ATTACHMENT 6

MEMORANDUM

TO: DLG
FROM: DED
RE: Town of Newtown - Municipal Regulation of the Discharge of Firearms
DATE: May 8, 2012

A municipality's enactment of an ordinance regulating the discharge of firearms is an exercise of the police power granted to it by *Conn. Gen. Stat.* § 7-148(c)(7). *See State v. Eastman*, 92 Conn. App. 261, 262 (2005).[1] Such an ordinance is probably valid unless it violates some constitutional right or, to the extent that it is more restrictive than state law, it is preempted by state law.[2]

Ordinances regulating hunting and handgun sales have been held to be preempted by state law. *See, e.g., Kaluszka v. Town of E. Hartford*, 46 Conn. Supp. 588, 597 (Conn. Super. Ct. 1999) (hunting preempted by state law);[3] *Dwyer v. Farrell*, 193 Conn. 7 (1984) (retail sales of

---

[1] These powers include the following:

The power to "[d]efine, prohibit and abate within the municipality all nuisances and causes thereof, and all things detrimental to the health, morals, safety, convenience and welfare of its inhabitants and cause the abatement of any nuisance at the expense of the owner or owners of the premises on which such nuisance exists." § 7-148(c)(7)(E).

The power to "[p]reserve the public peace and good order, prevent and quell riots and disorderly assemblages and prevent disturbing noises." § 7-148(c)(7)(H)(viii).

The power to "[m]ake and enforce police, sanitary or other similar regulations and protect or promote the peace, safety, good government and welfare of the municipality and its inhabitants." § 7-148(c)(7)(H)(xiii).

[2] "[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 a statute ... When the state has, by statute, demonstrated an intent to occupy a field of regulation ... a local ordinance that conflicts with or frustrates the purpose of the legislature in enacting the statute cannot stand." (Citation omitted; internal quotation marks omitted .) *Craig v. Driscoll*, 262 Conn. 312, 324, 813 A.2d 1003 (2003). "The fact that a local ordinance does not expressly conflict with a statute enacted by the General Assembly will not save it when the legislative purpose in enacting the statute is frustrated by the ordinance." *Dwyer v. Farrell*, 193 Conn. 7, 14, 475 A.2d 257 (1984). *Recycling Inc. v. City of Milford*, CV106002308S, 2010 WL 4884923 (Conn. Super. Ct. Nov. 2, 2010).

[3] In *Kaluszka*, the following ordinance was held invalid:

[T]he code of ordinances of the town of East Hartford, entitled "Discharging Firearms and Other Dangerous Weapons," provides in pertinent part: "(a) No person shall discharge any firearm, rifle, C02 gun, air gun, BB gun, sling shot, or bow and arrows, within the Town. (b) This Section shall not apply ...

handguns preempted by state law).[4] However, research disclosed no case law holding that ordinances regulating the *discharge* of firearms were preempted by state law. Rather, in *State v. Eastman*, 92 Conn. App. 261, 262, 884 A.2d 442, 444 (2005), where the defendants were charged with violating a municipal ordinance[5] requiring persons to obtain a permit from the town chief of police to discharge a firearm within the limits of the municipality, the trial court held that "the ordinance . . . did not conflict with the state statutes that regulate hunting because the ordinance sought only to protect the public peace and safety rather than specifically to regulate hunting." *Id.* at 263. The appeals court dismissed the appeal as moot so it did not address the defendants' attack on the ordinance based on state law preemption. *Id.*

---

(5) In any area recommended as a hunting area by the State and approved by the Chief of Police. Such area shall be posted as required by the Chief of Police and may be closed at any time by the Chief of Police."
While § 13–33 functions primarily as a prohibition against firearms, it also by its terms grants the East Hartford chief of police the power to terminate hunting in specific areas even if those areas are in compliance with the state hunting statutes.
Id. at 589.

[4] In *Dwyer*, section 18-12.1 of the New Haven Code of Ordinances provided:
(a) No person shall advertise, sell, offer or expose for sale, or have in his possession with intent to sell, any pistol or revolver at retail unless such person shall have obtained:
(1) a federal license as a dealer in firearms or ammunition from the Bureau of Alcohol, Tobacco and Firearms;
(2) a state permit for the sale at retail of pistols and revolvers within the City of New Haven; and
(3) a state permit to engage in or conduct business as a seller within the State of Connecticut for the place of business in which such a sale of any pistol or revolver at retail shall occur from the State Tax Commissioner."
(b) No sale of any pistol or revolver at retail by any person qualified to conduct such a sale under subsection (1) shall be conducted in a private dwelling, no part of which is open to the general public.
(c) All sales of any pistol or revolver at retail by any person qualified to conduct such a sale under subsection (1) shall be conducted in premises located on property zoned as a Business District or in premises for which a variance has been granted for the sale of pistols or revolvers at retail.
(d) For the purposes of this section:
(1) the term 'sale of any pistol or revolver at retail' means any transfer of title, exchange or barter, in any manner or by any means whatsoever, of any pistol or revolver for a consideration for any purpose other than resale in the regular course of business;
(2) the term 'pistol or revolver' means any firearm having a barrel less than twelve inches in length.
Dwyer v. Farrell, 193 Conn. 7, 9, 475 A.2d 257, 259 (1984)

[5] In *Eastman*, the Orange Code of Ordinances § 211-1 provided: "Except as otherwise specifically permitted by law, no person shall discharge a firearm within the Orange town limits without first having obtained a permit from the Orange Chief of Police to do so." *Id.*

Based on the authorities cited above and although the law is unsettled, municipalities acting pursuant to their police power probably may regulate the discharge of firearms in a way that is more restrictive than state law. Nonetheless, a challenge based on state law preemption of hunting should be anticipated research has disclosed no case law supporting the conclusion that state laws regulating hunting prohibit municipal regulation of the discharge of firearms for the purpose of promoting public safety.[6]

[6] In addition, the fact that the police chief of each municipality may revoke a handgun license "for cause" is additional persuasive authority against the state preemption of the regulation of the *discharge* of firearms.

Regulations of Connecticut State Agencies
Title 29. State Police
Board of Firearms Permit Examiners
Carrying a Pistol or Revolver

Regs. Conn. State Agencies § 29-36m-10

Sec. 29-36m-10. Revocation of permit

Currentness

Any permit for the carrying of any pistol or revolver may be revoked by the issuing authority for cause.

(a) **Conditions for mandatory revocation.** Any permit for the carrying of any pistol or revolver shall be revoked upon the occurrence of any of the following:

(1) Upon conviction of the holder of such permit of a felony;

(2) Upon conviction of the holder of any of the following misdemeanors: violation of subsection (c) of section 21a-279, section 53a-58, 53a-61, 53-61a, 53a-62, 53a-63, 53a-96, 53a-175, 53a-176, 53a-178, or 53a-181d of the Connecticut General Statutes; or

(3) Upon the occurrence of any event which would have disqualified the holder from being issued the original permit or the renewal.

(b) **Notification of revocation and surrender of permit.**

(1) Upon revocation of any permit, the revoking authority shall notify the person whose permit is revoked in writing by first class mail return receipt requested. Within five (5) days of the receipt of such notification, the person whose permit is revoked shall turn the permit in to the issuing authority.

(2) Upon revocation of any permit by the commissioner, said commissioner shall notify the local authority in writing of such revocation.

(3) Upon revocation of any permit by the local authority, said local authority shall notify the commissioner in writing of such revocation.

Voice: 203-337-4120
Fax: 203-337-5520
ddobin@cohenandwolf.com
www.cohenandwolf.com

From: Grogins, David L.
Sent: Thursday, October 27, 2011 11:31 AM
To: Dobin, David
Subject: FW: question

David, please look at this question and get back to me.

