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# Conflicting State and Local Laws

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## Conflicting State and Local Laws

Under what circumstances may a municipality pass regulations on a subject already covered by state legislation? A late pronouncement on the question by the Supreme Judicial court of Massachusetts[1] holds that a municipal ordinance penalizing the use of pinball machines is invalid where there is in effect a state statute regulating gambling, although the statute itself does not specifically refer to this form of gaming.[2] Gambling, the court reasoned, had long been exclusively controlled by statewide legislation in Massachusetts and the state statute, designed to eliminate the evil of gambling, was meant to occupy the entire legislative field. Therefore, the ordinance must be construed as being in excess of the legislative power delegated to municipalities and void.[3]

The problem of conflicting state and local regulations in its larger aspect is but one phase of the question of the extent of the right of local self government. The municipality has generally been considered to be the creature and organ of the state government creating it so that the extent of its powers is dependent on those granted by that government.[4] However, an early Michigan case[5] created some popularity for the theory that there also exists an inherent right to local self government so that the powers of the municipalities were inherent and not solely those delegated by the state. Although this theory found some support among several writers in the field,[6] it has been almost universally rejected by the courts[7] with the result today that they are in substantial agreement on the proposition that local governments are solely an organ of the state and their powers are only those delegated by it. As a result, the states have taken steps to give their municipalities varying degrees of legislative power. The most common of these steps is the so-called "Home Rule Amendment" which gives the various municipalities autonomy in regulating their internal affairs. Under this amendment it is generally recognized that municipal regulation of purely local

1 Commonwealth v. Wolbarst, 319 Mass. 291, 65 N.E. (2d) 552 (1946).

2 Mass G.L. (Ter. Ed.) c. 271 §3.

3 Mass G.L. (Ter. Ed.) c. 40 §21(1) authorizes towns to pass ordinances "for directing and managing their prudential affairs, preserving peace and good order and maintaining their internal police."

4 See 1 McQuillen, Municipal Corporations (2d ed. 1928) §145; 1 Dillon, Municipal Corporations (5th ed. 1911) §98 reads, "It must now be conceded that the great weight of legislative authority denies in toto the existence, in the absence of a special constitutional provision, of any inherent right of local self government which is beyond legislative control."

5 Cooley, J., in People v. Hurlbut, 24 Mich. 44 (1871).

6 1 McQuillen, *op. cit. supra,* note 4, §§265-6; 1 Dillon, *op. cit. supra,* note 4, §99.

7 1 Dillon, *op. cit. supra,* note 4, §98; McBain, The Doctrine of an Inherent Right of Local Self Government (1916) 16 Col. L. Rev. 190, 299.

matters is valid and independent of any conflicting state legislation, but municipal regulation of matters of general or statewide interest is subordinate to state legislation on the same subject[8] and the ordinances are void if they "conflict" with this legislation. Thus, a proper analysis in any given case would involve a determination of (1) the exact extent of the power delegated to the local government, (2) whether the matter is a subject of purely local or statewide interest,[9] and (3) whether or not the municipal regulation conflicts with any state legislation on the subject. The heart of the problem is usually found in the situation where the last named factor is the decisive issue;[10] that is, where the delegation of power to the municipality has been adequate and the subject is not a matter of purely local concern, but the remaining question to be decided is whether the ordinance is in conflict with the statute.

Inasmuch as this problem is strictly internal with each state and involves interpreting and giving effect to individual state statutes, it is not surprising that there is no general agreement on the exact meaning of the term "conflict".[11] The cases, seemingly in hopeless confusion, can be segregated for purposes of analysis into two general classes: those that apply a liberal interpretation of the term allowing municipal ordinances to stand in all cases except where the difference is irreconcilable, and those applying a strict interpretation which strikes ordinances down where there is a discernable variation from the statute. Thus, a recent California decision[12] upheld an ordinance which prohibited the carrying of dangerous weapons although the state statute regulating firearms did not so limit their use. The variation between the statute and the ordinance here was substantial in that the ordinance prohibited something which the statute allowed and the fact that the ordinance was upheld marks this as one of the more liberal decisions. Similarly, the Supreme Court of Wisconsin found no conflict between a state statute limiting the length of endurance contests and a city ordinance prohibiting them altogether.[13] The court said that both provisions could coexist and refused to invalidate the ordinance where the difference was one only of detail. In a very recent liberal construction of a municipal ordinance, the Supreme Court of Missouri held that a Kansas City ordinance requiring a physical examination for barbers every six months did not conflict with a state statute requiring a physical examination only once a year.[14]

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8 Ex Parte Daniels, 183 Cal. 636, 192 Pac. 442 (1920); Fremont v. Keating, 96 Ohio St. 468, 118 N.E. 114 (1917); State v. Jaasted, 43 Ariz. 458, 32 P. (2d) 799 (1934); Peterson v. Chicago and Alton Ry., 265 Mo. 462, 178 S.W. 182 (1915); Keefe v. People, 37 Colo. 317, 87 Pac. 791 (1906).

