



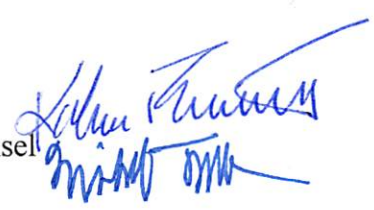
CITY OF STAMFORD, CONNECTICUT
INTER-OFFICE CORRESPONDENCE

To: Benjamin Lee, Chair
Legislative and Rules Committee of the Board of Representatives

From: Kathryn Emmett, Director of Legal Affairs and Corporation Counsel
Michael Toma, Assistant Corporation Counsel

Date: September 13, 2019

Re: Would a municipal ordinance banning the sale of dogs and cats by pet shops be preempted by State statutes?



We have been asked to provide the Board of Representatives Legislative and Rules Committee with a legal opinion concerning whether a municipal ordinance banning the sale of dogs and cats by pet shops would be preempted by State statutes. The doctrine of preemption is based upon the premise that the state legislature may reserve to itself exclusive jurisdiction over an entire subject area thereby preventing local action in that area. “A local ordinance is preempted by a state statute whenever the legislature has demonstrated an intent to occupy the entire field of regulation on the matter. . . or. . . whenever the local ordinance irreconcilably conflicts with the statute. . . . Whether an ordinance conflicts with a statute or statutes can only be determined by reviewing the policy and purposes behind the statute and measuring the degree to which the ordinance frustrates the achievement of the state’s objectives.” *Bauer v. Waste Mgmt. of Connecticut, Inc.*, 234 Conn. 221, 232 (1995) (citations omitted). “That a matter is of concurrent state and local concern is no impediment to the exercise of authority by a municipality through local regulation, so long as there is no conflict with the state legislation.” *Town of Rocky Hill v. SecureCare Realty, LLC*, 315 Conn. 265, 295 (2015).

“A test frequently used to determine whether a conflict exists is whether the ordinance permits or licenses that which the statute forbids, or prohibits that which the statute authorizes; if so, there is a conflict. If, however, both the statute and the ordinance are prohibitory and the only difference is that the ordinance goes further in its prohibition than the statute, but not counter to the prohibition in the statute, and the ordinance does not attempt to authorize that which the legislature has forbidden, or forbid that which the legislature has expressly authorized, there is no conflict.” *Aaron v. Conserv. Comm’n*, 183 Conn. 532, 544 (1981). “[M]erely because a local ordinance, enacted pursuant to the municipality’s police power, provides higher

standards than a statute on the same subject does not render it necessarily inconsistent with the state law.” *Greater New Haven Property Owners Ass’n v. City of New Haven*, 288 Conn. 181, 191 (2008).

The Legislative and Rules Committee is considering a proposed ordinance that would ban the sale of dogs and cats by pet shops. The proposed ordinance defines “pet shop” as “any place at which animals not born and raised on the premises are kept for the purpose of sale to the public.” The Connecticut statutes contain the same definition of “pet shop” as the proposed ordinance. See, C.G.S. 22-327.

Several Connecticut statutes regulate pet shops. C.G.S. 22-344 requires licensing by the State of pet shops. It provides, in pertinent part, “No person shall maintain a pet shop until he has obtained from the commissioner [of Agriculture] a license to maintain such pet shop under such regulations as the commissioner provides as to sanitation, disease and humane treatment of animals and the protection of the public safety. . . the commissioner shall issue such license provided the commissioner finds that such regulations have been complied with.” Those regulations, R.C.S.A. 22-344-16a, et seq., require, among other things, that the facilities for housing animals be structurally sound and sanitary, that they provide adequate physical comfort to the animals, that they be properly heated and ventilated, and that they provide adequate lighting.