From: Llodra, Pat [mailto:pat.llodra@newtown-ct.gov]
Sent: Thursday, October 27, 2011 11:19 AM
To: Grogins, David L.
Subject: question

Dave,

Are we (the Town) able to pass an ordinance that is more restrictive that the state statute regarding shooting of firearms? For exmaple, can we extend the distance needed from a structure? Can we limit time of day? Type of firearm? What are our righta and opportunities?

This is again an issue in three areas of town...
Pat

E. Patricia Llodra
First Selectman
Town of Newtown
3 Primrose Street
Newtown, CT 06470

(203) 270-4201 - Office
(203) 270-4205 - FAX

Sec. 29-36m-10. Revocation of permit, CT ADC § 29-36m-10

Credits

(Added effective September 26, 1995.)

Current with material published in Conn.L.J. through 10/18/2011.

§ 29-36m-10, CT ADC § 29-36m-10

Town ordinance that permitted the chief of police to close an area in the town to hunting conflicted with the Department of Environmental Protection's ultimate decision-making authority to close an area for safety reasons and, therefore, was preempted by hunting statutes. C.G.S.A. § 26-67c.

Attorneys and Law Firms

**1283 *589* Ralph D. Sherman, West Hartford, for the plaintiff.
Janis M. Small, Wallingford, for the defendants.

Opinion

ROBERT J. HALE, Judge Trial Referee.

The present action was commenced by service of process on September 2, 1997. As alleged in the complaint, the plaintiff, Michael Kaluszka, is a resident of the town of East Hartford who possesses a valid Connecticut hunting license. The defendants include the town of East Hartford, along with East Hartford Mayor Robert M. DeCrescenzo and East Hartford Chief of Police James Shay (hereinafter collectively town). The plaintiff is seeking a declaratory judgment that § 13-33 of the code of ordinances of the town of East Hartford is invalid to the extent that it regulates hunting, as well as a permanent injunction ordering the defendants to refrain from enforcing the portion of § 13-33 that regulates hunting.
Section 13-33 of the code of ordinances of the town of East Hartford, entitled "Discharging Firearms and Other Dangerous Weapons," provides in pertinent part: "(a) No person shall discharge any firearm, rifle, C02 gun, air gun, BB gun, sling shot, or bow and arrows, within the Town. (b) This Section shall not apply ... (5) In any area recommended as a hunting area by the State and approved by the Chief of Police. Such area shall be posted as required by the Chief of Police and may be closed at any time by the Chief of Police." While § 13-33 functions primarily as a prohibition against firearms, it also by its terms grants the East Hartford chief of police the power to terminate hunting in specific areas even if those areas are in compliance with the state hunting statutes.

**590* On October 13, 1998, the plaintiff filed a motion for summary judgment. In his motion, the plaintiff claims that the town does not have the authority to regulate hunting because the state hunting laws, General Statutes § 26-3 et seq., preempt any power the town otherwise might have in the area of hunting regulation. The plaintiff argues both that the state has occupied the field of hunting regulation and, alternatively, that the town ordinance conflicts with the state hunting statutes.

On December 24, 1998, the town filed an objection to the plaintiff's motion and, in addition, a cross motion for summary judgment. The town acknowledges that hunting is regulated by the state. The town ***1284* claims, however, that the state has not occupied the field of hunting regulation and, moreover, that § 13-33 does not conflict with state law.

On January 25, 1999, this court heard oral argument on the parties' motions.

The standards that the court must apply in deciding a motion for summary judgment are well established. "Practice Book § 384 [now § 17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.... In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party.... The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law ... and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact." (Citations omitted; **591* internal quotation marks omitted.) *Rivera v. Double A Transportation,* Inc., 248 Conn. 21, 24, 727 A.2d 204 (1999).

1 2 3 The general rule concerning state preemption of a local ordinance has been clearly stated by the Connecticut Supreme Court: "[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." (Internal quotation marks omitted.) *Bauer v. Waste Management of Connecticut, Inc.*, 234 Conn. 221, 232, 662 A.2d 1179 (1995). Thus, if the state has occupied the relevant field of regulation, any ordinance that operates to regulate such field is necessarily preempted; even if the state has not occupied the field, a local ordinance is still preempted if it conflicts with state statutory law. See, e.g., *Helicopter Associates, Inc. v. Stamford,* 201 Conn. 700, 705, 519 A.2d 49 (1986). "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." (Internal quotation marks omitted.) *Bauer v. Waste Management of*

760 A.2d 1282
Superior Court of Connecticut,
Judicial District of Hartford.

Michael KALUSZKA
v.
TOWN OF EAST HARTFORD et al.

No. CV97–0573686–S. April 22, 1999.

Resident brought action against town for declaratory judgment invalidating ordinance that permitted the chief of police to close an area in the town to hunting. Resident moved for summary judgment. The Superior Court, Judicial District of Hartford, Robert J. Hale, Judge Trial Referee, held that the ordinance was preempted by state hunting statutes.

Motion granted.

Affirmed.

West Headnotes (7)

1 **Municipal Corporations**
Conformity to Constitutional and Statutory Provisions in General
Municipal Corporations
Concurrent and Conflicting Exercise of Power by State and Municipality

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.

1 Cases that cite this headnote

2 **Municipal Corporations**
Concurrent and Conflicting Exercise of Power by State and Municipality

If the state has occupied the relevant field of regulation, any ordinance that operates to regulate such field is necessarily preempted.

3 **Municipal Corporations**
Conformity to Constitutional and Statutory Provisions in General

Even if the state has not occupied the field, a local ordinance is still preempted if it conflicts with state statutory law.

4 **Towns**
Governmental Powers in General

Town ordinance that permitted the chief of police to close an area in the town to hunting was preempted by state hunting statutes, which demonstrated an intent to occupy the field of hunting regulation. C.G.S.A. § 26–67c.

5 **Municipal Corporations**
Concurrent and Conflicting Exercise of Power by State and Municipality

The questions whether the legislature has undertaken to occupy exclusively a given field of legislation so that a statute preempts local ordinances are to be determined in every case upon an analysis of the statute and of the facts and circumstances upon which it intended to operate.

6 **Towns**
Governmental Powers in General

Town lacked authority to regulate hunting on federal, state, or private property within its borders, since state hunting statutes preempt the field. C.G.S.A. § 26–3 et seq.

7 **Towns**
Governmental Powers in General

Connecticut, Inc., supra, at 232, 662 A.2d 1179.

4 5 The court's first task, therefore, is to determine if the state hunting statutes demonstrate the intent of the General Assembly to occupy the field of hunting regulation. If such an intent is apparent, then § 13–33 of the town ordinance would be preempted to the extent that it regulates hunting, regardless of its consistency with the state regulatory scheme. See *Helicopter Associates, Inc. v. Stamford*, supra, 201 Conn. at 705, 519 A.2d 49. "[W]hether the legislature has undertaken to occupy exclusively a given field of legislation is to be determined in every case upon an analysis of the statute, and of the facts and *592 circumstances upon which it intended to operate." (Internal quotation marks omitted.) *Bencivenga v. Milford*, 183 Conn. 168, 176, 438 A.2d 1174 (1981).

The state hunting statutes appear throughout chapter 490 of the General Statutes, which covers fisheries and game. From the nature of the specific provisions throughout chapter 490, it is apparent that the legislature intended to develop a detailed scheme of wildlife management. Section 26–3, which delegates the responsibility over the development and implementation of this general scheme to the commissioner of environmental protection, provides the commissioner with broad authority over fish and game management.

