



Iowa General Assembly

2003 Legal Updates

Legislative Services Agency – Legal Services Division

<http://www.legis.state.ia.us>

Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

LOCAL INDOOR SMOKING ORDINANCE

Filed by the Iowa Supreme Court
May 7, 2003

James Enterprises, Inc. vs. City of Ames and Bederazack vs. City of Ames

<http://www.judicial.state.ia.us/supreme/opinions/20030507/02-0415.asp>

Facts and Procedure. Plaintiffs and intervenor, owners of food service establishments in Ames, sought declaratory and injunctive relief to preclude the enforcement of chapter 21A of the Municipal Code of Ames, which prohibits smoking in any public place. However, the ordinance does provide exemptions to this general prohibition including a time of day exemption which allows food establishments to allow smoking between the hours of 8:30 p.m. and 6 a.m., in designated smoking areas. The plaintiffs contended that the ordinance was in contravention of state statute. The district court denied a request for a temporary injunction and dismissed a subsequent motion for summary judgment. The plaintiffs appealed the ruling on summary judgment.

Issue. The main issue on appeal was whether the district court's failure to restrict the scope of the municipal ordinance created inherent inconsistencies with the state law and whether these inconsistencies created a dilemma for those in custody or control of a public place. The city contended that the state statute did not restrict its powers to prohibit smoking in a public place and that this contention is supported by its home rule powers.

Analysis and Conclusion. The statute in question is Iowa Code chapter 142B, smoking prohibitions, and specifically sections 142B.2 and 142B.6. Section 142B.2 prohibits a person from smoking in a public place, except in a designated smoking area. The section authorizes persons having custody or control over the public place to designate smoking areas, unless smoking in such place is otherwise prohibited by the fire marshal, or by other law, ordinance, or regulation.

Section 142B.6 provides that enforcement of chapter 142B is to be implemented in an equitable manner throughout the state such that the provisions of the chapter supersede any local law or regulation which is inconsistent with or conflicts with the provisions of that chapter.

The city argued that even though the state statute provided some regulation of smoking in public places, the city had authority to prohibit smoking in public places under its local jurisdiction, pursuant to its home rule powers.

The Court reviewed the issue of home rule powers. The Court noted that home rule power is provided in Article III, Section 38A, of the Iowa Constitution and that in the Court's previous interpretation of home rule powers the Court determined these powers to be limited such that cities had authority to act unless a particular power had been denied the city by statute. Additionally, the Court noted that in cases in which the state and local governments are regulating the same area, section 364.3, subsection 3, relating to the limitations on the powers of a city, applies. That section provides that a city may not set standards which are less stringent than those imposed under state law, but may set standards which are more stringent, unless the state law provides otherwise.

The Court noted that even though under the home rule provisions, the authority exists for a local government to establish stricter standards than the state statute on the same subject, this authority is reduced if the state statute is in opposition to the stricter standard. In this case, the local ordinance prohibited designation of smoking areas, whereas the state statute authorized such designation, and thereby the standards were in conflict. By applying section 142B.6 to the conflict

between the ordinance and the statute, the Court determined that chapter 142B would supersede the conflicting provisions of the local ordinance.

The Court also reviewed the conflict between section 142B.2, subsection 2, which exempts from designation as smoking areas, places in which smoking is otherwise prohibited by the fire marshal, other law, ordinance, or regulation, and section 142B.6, which requires uniform application of the statute and the superseding of the statute over conflicting local law and regulation. The Court determined that under rules of interpretation related to conflicting statutes, section 142B.6 precluded any grant of local authority that might stem from section 142B.2, because section 142B.6 comes at the end of the chapter and therefore governs the provisions that come before it in the chapter, and section 142B.6 was enacted in 1990, three years after section 142B.2 was enacted in 1987, and therefore the later enactment would prevail.

The Iowa Supreme Court remanded the case to the district court to grant declaratory and injunctive relief to preclude enforcement of the provisions of the ordinance that were beyond the scope authorized by statute in accordance with the decision.

LSA Contact: Patty Funaro, Legal Services (515) 281-3040