9 1 McQuillen, *op. cit. supra*, note 4, §194: "The consequence is there are no well established rules or principles by which to determine what are municipal and what are state affairs."

10 A large part of the difficulty in this field is caused by the fact that the courts do not always clearly distinguish among these three separate grounds. In the principal case the court discusses the inadequacy of the delegation as well as the concept that the statute occupies the entire field. The opinion infers that the delegation was construed as inadequate largely because the statute was meant to be exclusive.

11 See comments (1930) 40 Yale L. J. 647; (1942) 28 Iowa L. Rev. 108.

12 People v. Commons, 64 Cal. App. 2d Supp. 925, 148 P. (2d) 724 (1944).

13 Fox v. Racine, 225 Wis. 542, 275 N.W. 513 (1937).

14 Vest v. Kansas City, —Mo.—, 194 S.W. (2d) 38 (1946).

The opposite, more strict interpretation is found in cases with much the same factual situations. Thus, the Supreme Court of Ohio held that an ordinance prohibiting the sale of beer and intoxicating liquors after midnight was inconsistent with a state statute which prohibited their sale after two-thirty in the morning.[15] By prohibiting the sale only after two-thirty, the court reasoned, the statute was impliedly allowing it until that time and the ordinance which prohibited it after midnight was therefore inconsistent and conflicting. In another case[16] the state statute prohibited gambling in public and the ordinance was a blanket regulation against gambling in general. The Alabama Court of Appeals held that the statute, in prohibiting gambling in public, was in effect permitting it in private, so that part of the ordinance which was construed as being against gambling in private was conflicting and void. Cases following this line of construction are legion.[17]

The situation existing where a state statute and a similarly worded ordinance vary only as to the severity of the penalty provided affords a good example of the confusion surrounding the meanings of "conflict". An Ohio appellate court held that an ordinance against disturbing the peace which provided a fine of not exceeding $100 for its violation did not conflict with a statute to the same effect which provided for a fine of not more than $50.[18] The court adhered to the familiar rule that an ordinance is not void solely because it varies the penalty provided by the statute, though it would conflict if it allowed that which the statute prohibited.[19] In Texas the court held that an ordinance which provided a different penalty for a given offense than the Penal Code did was thereby conflicting with it and void.[20] Numerous cases stand on various intermediate grounds between these two findings, such as that line which holds that an ordinance having more severe penalties than the statute is valid where it is generally consistent with the statute's policy, but void if it is not.[21]

Many courts have phrased their decisions in these cases in terms of whether or not the state statute was meant to be exclusive and thereby occupy the entire legislative field. It is obvious from the above cases that a court can, by holding that a state statute on the subject impliedly permits everything it does not expressly forbid, find that a municipal ordinance conflicts with these impliedly permitted acts, and thereby accept a high standard of legislative prerogative. Conversely, by a holding that a statute covers only the items specifically referred to therein the municipality is left considerable leeway to legislate on those subjects not covered. The principal case seems to be one of those best

15 Neil House Hotel v. City of Columbus, 144 Ohio St. 248, 58 N.E. (2d) 665 (1944).

16 Town of Boaz v. Jenkins, —Ala.—, 25 So. (2d) 394 (1946).

17 State v. Stallings, 189 N.C. 104, 126 S.E. 187 (1925); Schneiderman v. Sesanstein, 121 Ohio St. 80, 167 N.E. 158 (1929); In Re Porterfield, —Cal.—, 168 P. (2d) 706 (1946); Horwith v. City of Fresno, —Cal. App.—, 168 P. (2d) 767 (1946).

18 Village of Leipsic v. Folk, 38 Ohio App. 177, 176 N.E. 95 (1931).

19 Marengo v. Rowland, 263 Ill. 531, 105 N.E. 285 (1914); Ex Parte Daniels, 183 Cal. 636, 192 Pac. 442 (1920); Town of Livingston v. Scruggs, 18 Ala. App. 527, 93 So. 224 (1922).

20 City of Wink v. Griffith Amusement Co., 149 Tex. 40, 100 S.W. (2d) 695 (1936).

21 Ex Parte Iverson, 199 Cal. 582, 250 Pac. 681 (1926); Keats v. Board of Police Commissioners of Providence, 42 R.I. 240, 107 Atl. 74 (1919); Flynn v. Bledsoe Co., 92 Cal. App. 145, 267 Pac. 887 (1928).