The regulation of hunting is an integral part of the state's overall wildlife management plan. See *Elliott v. Waterbury*, 245 Conn. 385, 416, 715 A.2d 27 (1998). General Statutes §§ 26–65 and 26–66 provide the **1285 commissioner of environmental protection with the authority to regulate hunting in Connecticut and, through this power, to adopt regulations that restrict hunting activities in several ways. Pursuant to this authority, the commissioner has promulgated regulations designed to protect the general public. For example, § 26–66–1(d) of the Regulations of Connecticut State Agencies provides in relevant part: "There shall be no hunting with firearms, discharging of firearms ... within five hundred feet of any building occupied by people or domestic animals or used for storage of flammable or combustible materials, unless written permission of owner of such buildings is obtained and carried while hunting to allow closer shooting distances ...." Other provisions in the General Statutes regulate hunting safety by setting penalties for hunting accidents, providing for the posting of warning signs and setting up a scheme for complaints about hunting in proximity to certain buildings, persons and animals. See General Statutes §§ 26–62, 26–66a, 26–67c and 26–71.

*593 Of the specific provisions in the General Statutes pertaining to hunting, § 26–67c is of particular interest. The town argues that the purpose behind the passage of § 13–33 of the code of ordinances of the town of East Hartford is to ensure the safety of the public due to the dense population of the town. The defendant Shay testified by affidavit that pursuant to § 13–33, "[i]f there are *local* safety concerns, the area will not be approved for hunting," and that "[t]he interest of the town in regulating hunting is to protect the safety of citizens in [the town]." (Emphasis added.) Section 26–67c, however, establishes a procedure for dealing with local safety concerns. Under § 26–67c (a), the commissioner of environmental protection is required to compile a record of written complaints filed concerning the violations of the hunting regulations pertaining to hunting in proximity to persons, buildings or animals. Each year, the commissioner must then conduct a hearing to determine whether the regulations should be amended with respect to particular localities. If the commissioner finds cause to do so, he or she may then "amend such regulations for a particular locality." Subsection (b) of § 26–67c provides further that municipal officers must maintain a record of local complaints; if the officer feels that hunting in a particular area presents a "hazard to public safety," he or she may file a written report of such determination to the commissioner of environmental protection. It thus appears that the state has implemented a procedure for dealing with the concerns that prompted the enactment of § 13–33 of the town ordinances.

In addition to the detailed regulatory scheme set out in the General Statutes, the attitude of the legislature toward the municipal regulation of hunting is apparent from the proceedings of the General Assembly. In recent years, several bills that would have given municipalities some control over the regulation of hunting *594 have been proposed, but none were enacted. In 1991, the legislature considered—but did not pass—various bills that would have given local legislative bodies the power, inter alia, to restrict hunting on lots of a certain size to the use of shotguns only, to prohibit hunting within 1,000 feet of a residence and to prohibit hunting on certain tracts of land purchased jointly by the state and the municipality. See 34 H.R. Proc., Pt. 19, 1991 Sess., pp. 7255–76; Conn. Joint Standing Committee Hearings, Environment, Pt. 1, 1991 Sess., pp. 2–77. In commenting on one of these provisions on the floor, Representative Dale W. Radcliffe remarked that the provision did "not seek to allow a municipality to regulate hunting at all times, in all places and under all circumstances. That is properly an activity which is left to the regulation of the department of environmental protection and the state of Connecticut." 34 H.R. Proc., supra, p. 7263. Representative Radcliffe later commented: "I'm not seeking municipal control of hunting. I don't **1286 think anyone would responsibly advocate that. Hunting activities are properly regulated by the state." 34 H.R. Proc., Pt. 28, 1991 Sess., p. 10711. The nature of the bills considered and the comments made concerning those bills constitute evidence of the legislature's belief that municipalities have the power to regulate hunting only when and to the extent authorized by the state.

Since 1991, several other bills were proposed and rejected. In 1993, four such bills were considered. Proposed House Bill No. 5498 would have allowed municipalities, rather than the department of environmental protection, to determine by binding referendum whether to allow hunting in the municipality. Proposed House Bill No. 6791 would have enabled municipalities to restrict hunting on certain land to shotgun use only. Proposed Senate Bill No. 173 and Proposed Senate Bill No. 382 both would have granted broader power to *595 municipalities to determine whether and in what manner hunting would be permitted. None of these proposed bills, however, gained the approval of the joint committee on the environment. Similarly, in 1997, a public hearing was conducted before the joint committee on the environment on Raised Senate Bill No. 942, which would have allowed municipalities with a population density of greater than 1,000 per square mile to pass more restrictive hunting regulations. This bill, too, failed at the committee level. The common element in each of these proposed bills is the notion that for a municipality to have the authority to restrict hunting, the General Assembly must affirmatively grant the municipality that power. So far, however, the state legislature has not done so.

Moreover, Connecticut courts that have considered whether the state has preempted the local regulation of hunting have reached the conclusion that the state has occupied the field of hunting regulation. In *State v. Brennan*, 3 Conn.Cir.Ct. 413, 216 A.2d 294 (1965), the Circuit Court held that the town of Westport, which was granted the power to regulate hunting within the town by special act, had no power under the special act to regulate hunting over navigable waters adjacent to the town. In so holding, the court noted: "Under chapter 490 of the General Statutes, and more particularly under part IV thereof, the state has preempted the field of regulating and encouraging the hunting of wildlife on public and private lands and waters ...." *Id.*, at 417, 216 A.2d 294.

More recently, in *Wings Over Connecticut Corp. v. Tolland Zoning Board of Appeals*, Superior Court, judicial district of Tolland at Rockville, Docket No. 046338, 1991 WL 232581 (Oct. 31, 1991), the court was faced with a challenge to a cease and desist order issued by the zoning enforcement officer to the plaintiff requiring the plaintiff to discontinue operating a commercial hunting enterprise in a *596 residential zone. The plaintiff challenged, inter alia, the town's power to restrict hunting through zoning laws, claiming that the state had occupied the field of hunting regulation. The court agreed with the plaintiff that the state had preempted the field of hunting regulation, thus prohibiting municipalities from directly regulating hunting activities. See *id.*

6 The decisions in *Brennan* and *Wings Over Connecticut Corp.* demonstrate that the state has manifested the intent to occupy the field of hunting regulation. The comprehensive nature of the state hunting statutes and regulations, when considered along with the comments and actions of the General Assembly in its consideration of provisions that would have delegated power over hunting regulation to the towns, is ample evidence of the legislature's intent. Accordingly, it is the opinion of the court that the town has no authority to regulate hunting on federal, state or private property within its borders.1

**1287 7 Even if the court were to hold, however, that the state had not occupied the field of hunting regulation, it would still be necessary to determine whether § 13–33 of the town ordinances conflicts with any of the state hunting statutes. Where the state has not occupied a particular field of regulation, municipal regulation of that field is nonetheless preempted where such regulation is inconsistent with state law. See *Bauer v. Waste Management of Connecticut, Inc.*, supra, 234 Conn. at 232–35, 662 A.2d 1179. "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 *597 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 ." (Internal quotation marks omitted.) *Id.*, at 235, 662 A.2d 1179.

The General Statutes—in particular § 26–67c—set forth a scheme under which specific areas may be closed pursuant to safety concerns. Under § 26–67c, if a municipality determines that a safety hazard exists in connection with a specific hunting area, a procedure is in place whereby the municipality may request that hunting be restricted or terminated in such area. The department of environmental protection, however, is given the ultimate decision-making authority as to closings for safety reasons. Section 13–33 of the code of ordinances of the town of East Hartford attempts to bypass the procedure set forth in the General Statutes. Section 13–33 frustrates the purpose and operation of the state statutes, especially General Statutes § 26–67c. Accordingly, the court finds that § 13–33 of the town ordinances is in conflict with the General Statutes and is thus preempted.