The purpose of the license requirement in C.G.S. 22-344 is to ensure that a pet shop meets State regulations regarding sanitation, disease and humane treatment of animals and the protection of the public safety. This framework indicates that the State Legislature determined that the health and safety of the public and of the animals are adequately protected when a pet shop complies with the State regulations and obtains a license. There is nothing in the statutes to suggest that the sale of dogs and cats by a licensed pet shop is prohibited; to the contrary, the statutes implicitly authorize the sale of dogs and cats by pet shops.

C.G.S. 22-344 provides that the commissioner “shall establish and maintain . . . a list of animals which are deemed to be injurious to the health and safety of the public or whose maintenance in captivity is detrimental to the health and safety of the animal. The sale or offer of sale of any animal which is on said list is prohibited. . .” By imposing a ban on sales of those animals on the list, the State Legislature has, by implication, authorized the sale of dogs and cats, which are not on the list, by pet shops.

C.G.S. 22-344a assumes that pet shops will sell animals. It provides that euthanasia of any warm-blooded animal which was offered for sale by a pet shop and not sold or transferred to another owner shall be by lethal injection administered by a veterinarian.

C.G.S. 22-344b presumes that pet shops sell dogs and cats and regulates such sales. It provides, in pertinent part, that a pet shop licensee shall, prior to offering a dog or cat for sale and thereafter at intervals of fifteen days until such dog or cat is sold, provide for examination of such dog or cat by a veterinarian.

Taking for granted that dogs will be sold, C.G.S. 22-344d establishes conditions for the sale of dogs in pet shops. It provides, in pertinent part, that “a sign measuring not less than three inches in height and not less than five inches in width shall be posted on the cage of each dog offered for sale in a pet shop. The sign shall contain information printed in black lettering on a white background listing the breed of such dog, the locality and state in which such dog was born, and any individual identification number of such dog. . . .”

C.G.S. 22-344e clearly authorizes pet shops to sell dogs and cats. It provides, in pertinent part: “No person shall procure any dog or cat for the purpose of resale unless such person . . . holds a pet shop license under section 22-344. . . .”

C.G.S. 22-354(b) envisions that pet shops will sell dogs. It provides, in pertinent part: “Any dog sold or offered for sale by a pet shop licensee in this state shall be accompanied by a certificate of origin identifying the name and address of the person, firm or corporation that bred such dog and of any person, firm or corporation that sold such dog to such pet shop licensee.”

Although there is a general grant of authority to municipalities, found in C.G.S. 7-148(c)(7)(D), to prevent cruelty to animals and to regulate the keeping of animals, this authority cannot be exercised in such a manner as to conflict with the State’s statutes. As outlined above, the statutes authorize the sale of dogs and cats by pet shops, and so the inescapable conclusion is that the proposed ordinance, which bans such sales, would prohibit what the statutes authorize. Therefore, the proposed ordinance is preempted by State law.

The State statutes concerning pet shops have a purpose which conflicts with the purpose of the proposed ordinance. The relationship between these statutes and the proposed ordinance is different from the relationship between the State statute and the local ordinance concerning cigarette vending machines that was reviewed in *Modern Cigarette, Inc. v. Town of Orange*, 256 Conn. 105 (2001). There, the Connecticut Supreme Court found that a local ordinance banning cigarette vending machines in town was not preempted by a State statute which prohibited such machines in places primarily frequented by minors. Because the State Legislature’s concern in enacting the statute was to prevent cigarettes from being accessed by minors, the Court held that the ordinance, which was motivated by the same purpose, simply went further than the statute in accomplishing the same objective and therefore was not preempted. In contrast, the purpose of the proposed ordinance is different from the purpose of the statutes concerning pet shops. Whereas the objective of the statutes is to ensure, through licensing and inspection, that pet shops conduct their business, including the sale of dogs and cats, in a safe and healthy manner, the objective of the proposed ordinance is to prohibit the sale of dogs and cats by pet shops.

In conclusion, a municipal ordinance banning the sale of dogs and cats by pet shops would be preempted by State law.

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