



Iowa General Assembly

2006 Legal Updates

Legislative Services Agency – Legal Services Division

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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.*

ALCOHOL FEES

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Iowa Grocery Industry Association v. City of Des Moines

Iowa Supreme Court, No. 40/04-1914

http://www.judicial.state.ia.us/Supreme_Court/Recent_Opinions/20060414/04-1914.pdf

Issue. Whether a city ordinance imposing administrative fees for processing applications for liquor licenses and beer and wine permits is preempted by the State's regulation of alcoholic beverage licensing and its statutory scheme created for application fees.

Relevant Statutory Background. Chapter 123 of the Code of Iowa, cited as the "Iowa Alcoholic Beverages Control Act" (Act) provides a statutory scheme to regulate the traffic in alcoholic beverages "as an exercise of the police power of the state. . ." (Code section 123.1) The Act requires that applications for liquor licenses and beer and wine permits be filed with the local authority. The local authority is authorized to make an initial decision whether to approve or disapprove the application and then is required to forward the application to the Iowa Alcoholic Beverages Division (Division) of the Department of Commerce. The Act provides for specific application fees for licenses and permits. For beer permit applications, the local authority retains the entire amount of an application fee. For other application fees, the local authority sends the application fees to the State and receives back a percentage of the fees.

Factual and Procedural Background. In 2003, the City of Des Moines adopted an ordinance requiring an additional administrative fee on applications for liquor licenses and beer and wine permits to cover its costs in processing and investigating applications. The Iowa Grocery Industry Association (IGIA) filed a declaratory judgment action and, later, a motion for summary judgment, claiming the ordinance is illegal because state regulation of liquor licensing preempts the imposition of additional local fees. The district court granted IGIA's motion for summary judgment, and the city appealed.

Analysis. The city claimed that it had authority under the municipal home rule amendment to impose fees in addition to those authorized by the Act because the Act does not explicitly limit its right to do so. The municipal home rule amendment in Article III, section 38A of the Iowa Constitution reads as follows:

Municipal corporations are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the general assembly.

The rule or proposition of law that a municipal corporation possesses and can exercise only those powers granted in express words is not a part of the law of this state.

The Iowa Supreme Court (the Court) rejected the city's claim, citing City of Des Moines v. Gruen, 457 N.W.2d 340, 342 (Iowa 1990), wherein the Court had ruled that "[a] municipal ordinance is inconsistent with a law of the general assembly and, therefore, preempted by it, when the ordinance prohibits an act permitted by statute, or permits an act prohibited by a statute" or "when the ordinance invades an area of law the legislature reserved to itself." The Court also referred to Goodell v. Humboldt County, 575 N.W.2d 486, 492 (Iowa 1998), in which the Court stated that "municipalities do not have authority to act if a particular power has been denied them by statute." The Court stated that the local ordinance imposing additional fees was in conflict with the state statutory scheme for imposition of fees for alcoholic beverage licenses and permits. The Court noted that the Act specifically gave limited regulatory powers to local authorities, and the power to

impose an additional fee was not one of those powers bestowed by the Act. Because this power was denied to local authorities by the Act and because the Act specifies the amount of the application fee to be imposed when applying for alcoholic beverage licenses and permits, a local ordinance imposing an additional fee is inconsistent with the Act.

The Court noted that the Act gave local authorities the authority to adopt local ordinances which govern "any other activities or matters which may affect the retail sale and consumption of beer, wine, and alcoholic liquor and the health, welfare and morals of the community involved" and "not in conflict with" the Act. (Code section 123.39(2)) In addition to the fees imposed by the local ordinance, the Court recited other provisions of the local ordinance that conflicted with the Act.

The Court concluded by stating:

The general assembly has established a comprehensive and uniform procedure for controlling the fees surrounding the issuance and transfer of alcoholic beverage permits or licenses. This procedure clearly defines the local authority's role in the application process and compensates the local authority for its responsibilities. The Des Moines ordinance conflicts with this statutory scheme.

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