It is the court's opinion that in the area of hunting regulation, the state has occupied the field. Thus, the town lacks the authority to regulate hunting, and § 13–33 of the code of ordinances of the town is invalid to the extent that it operates to regulate hunting. Furthermore, even if the court were to hold that the state has not occupied the field

of hunting regulation, the hunting regulation provisions of § 13--33 are in conflict with the state statutes and are therefore preempted. Accordingly, the plaintiff's motion for summary judgment is granted and the defendants' motion for summary judgment is denied.

Parallel Citations

760 A.2d 1282, 24 Conn. L. Rptr. 405

Footnotes

* Affirmed. *Kaluszka v. East Hartford*, 60 Conn.App. 749, 760 A.2d 1269 (2000).

1 Of course, the town, as owner, could restrict hunting on municipally owned property.

884 A.2d 442
Appellate Court of Connecticut.

STATE of Connecticut
v.
Brian R. EASTMAN, Jr.
State of Connecticut
v.
John N. Scasino.
State of Connecticut
v.
Sergio Urzua.

No. 25821.Argued Sept. 16, 2005.Decided Nov. 8, 2005.

Synopsis

Background: Hunters were convicted pursuant to nolo contendere pleas in the Superior Court, Judicial District of Ansonia-Milford, George W. Ripley II, Judge Trial Referee, and Sylvester, J., of violating town **ordinance** that required individuals to obtain permit from town chief of police before discharging a **firearm** within town limits, and were each fined $50. Hunters appealed.

Holdings: The Appellate Court, Harper, J., held that:
1 substantive issues that hunters raised on appeal were moot, and
2 hunters failed to demonstrate reasonable possibility of collateral consequences so as to overcome mootness of their appeal.

Appeal dismissed.

West Headnotes (8)

1 **Action**
Persons Entitled to Sue

Standing doctrine is designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect rights of others are forged in hot controversy, with each view fairly and vigorously represented.

1 Cases that cite this headnote

2 **Action**
Moot, Hypothetical or Abstract Questions

Justiciability requires that: (1) there be actual controversy between or among parties to dispute; (2) interests of parties be adverse; (3) matter in controversy be capable of being adjudicated by judicial power; and (4) determination of controversy will result in practical relief to complainant.

2 Cases that cite this headnote

3 **Criminal Law**
Grounds of Dismissal in General

If an actual controversy does not exist between the parties, both when the appeal is filed and through the pendency of the appeal, then the case has become moot.

4 **Towns**
Governmental Powers in General

Hunters' voluntary payment of fines that court imposed for violating town **ordinance**, requiring individuals to obtain permit from town chief of police before discharging a **firearm** within town limits, satisfied judgments against them, and thus, substantive issues that hunters raised on appeal were moot. C.G.S.A. § 54-96a.

2 Cases that cite this headnote

5 **Action**
Moot, Hypothetical or Abstract Questions
Criminal Law
Appellate Jurisdiction

A controversy continues to exist, affording the court jurisdiction, notwithstanding inability to give relief from actual injury suffered by litigant, if the actual injury suffered by the litigant potentially gives rise to a collateral injury from which the court can grant relief;

such a situation arises when a litigant demonstrates a basis upon which the court could conclude that, under the circumstances, prejudicial collateral consequences are reasonably possible as a result of the alleged impropriety challenged on the appeal.

| Cases that cite this headnote

6 **Criminal Law**
Grounds of Dismissal in General

Where there is no direct practical relief available from the reversal of the judgment, collateral consequences doctrine acts as a surrogate, calling for a determination whether a decision in the case can afford the litigant some practical relief in the future.

7 **Action**
Moot, Hypothetical or Abstract Questions

Collateral-consequences mootness doctrine requires plaintiff to demonstrate more than abstract, purely speculative injury, but does not require plaintiff to prove that it is more probable than not that prejudicial consequences will occur.

8 **Towns**
Governmental Powers in General

Hunters failed to demonstrate reasonable possibility of collateral consequences so as to overcome mootness of their appeal from convictions for violating town **ordinance** that required individuals to obtain permit from town chief of police before discharging a **firearm**; hunters' concerns that their convictions would impact negatively on their ability to hunt in future were unwarranted, and since hunters were convicted only of violations and not of crimes, they would not have criminal histories resulting from their convictions. C.G.S.A. §§ 7-148, 53a-24, 53a-27.

Attorneys and Law Firms

***444* Ralph D. Sherman, West Hartford, for the appellants (defendants).
Sarah Hanna, special deputy assistant state's attorney, with whom, on the brief, were Mary M. Galvin, state's attorney, and Marjorie Sozanski, deputy assistant state's attorney, for the appellee (state).

FLYNN, DiPENTIMA and HARPER, Js.

Opinion

HARPER, J.

262* The defendants in this consolidated appeal, Brian R. Eastman, Jr., John N. Scasino and Sergio Urzua, appeal from the judgments of the trial court rendered following the denial of their motions to dismiss for insufficiency of cause. On appeal, the defendants claim that the court improperly found that a town **ordinance requiring persons to obtain a permit from the town chief of police to discharge a **firearm** within the limits of the municipality did not intrude on the state's right to regulate hunting. We dismiss the appeal as moot.

The following facts and procedural history are relevant to our disposition of the defendants' appeal. On December 23, 2003, the defendants were hunting geese at the Grassy Hill Country Club in Orange. At the time, each of the defendants possessed a valid hunting license from the department of environmental protection. The defendants also had obtained permission from the custodian of the grounds prior to hunting on the property.
While the defendants were hunting, an individual driving by the golf course heard gunshots. The driver thought that his vehicle may have been hit by a stray shotgun pellet. He stopped to speak with the defendants and then called the Orange police department. The police subsequently issued each of the defendants a misdemeanor summons and complaint charging them **263* with having violated a town ordinance. Although the defendants possessed valid hunting licenses and had permission from the golf course to be hunting on those grounds, they did not have permits from the Orange chief of police to discharge a **firearm** on that particular property, as required by Orange Code of **Ordinances** § 211-1.[1]

The defendants each filed a motion to dismiss for insufficiency of cause, claiming that Connecticut municipalities lack the authority to regulate hunting by individuals who possess valid hunting licenses issued by the state. The court denied the defendants' motions,

holding that the ordinance at issue did not conflict with the state statutes that regulate hunting because the ordinance sought only to protect the public peace and safety rather than specifically to regulate hunting. The defendants then entered conditional pleas of nolo contendere, reserving the right to appeal from the court's denial of their motions to dismiss. The court imposed a $50 fine, without costs, on each defendant. The defendants paid their respective fines and this appeal followed.

1 2 3 The parties did not raise the issue of mootness in the present appeal, but **445 we do so sua sponte because mootness implicates the court's subject matter jurisdiction. It is, therefore, a threshold matter to resolve. *State v. Aquino*, 89 Conn.App. 395, 399, 873 A.2d 1075, cert. granted on other grounds, 275 Conn. 904, 882 A.2d 676 (2005). "The doctrine of mootness is rooted in the same policy interests as the doctrine of standing, namely, to assure the vigorous presentation of arguments concerning the matter at issue.... [Our Supreme Court has] reiterated that the standing doctrine is designed to *264 ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented.... Justiciability requires (1) that there be an actual controversy between or among the parties to the dispute ... (2) that the interests of the parties be adverse ... (3) that the matter in controversy be capable of being adjudicated by judicial power ... and (4) that the determination of the controversy will result in practical relief to the complainant." (Citations omitted; internal quotation marks omitted.) *State v. McElveen*, 261 Conn. 198, 204, 802 A.2d 74 (2002). If an actual controversy does not exist between the parties, both when the appeal is filed and through the pendency of the appeal, then the case has become moot. Id., at 205, 802 A.2d 74; *Williams v. Ragaglia*, 261 Conn. 219, 225, 802 A.2d 778 (2002).

