, municipalities generally do not have inherent power to act but must rely on delegated authority from the Commonwealth. In most cases, if municipalities are otherwise authorized to act pursuant to their subordinate police power, they may promulgate regulations even though the state has also acted in that area. These municipal regulations can be supplemental or additional to those of the Commonwealth, and they must be reasonable and not offensive to the spirit of the state's regulatory provisions. That said, if the regulation contains provisions that contradict or are inconsistent with state law, those provisions would be superseded.[2] Thus, one can say that the mere fact that the state has legislatively regulated a particular field does not mean that it has completely preempted the field, thereby preventing any municipal regulation of that same subject matter.

The doctrine of "preemption," as denominated by the courts, effectively provides that certain legislation of the Commonwealth will disallow municipal regulation of the same subject or activities, even though such local regulation would otherwise be proper in the absence of a statewide scheme. The rationale for the legislative preemption of local action can be said to be based on the fact that municipalities are creatures of the Commonwealth, and their powers are derived from the Commonwealth. As such, municipalities have no inherent or independent authority to act contrary to the laws of the Commonwealth.

The Commonwealth may achieve legislative preemption of local regulation in one of two ways: (1) by explicit language within a statute establishing a statewide scheme of regulation; or (2) by implication when the state and local powers actually and materially conflict.

When there is no explicit preemption, and one is attempting to establish that preemption is to be implied, the courts look to legislative intent. To ascertain legislative intent with regard to preemption of a statewide statutory scheme over a local ordinance, the courts will consider the following pertinent questions: (1) Does the ordinance conflict with state law, either because of conflicting policies or operational effect? (e.g., Does the ordinance forbid what the Legislature has permitted?) (2) Was the state law intended expressly or impliedly to be exclusive in the field? (3) Does the subject matter reflect a need for uniformity? (4) Is the state scheme so pervasive or comprehensive that it precludes coexistence of municipal regulation? and (5) Does the ordinance stand as an

[1] *See Deskbook* article entitled "Dillon's Rule – State Primacy Over Local Governments."

[2] For example, local zoning ordinances are subordinate to the Municipalities Planning Code, Act 247 of 1968 (53 P.S. § 10101 et seq.) (MPC) and thus, to the extent that a zoning ordinance is inconsistent with the MPC, the MPC takes precedence over and invalidates the zoning enactments. *See* MPC, § 103.

obstacle to the accomplishment and execution of the full purposes and objectives of the Legislature?[3]

Courts have found an intent to totally preempt local regulation in areas including alcoholic beverages, banking and anthracite strip mining. Also, an example of an explicit preemption, for both political subdivisions and home rule municipalities, exists in Chapter 5 (Nutrient Management and Odor Management) of the Agricultural Code,[4] where the statute provides that it is of statewide concern, and that it is to occupy the whole field of nutrient management to the exclusion of all local regulation.[5]

Although the prerogative of the General Assembly to preempt municipal regulations is inherent in the relationship between Pennsylvania and its municipalities, other constitutional imperatives must be honored in the manner by which such preemption occurs. In 2013, the Pennsylvania Supreme Court held that legislation preempting local ordinances with regard to oil and gas operations was unconstitutional.[6] In finding that various sections of the Pennsylvania Oil and Gas Act (Act 13 of 2012)[7] violated Article I, § 27 (the Environmental Rights Amendment) of the Pennsylvania Constitution,[8] the Court concluded:

> Imposing statewide [industrial standards] in sensitive zoning districts lowers environmental and habitability protections for affected residents and property owners below the existing threshold, and permits significant degradation of public natural resources. The outright ban on local regulation of oil and gas operations… that would mitigate the effect, meanwhile, propagates serious detrimental and disparate effects on [natural resources]…. [T]he Commonwealth fails to respond in any meaningful way to the citizens' claims that Act 13 falls far short of providing adequate protection to existing environmental and habitability features of neighborhoods in which they have established homes, schools, businesses…. For these reasons, we are constrained to hold that the degradation of [natural resources] and the disparate impact on some citizens sanctioned by… Act 13 are incompatible with the express command of the Environmental Rights Amendment.

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[3] *See Liverpool Township v. Stephens,* 900 A.2d 1030 (Pa. Cmwlth. 2006); *Commonwealth of Pennsylvania v. Brandon,* 872 A.2d 239 (Pa. Cmwlth. 2005); *Klein v. Straban Tp.,* 705 A.2d 947 (Pa. Cmwlth. 1998).

[4] 3 Pa.C.S. § 501 et seq.

[5] 3 Pa.C.S. § 519.

[6] *Robinson Twp. v. Commonwealth*, 83 A. 3d 901 (Pa. 2013).

[7] *See* 58 Pa.C.S. §§ 3303, 3304 and 3215(b)(4).

[8] Article I, §27:

> The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.