



The attached opinion of the Office of the Attorney General deals with local sprinkler ordinances, but is equally applicable to other building-related issues. This information has been obtained from the Connecticut Bar Association. Should a question arise, it might behoove the architect to request that the city or municipal attorney might wish to research preemption.

AGO 1992-023.

Connecticut Attorney General Opinions

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August 20, 1992

Opinion No. 1992-023

Honorable Nicholas Cioffi
Commissioner
Department of Public Safety
100 Washington Street
Hartford, Connecticut 06106

Dear Commissioner Cioffi:

You have requested our advice on whether the provisions of the Connecticut Fire Safety Code, the Connecticut State Building Code and Conn. Gen. Stat. § 29-315, with regards to automatic fire extinguishing systems, preempt the field so as to preclude local ordinances on the subject. In 1973, a similar question was asked by your agency and our response at that time was in the affirmative. See 1973 Conn. Op. Atty. Gen. (12-14-73). You now seek to have us update our 1973 advice. Our response continues to be in the affirmative.

A local ordinance is preempted by a state statute if it can be shown that the legislature intended to occupy the entire field of regulation on the matter or if the local ordinance irreconcilably conflicts with the statute. *Dwyer v. Farrell*, 193 Conn. 7, 14, 475 A.2d 257 (1984). The fact that the local ordinance does not expressly conflict with a statute will not save it, however, if the legislative purpose in enacting the statute is frustrated by the ordinance. *Manchester Sand & Gravel Co. v. South Windsor*, 203 Conn. 267, 273, 524 A.2d 621 (1987). Moreover, a municipality, as a creature of the state, can exercise only such powers as are expressly granted to it or such powers as are reasonably necessary to enable it to discharge its duties and carry into effect the objects and purposes of its creation. *Dwyer v. Farrell*, 193 Conn. at 11-12.

In *R. B. Benson & Co., Inc. v. Town of Trumbull*, Docket No. 2354 38, CSCR, Vol.II, p.579 (April 10, 1987), the court had an opportunity to pass on the very issue of whether municipalities can enact ordinances requiring more extensive use of automatic fire extinguishing systems than required by the Connecticut Fire Safety Code, the Connecticut Building Code and Conn. Gen. Stat. § 29-315. The court, in a well reasoned opinion, held that the legislature had manifested an intent to occupy the entire field of building and fire safety regulations. The court stated:

The Fire Safety Code sets forth minimum requirements for fire safety, Conn. Gen. Stat. § 29-293 (rev. to 1987). This same statute no longer empowers the municipality to enact ordinances or orders pursuant to safety in buildings. Conn. Gen. Stat. § 29-293 (rev. to 1987) (See Public Act 85-34 which (a) deleted 383 and (b) repealed § 29-383 in that same act). Conn. Gen. Stat. § 29-293 (rev. to 1987). Thus, the court finds that the legislature has demonstrated an intent to occupy the entire field of building and fire safety regulations. This conclusion is supported by the scope of the existing legislation involving these two areas. See, Conn. Gen. Stat. § 29-251 et seq. and Conn. Gen. Stat. § 29-291 et seq.

Id. at 580. The court in that case further held that a local ordinance which attempts to expand the scope of the automatic fire extinguishing system requirements of Conn. Gen. Stat. § 29-315 is invalid because it conflicts with that statute. Id. at 580.

The state building code would also preempt local ordinances on fire extinguishing systems. Conn. Gen. Stat. § 29-254 authorizes a municipality to propose amendments to the state building code. A municipality which desires to propose such an amendment must do so pursuant to the provisions of Conn. Gen. Stat. § 29-254, not through a local ordinance.

"The Building and Fire Codes apply to all municipalities through Conn. Gen. Stat. § 29-253 (rev. to 1987); See Conn. Gen. Stat. § 29-252 (§ 1200.1 of the Building Code incorporates the State Fire Code). The legislature, through § 29-252 and § 29-254 has set forth a statutory scheme for amendments to the building code. This scheme includes the opportunity for a municipality to propose amendments which may be either applicable to all municipalities or, subject to certain conditions, restricted to such municipality. Conn. Gen. Stat. § 29-254(a). See also Conn. Gen. Stat. §§ 29-256, 29-292 and 29-296 (providing for review process of the building and fire codes). Moreover, the statute also provides penalties for violations of the Fire Safety Code. Conn. Gen. Stat. § 29-295 (rev. to 1987). The broad scope of this legislation demonstrates an intent by the legislature to occupy the field of building and fire safety regulations.

R.B. Benson & Co. Inc. v. Town of Trumbull, supra at 580.

In enacting the Fire Safety Code and the Building Code the legislature manifested an intent to provide for uniformity throughout the State of Connecticut in the field of building and fire safety regulations. Local ordinances affecting the areas regulated by these codes would destroy that uniformity. See Conn. Gen. Stat. § 29-253(a); Edwards v. Code Enforcement Committee, 13 Conn. App. 1, 9 534 A.2d 617 (1987).

Although some of the relevant statutes and provisions of the building and fire safety codes have been amended since the decision in R.B. Benson & Co. Inc., the amendments do not affect the outcome of this advisory opinion.

Based on the foregoing reasons, it is our opinion that the provisions of the Connecticut Fire Safety Code, the Connecticut State Building Code and Conn. Gen. Stat. § 29-315, with regards to automatic fire extinguishing systems, preempt the field so as to preclude local ordinances on the subject.

Very truly yours,

RICHARD BLUMENTHAL
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