Under General Statutes § 54-96a, the payment of a fine before a hearing in the Appellate Court "shall vacate the appeal and restore the judgment." When a defendant voluntarily pays in full a fine that has been imposed, there is "complete compliance with the sentence of the court; the [substantive] questions [become] moot; the matter [is] at an end, and no right of appeal exist[s] thereafter from the satisfied judgment and sentence.... [T]he fine having been paid, the court [cannot] reopen the judgment ... since it [is] satisfied.... It is clear that where an act has been done in execution of a sentence, the court is without power to erase the judgment." (Citation omitted; internal quotation marks omitted.) *State v. Arpi*, 75 Conn.App. 749, 752-53, 818 A.2d 48 (2003).

4 In this case, the defendants were charged with violating a town ordinance. After the court denied their motions to dismiss for insufficiency of cause, the defendants entered conditional pleas of nolo contendere, *265 reserving the right to appeal from the court's denial of their motions to dismiss. The court then fined each of the defendants $50, without costs. During the pendency of their appeal, the defendants voluntarily paid the fines that the court imposed. Consequently, the judgments against the defendants have been satisfied, and the substantive issues that they have raised on appeal are moot.

5 6 7 Notwithstanding the mootness of the defendants' appeal, "a controversy continues to exist, affording the court jurisdiction, if the actual injury suffered by the litigant potentially gives rise to a collateral injury from which the court can grant relief." *State v. McElveen*, supra, 261 Conn. at 205, 802 A.2d 74. Such a situation arises when a litigant demonstrates "a basis upon which [the court] could conclude that, under the circumstances, prejudicial collateral consequences are *reasonably possible* as a result of the alleged impropriety challenged on the appeal." (Emphasis added.) Id. "[This] standard requires that, for a litigant to invoke successfully the collateral consequences doctrine, the litigant must show that there is a reasonable possibility that prejudicial collateral consequences will occur. Accordingly, the litigant must establish these consequences by more than mere conjecture, but need not demonstrate that these consequences **446 are more probable than not. This standard provides the necessary limitations on justiciability underlying the mootness doctrine itself. Where there is no direct practical relief available from the reversal of the judgment ... the collateral consequences doctrine acts as a surrogate, calling for a determination whether a decision in the case can afford the litigant some practical relief in the future. The reviewing court therefore determines, based upon the particular situation, whether, the prejudicial collateral consequences are reasonably possible." Id., at 208, 802 A.2d 74. In other words, the litigant must "demonstrate more than an abstract, purely speculative injury, but [this standard] *266 does not require the [litigant] to prove that it is more probable than not that the prejudicial consequences will occur." *Williams v. Ragaglia*, supra, 261 Conn. at 227, 802 A.2d 778.

8 The defendants argue that their appeal is not moot because collateral consequences exist as a result of their convictions, in particular that their ability to hunt will be impaired because of the stigma associated with a hunting or firearms violation. The defendants claim that they will not be able to obtain, or retain, a gun permit because they will have to answer affirmatively questions regarding arrests and convictions.2 The defendants further note that gun permit applicants are required to submit to state and national criminal records checks pursuant to General Statutes § 29-29(a), and they argue that their convictions will prevent them from securing permits. Finally, the

defendants argue that they may be prevented from hunting on private property or from joining a hunting club if either the private property owner or hunting club asks whether they have ever been convicted of a hunting violation and they reveal that these convictions have occurred.3 We disagree with the defendants that these consequences will result from their convictions.

Contrary to the defendants' claims, they were not convicted of either a crime or a hunting violation. Rather, they were convicted of violating a town **ordinance** *267 that required individuals to obtain a permit from the town chief of police before discharging a **firearm**, an offense under General Statutes § 7-148. Such an offense is merely a *violation* as, "[a]n offense, for which the only sentence authorized is a fine, is a violation unless expressly designated an infraction." General Statutes § 53a-27(a). Because the penalty for violating Orange Code of Ordinances § 211-1 is at most only a $100 fine, the defendants' offenses constitute violations, and not infractions, under § 53a-27(a).4 Most importantly, "[t]he term 'crime' comprises felonies and misdemeanors. Every offense which is not a 'crime' is a 'violation'. Conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense." **447 General Statutes § 53a-24(a). Thus, the defendants' concerns that their convictions will impact negatively on their ability to hunt in the future are unwarranted.

The comment of the commission to revise our criminal statutes makes this even more clear: " 'Violation' ... is a new category of non-criminal offense; conduct which should be proscribed but conviction for which should in no way brand the offender a 'criminal'.... [F]or example, a person who has been convicted only of a violation can truthfully answer '*no* ' to the question: Have you ever been convicted of a crime?" (Emphasis added.) Commission to Revise the Criminal Statutes, Penal Code Comments, Connecticut General Statutes Annotated (West 2001) § 53a-24, commission comment. Accordingly, the defendants will not have to answer affirmatively questions posed on a gun permit application by a private property owner or by a hunting club relating to past arrests or convictions on the basis of *268 the violation at issue. In addition, because the defendants were convicted only of violations and not of crimes, they will not have criminal histories resulting from their convictions.5 We conclude that the defendants are unable to demonstrate a reasonable possibility of collateral consequences so as to overcome the mootness of their appeal. We must, therefore, dismiss the defendants' appeal for lack of subject matter jurisdiction.

The appeal is dismissed.

In this opinion the other judges concurred.

Parallel Citations

884 A.2d 442

Footnotes

1 Orange Code of **Ordinances** § 211-1 provides: "Except as otherwise specifically permitted by law, no person shall discharge a **firearm** within the Orange town limits without first having obtained a permit from the Orange Chief of Police to do so."

2 The defendants specifically refer to the Connecticut pistol permit application, which includes the following questions: "Have you ever been ARRESTED for any crime, in any jurisdiction, regardless of disposition? ... Have you ever been CONVICTED in any court of any crime?"

3 The defendants also claim that without a decision on the merits of this case, they will not know whether they are able to hunt in Orange without a permit from the Orange chief of police. Although the defendants may be subject to prosecution for this violation again if we dismiss their appeal for lack of subject matter jurisdiction, that possibility is not a collateral consequence of the convictions from which they are presently appealing, but rather, is an entirely distinct controversy. This appeal, therefore, still would be moot.

4 Pursuant to Orange Code of Ordinances § 211-5, "[a]ny person who violates any provision of [chapter 211] shall be subject to arrest and prosecution by the proper authorities and may be *fined* an amount not to exceed $100 for each violation." (Emphasis added.)

5 In fact, the state represented in its supplemental brief that the convictions at issue are not contained in the criminal history records for the defendants.

Grogins, David L.

From:	Dobin, David
Sent:	Tuesday, May 08, 2012 11:55 AM
To:	Grogins, David L.
Subject:	FW: question re Firearm Ordinances
Attachments:	Kaluszka_v_Town_of_East_Hartford.rtf; Memo 10-28.doc; Sec_29-36m-10 _Revocation_of_permit.rtf; State_v_Eastman.rtf

David Dobin, Esq.
Cohen and Wolf, P.C.
1115 Broad Street
Bridgeport, CT 06604
Voice: 203-337-4120
Fax: 203-337-5520
ddobin@cohenandwolf.com
www.cohenandwolf.com

AMONG THE LEGAL SERVICES THIS LAW FIRM PROVIDES IS DEBT COLLECTION AND ANY INFORMATION PROVIDED BY YOU WILL BE USED FOR THAT PURPOSE.

This message is being sent by or on behalf of a lawyer. It is intended for the exclusive use of the individual or entity that is the named addressee and may contain information that is privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee or an employee or agent responsible for delivering this message to the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify us immediately by e-mail, or by telephone (203-368-0211), discard any paper copies and delete all electronic files of the message.

Please also be advised that if you are not my client and are not represented by counsel, I am not disinterested and I am not your lawyer. In addition, you are advised to secure counsel and have your counsel contact me.

From: Dobin, David
Sent: Friday, October 28, 2011 4:12 PM
To: Grogins, David L.
Cc: Dobin, David
Subject: RE: question re Firearm Ordinances

Please see the attached memorandum and case law based on my preliminary research into state preemption of municipal ordinances regulating the discharge of firearms.

I have also attached a PDF with sample ordinances.

David

David Dobin, Esq.
Cohen and Wolf, P.C.
1115 Broad Street
Bridgeport, CT 06604

Location:
MUNICIPALITIES; WEAPONS - GUN CONTROL;
Scope:
Connecticut laws/regulations; Court Cases; Background;

ATTACHMENT 7

March 11, 2011 2011-R-0137

OLR BACKGROUNDER: FIREARM PREEMPTION ISSUES—DOES CONNECTICUT LAW PREEMPT MUNICIPAL FIREARM ORDINANCES?

By: Veronica Rose, Chief Analyst

This report discusses preemption, especially as it relates to Connecticut gun laws, in light of a bill (HB 6377) currently before the Public Safety Committee to preempt local gun control laws.

The Office of Legislative Research is not authorized to render legal opinions, and this report should not be construed as such.

SUMMARY

State preemption laws prevent local jurisdictions from enacting ordinances that irreconcilably conflict with state statutes or address matters in an area in which the legislature has demonstrated the intent to occupy the entire field of regulation. Preemption may be expressly stated in a statute or constitutional provision or implied from the statute's construction and purpose. It is up to the courts to determine if a statute preempts an ordinance.

In determining whether local jurisdictions are preempted from taking action in a particular field, the state Supreme Court has held that courts are not to look for statutory prohibition against an enactment but for statutory authority for it. Towns might look for authority to regulate firearms under their municipal powers statutes, which give them broad authority to address nuisances and take steps to protect public health and safety.

Connecticut statutes do not expressly preempt local firearm ordinances. But the courts have ruled that the statutes implicitly preempt such ordinances in two areas: firearm sales and hunting regulation. The state Supreme Court struck down a New Haven gun ordinance dealing with firearm sales, in part because the ordinance effectively prohibited what state law permitted. And the Appellate Court struck down an East Hartford ordinance to the extent it operated to regulate hunting, finding that the state has occupied the field.

Connecticut courts have not considered whether the legislature has demonstrated the intent to occupy areas of firearm regulation besides hunting and firearm sales. Given the extent of state firearm regulation in Connecticut, a court may decide that the legislature has manifested the intent to occupy the entire field of firearm regulation. But a court may also decide that, absent a direct conflict with state law, towns, under the municipal powers

statutes, may enact firearm ordinances to protect the public health, safety, and welfare of their citizens.

WHAT IS PREEMPTION?

Preemption is based on the premise that a legislature may reserve to itself exclusive jurisdiction over an entire subject area thereby preventing local action in that area.

Legislative intent to preempt municipal action may either be expressly stated in a statute or constitutional provision or implied from the construction or purpose of the legislation. Express preemption occurs when a statutory or constitutional provision contains explicit language that removes a local government's regulatory authority. For example, a bill currently before the Public Safety Committee preempts municipalities from regulating most aspects of firearms and ammunition. Under the bill:

(a) [N]o municipality may regulate, restrict or license the ownership, possession, use, purchase, sale, transportation or transfer of firearms, ammunition for firearms or components for firearms, nor may any municipality maintain or enact any ordinance or regulation which in any way regulates, restricts, prohibits, licenses or affects the ownership, possession, use, purchase, sale, transportation or transfer of such firearms, ammunition or components except as otherwise provided in state or federal law.

(b) The matters described in subsection (a) of this section are under the exclusive jurisdiction of the state and federal government, and the laws relating to such matters are intended to fully occupy the areas described and preempt any city or town, or any political subdivision of a city or town from legislating on such matters except when expressly permitted by the state.

(c) A municipality shall not define any activity related to firearms as constituting a public nuisance or as being detrimental to public health and safety.

(d) The provisions of this section shall supersede any inconsistent ordinances or regulations enacted by a municipality(http://www.cga.ct.gov/2011/TOB/H/2011HB-06377-R00-HB.htm).

Absent explicit preemptive statutory language, courts may infer an implied intent on the state's part to assert exclusive authority over a subject matter when a comprehensive scheme of state regulation exists on that subject. This is referred to as implied preemption. The state Supreme Court has held that "[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. . . ."(*Bauer v. Waste Management of Connecticut,* Inc., 234 Conn. 221, 232 (1995)).

Even if the legislature has not occupied a field, courts may find that a municipal ordinance is preempted if it conflicts with state law, making compliance with both state law and the ordinance impossible. This is referred to as conflict preemption. "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 (*Id.,* at 232). The state Supreme Court has ruled that (1) an ordinance is not in conflict with a state statute if it only enlarges on "the provisions of a statute by requiring more than [the] statute" (*Aaron v. Conservation Commission,* 183 Conn. 532, 544 (1981)) and (2) an ordinance that is not in conflict with a

statute is not preempted by it (*Modern Cigarette, Inc. v. Orange*, 256 Conn. 105, 130, 131 (2001)).

[The] 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. Conversation Commission*, 183 Conn. 532, 544).

STATE FIREARM REGULATION AND MUNICIPAL POLICE POWERS

Firearm Regulation

State law extensively regulates firearm use, sale, transfer, possession, and transportation. For example, it prohibits (1) firearm possession in certain places and by certain people, (2) possession of certain types of firearms, (3) carrying or transporting of firearms in an unauthorized manner, (4) discharging firearms in certain locations, and (5) transferring firearms to unauthorized persons (OLR Report 2007-R-0369 for a detailed summary of Connecticut gun laws).

The statutes neither expressly prohibit municipalities from enacting firearm ordinances nor authorize municipalities to enact such ordinances. But, in determining whether a municipality has the authority to enact an ordinance, the state Supreme Court has held that courts are not to look for statutory prohibition against such an enactment. Instead, they must look for statutory authority for it (*Simons v. Canty*, 195 Conn. 524, 530 (1985), citing *Avonside, Inc. v. Zoning & Planning Commission*, 153 Conn. 232, 236 (1965)). And while towns may not have specific authority to regulate firearms, the general statutory grant of police powers may be sufficient to authorize them to do so within their boundaries.

Municipal Powers Re: Health and Safety

The state Supreme Court has ruled that a municipality's powers are those that are (1) expressly granted or (2) by implication, necessary to exercise those powers expressly granted (*Hennessy v. City of Bridgeport*, 231 Conn. 656 (1990)). The statues give towns the power "to make and enforce police, sanitary and similar regulations and protect or promote the peace, safety, good government and welfare of the municipality and its inhabitants" and "provide for the health of the inhabitants of the municipality and do all things necessary or desirable to secure and promote the public health" (CGS § 7-148(c)(7)(H)(xiii, xi)).

In 2001, the state Supreme Court considered municipal power to adopt health and safety ordinances and held that municipalities may prohibit cigarette vending machines within their boundaries (*Modern Cigarette, Inc. v. Orange*, 256 Conn. 105 (2001)).

The trial court had found that (1) the town and state both had a legitimate interest in promoting the health, safety, and welfare of their citizens by regulating tobacco products and preventing minors from getting access to cigarettes; (2) in spite of the laws barring minors from buying tobacco, they had little difficulty in buying cigarettes from machines;

and (3) the town's ordinance was rationally related to the goal of preventing youth access to tobacco. Nonetheless, the court concluded that the state law governing cigarette vending machines (CGS § 12-289a) preempted the ordinance. The court held that, although the law allows municipalities to impose more restrictive conditions on vending machines than the statute provides, the legislature had not granted municipalities the power to ban vending machines outright. The court accordingly declared the ordinance invalid. (The dissent in the case contrasted this statute with CGS § 30-9, which allows municipalities to ban the sale of liquor.)

On appeal to the state Supreme Court, Justice Katz, writing for the majority, discussed the legal principles underlying a municipality's police powers and the court's deference to their exercise. Justice Katz then discussed how the Court determines whether a local ordinance is preempted by statute. She noted that preemption occurs when the legislature has demonstrated the intent to occupy the entire field of regulation or when a local ordinance irreconcilably conflicts with a statute. Justice Katz also noted that (1) the legislature had clearly anticipated municipalities adopting public health regulations when it granted them broad police powers and (2) if the legislature had wanted to preempt a municipality from adopting an ordinance banning vending machines, it could have done so explicitly.

The majority upheld the ordinance, in part, based on the fact that the legislature did not explicitly preempt municipal regulations that went beyond the state regulation. It cited *Aaron v. Conservation Commission*, (183 Conn. 532, 544 (1981)), which held that "[w]here a municipal ordinance merely enlarges on the provisions of a statute by requiring more than a statute, there is no conflict unless the legislature has limited the requirements for all cases."

CONNECTICUT COURT DECISIONS INVOLVING FIREARM ORDINANCES

Connecticut courts have held that state statutes preempt local firearm regulation in two areas: firearm sales and hunting regulation. They have not considered whether the legislature has demonstrated the intent to occupy areas of firearm regulation in other areas.

Firearm Sales

State statutes require anyone who wishes to sell handguns at retail to first obtain a permit from the local police (or selectmen, where applicable). The permit holder may sell guns in the "room, store, or place" described in the permit (CGS §§ 29-28 to -32).

The state Supreme Court has held that these statutes preempt municipal regulations that are irreconcilable with the state's requirements. In *Dwyer v. Farrell*(193 Conn. 7 (1984)), the Court struck down a New Haven ordinance that (1) required sellers to have a federal firearms license, a state tax permit, and a state gun permit and (2) prohibited sales in private dwellings or anywhere outside an area zoned as a business district, unless the seller obtained a variance. The Court reasoned that state laws showed a clear legislative intent to regulate gun sales, including those by nondealers and people living in residential neighborhoods. Thus, the ordinance effectively prohibited what state law clearly permitted because a "casual seller residing in a nonbusiness zone can have no real hope of ever conforming to the local ordinance." According to the trial court:

[T]he New Haven ordinance removes an entire class of persons as potential sellers of handguns at retail. The state permit is rendered an illusory right because a casual seller residing in a nonbusiness zone can have no real hope of ever conforming to the local ordinance. In this respect the local ordinance conflicts with the legislative intent as expressed in the applicable statutes. The city has removed a right that the state permit bestows and thus has exceeded its powers (*Id.*, at p. 14).

Dwyer was particularly concerned with handgun sales by individuals. The Court specifically noted that it was not deciding on whether a municipality could pass a zoning ordinance restricting the sale of handguns to specific zones. This would seem to allow towns to regulate the location, at least, of commercial gun outlets. West Hartford, for example, prohibits gun shops in 'neighborhood business districts,' allowing them in "business districts" as a secondary use (e.g., as a department in a sporting goods or department store). A "neighborhood business district" is defined as an area where stores provide goods and services predominately for surrounding residents. These might include convenience, package, or drug stores (West Hartford Municipal Code § 177-16.2).

Hunting

Several courts have considered whether state law preempts local regulation of hunting, including *State v. Brennan* (3 Conn. Cir. Ct. 413, 216 A.2d 294 (1965)) and *Kaluszka v. East Hartford* (60 Conn. App. 749 (2000)).

In *Brennan*, the court held that the town of Westport, which was granted the power to regulate hunting within the town by special act, had no power under the special act to regulate hunting over navigable waters adjacent to the town. The court found that the state has preempted the field of regulating and encouraging the hunting of wildlife on public and private lands and waters (*Id., 417*).

In *Kaluszka*, the Appellate Court upheld a lower court decision that (1) an East Hartford ordinance was invalid to the extent it operated to regulate hunting and (2) the state has occupied the field in the area of hunting regulation. According to the trial court:

The comprehensive nature of the state hunting statutes and regulations, when considered along with the comments and actions of the General Assembly in its consideration of provisions that would have delegated power over hunting regulation to the towns is ample evidence of the legislature's intent. Accordingly, it is the opinion of the court that the town has no authority to regulate hunting on federal, state or private property within its borders. . . .Furthermore even if the court were to hold that the state has not occupied the field of hunting regulation, the hunting regulation provisions of § 13-33 are in conflict with the state statutes and are therefore preempted (*Kaluszka v. East Hartford*, 46 Conn. Sup. 588, 596, 597 (1999).

VR:ro

MEMORANDUM

TO: Mary Ann Jacob
Jeff Capeci
FROM: David E. Dobin, Esq.
CC: David L. Grogins, Esq.
RE: Town of Newtown – Proposed Ant-Blight Ordinance
DATE: October 3, 2012

Please see enclosed the revised draft Anti-Blight Ordinance. Please note the following when reviewing the draft ordinance:

1. In Section 3(A), re the definition of the Anti-Blight Enforcement Officer, there is no provision for a "Director of Land Use" or a "Land Use Agency" in the Town of Newtown Code Book. David Grogins discussed this with George Benson who suggested that the Planning and Zoning Commission be given authority to designate anti-blight enforcement officer. The ordinance was revised to reflect his suggestion.

2. There was no provision in the original ordinance that explicitly outlawed blight. I have added that in the revised draft in section 4.

3. The method of providing written notice for a violation in the original draft of the blight ordinance was unclear and potentially cumbersome. For example, the draft of the blight ordinance required notice to the owner/occupant and all known encumbrancers. This would require the Anti-Blight Enforcement Officer to send notices to anyone who had a record interest on the property. Because all that extra notice would be required, it would give an owner multiple avenues to challenge any fines. In addition, CGS s. 7-148c(7)(H)(xv) only requires notice to the owner and occupant. The revised draft takes these considerations into account.

4. The original draft did not include a clear avenue for property owners to appeal, as it referred to a Citation Review Board that had not been established. Therefore, I have removed any reference to a Citation Review Board and instead require the citation to include a statement that the person being cited for violation of the ordinance can appeal to a Citation Hearing Officer, defined in "Code of the Town of Newtown" Section 260-11, Appeals procedure, Sections B – E (Fire Lanes ordinance).

5. Also in connection with the appeals procedure, the ordinance references the Fire Lanes ordinance but it is unclear whether the reference is correct. The Town web site states that the Fire Lanes ordinance is in Chapter 229, not 260, but the sections governing the appeals procedure are labeled as sections "260-11" and "260-12." In addition, the Code Book, which is supposed to be printed in full at http://www.ecode360.com/NE0077 puts the Fire Lanes ordinance in Chapters 132 and 610. Moreover, David Grogins informs me that the Code Book, including the

numbering of the sections, has recently been changed. So, we need to make sure that the reference to the Fire Lanes chapter is accurate.

6. In Section 2, the council should consider whether properties owned by the Town should also be exempt from the Ordinance.

7. In Section 3(B), the definition of Blight is very broad and there is a risk that the Ordinance may be used against properties that may not traditionally be considered blighted. The council may want to consider an alternate definition that is more limited, for example:

   "Any building, structure, dwelling, premises or any part of a structure that is a separate unit, which is in such a condition that it poses a serious long-term or immediate danger to the community through risk of collapse, fire or infestation, or which has been declared by the Director of Health as unfit for human habitation, or which otherwise puts at risk the health or safety of the citizens or visitors of the Town."

TOWN OF NEWTOWN
Anti Blight Ordinance

Sec. 1. Purpose: The Purpose of this Ordinance, adopted pursuant to Connecticut General Statutes Section 7-148(c), is to define and provide for the abatement of blight and nuisances and protect, preserve and promote public health, safety and welfare, property values and quality of life in the Town of Newtown.

Sec. 2. Scope: This Ordinance shall apply to the maintenance of all business, industrial and residentially zoned properties and their premises now in existence or hereafter constructed, maintained, or modified but this Ordinance shall not apply to: agricultural lands as defined in Section 22-3(b) of the Connecticut General Statutes; land dedicated as public or semi-public open space or preserved in its natural state through conservation easements; ~~or~~ areas designated as inland wetlands and watercourses; or any Premises owned by the Town of Newtown.

Sec. 3. Definitions: The following definitions apply in the interpretation and enforcement of this Ordinance:

A. **Anti-Blight Enforcement Officer:**

1) Any ~~member of the staff of the Land Use Agency who is~~person or persons designated by the ~~Planning and Zoning Commission~~First Selectman, with the approval of the Board of Selectmen, to enforce the provisions of this Ordinance; and

2) A duly authorized agent of the Anti-Blight Enforcement Officer designated pursuant to sub-section 3(A)(1) of this Ordinance.

~~B. Blight:~~

B. **Blight: Any one of the following sub-sections (1)-(3) unless excluded by sub-section (4):**

1) Any Premises in or upon which at least one (1) of the following circumstances exist:
   a. Conditions that pose a serious threat to the safety, health and general welfare of the community, as determined by the Anti-Blight Enforcement Officer;
   b. Conditions that attract, harbor or conceal illegal activity as documented by the Police Department;
   c. Conditions or circumstances that cause to lower, impair or reduce the market value of real or personal property in the same Neighborhood.

2) Any Premises not being adequately maintained, as evidenced by the existence of one or more following conditions:
   a. Contains any building or structure that is open to the elements, has collapsed or is missing walls, roofs, windows, doors;

b. Contains any building or structure that is unable to provide shelter, or serve the purpose for which it was constructed due to significant damage, Dilapidation, decay, or severe animal, rodent, vermin or insect infestation, or;

c. The Premises is in the Public View and, as determined by the Anti-Blight Enforcement Officer, is neglected or abandoned.

3) Any Premises that is, or contains material or equipment which is incapable of performing the function for which it is designed including, but not limited to:

   a. Discarded or unused materials or equipment such as unregistered motor vehicles, boats, sporting and recreation vehicles which may be missing parts, not complete in appearance or in an obvious state of disrepair or decay;

   b. Parts of the aforementioned motor vehicles, boats, sporting and recreation vehicles and items to include, but not be limited to, household or commercial furniture, appliances, drums, cans, boxes, scrap metal, tires, batteries, containers and garbage in the Public View.

4) Exclusions:

   a. Notwithstanding the foregoing, the following shall not constitute Blight within the definition of this Ordinance: such temporary conditions not to exceed six (6) months in duration, as may be reasonably related to repair or restoration of building(s) and/or motor vehicles, boats or recreational vehicles registered to the subject Premises' owner(s) or tenants(s), as determined by the Anti-Blight Enforcement Officer, provided that there are no delinquent taxes or other amounts owed to the Town of Newtown or any agency or department of the Town of Newtown.

C. **Capable Individual**: Shall mean a person that can be reasonably expected to perform maintenance and yard work around a property or premises. This shall include any individual above eighteen (18) years of age who is not a Disabled Individual.

D. **Citation Hearing Officer:** Citation hearing officer as defined in "Code of the Town of Newtown" Section ~~260-11, Citation hearing officer (Fire Lanes ordinance), available at http://www.newtown-ct.gov/public_documents/newtownct_police/Ord%20Folder/ordinances/229 (last visited October 3, 2012).~~132-9, Citation hearing officer.

E. **Dilapidation:** Shall mean significant partial ruin, decay or disrepair of property such that it would not qualify for a certificate of use and occupancy, or which is deemed unsafe or which is designated by Health, Zoning Enforcement, Fire or Building Inspectors or Officers as unfit for use or habitation.

F. **Disabled Individual:** Shall mean, in the case of an owner-occupied residence, an individual who has a disability meeting the definitions for the mental or physical disability as defined under the Americans with Disabilities Act of 1990, and does not have a household member who meets the definition of a Capable Individual.

G. **Elderly Individual:** Shall mean an individual over the age of sixty-five (65), who does not have a household member who meets the definition of a Capable Individual.

H. **Low Income Individual:** Shall mean, in the case of an owner occupied residence, an individual, or where more than one person resides in the premises, a family unit, that has an income below the highest level of "qualifying income" established by Conn. General Statutes Section 12-170d(a)(3).

I. **Historic Structures:** Shall mean those listed in the "Newtown Historical Inventory" (The Inventory), as compiled and maintained by the Town Historian and the Land Use Director, published on March 25, 2009, as the same may be amended.

J. **Infestation:** Shall mean the presence of insects, rodents, vermin or other pests on the premises, which constitute a health hazard.

K. **Neighborhood:** Shall mean an area of the Town of Newtown comprising Premises or parcels of land any part of which is contiguous with any other parcel within the Town of Newtown.

L. **Nuisance:** Shall be taken to include:
    1) Any **public nuisance**, as defined by statute or ordinance;
    2) Any **attractive nuisance**, defined as the presence of any condition on any Premises that is detrimental to the health or safety of individuals coming into contact with the subject Premises. This shall include, but is not limited to, the presence of abandoned wells, shafts, basements, excavations, secured and unsecured equipment, appliances, vehicles, lumber, garbage, waste and structurally unsound fences or other structures, as determined by the Anti-Blight Enforcement Officer.
    3) Physical conditions **dangerous to human life** or detrimental to the health of persons on or near any Premises where the conditions exist, as determined the Anti-Blight Enforcement Officer.
    4) **That which renders air, food or drink unwholesome** or detrimental to the health of human beings;
    5) **Fire hazards** and any condition or situation, process, material or blocked/obstructed egress that may cause a fire, an explosion or provide a ready fuel supply to augment the spread or intensity of a

fire or explosion, thereby posing or intensifying a threat to life or property, as determined by the Anti-Blight Enforcement Officer.
6) **Illegal Activity**, as determined by the Anti-Blight Enforcement Officer.

M. **Owner/Occupant:** Shall mean any person, institution, foundation, entity or authority which owns, leases, rents, possesses, controls, is responsible for or occupies any property or Premises within the Town of Newtown.

N. **Person:** Shall mean any individual, corporation, partnership, limited liability company, trust, estate, association, joint venture, or any other legal or commercial entity.

O. **Premises:** Shall be deemed to include any property, buildings, dwellings, parcels of land, unoccupied lots or Structures within the Town of Newtown.

P. **Public View:** Shall mean visible from any public right-of-way or Neighborhood.

Q. **Structure:** Shall mean any building, walls, dwelling, fence, swimming pool, or similarly constructed object, located above or below ground on any Premises, or structures as defined in the Newtown Zoning Regulations, Connecticut Building Codes or Connecticut Fire Safety Codes.

Sec. 4. Creating or Maintaining Blight Prohibited; Responsibility

A. No person shall cause any Blight to be created or maintained within the Town of Newtown. Any such person, including the agents thereof, shall be jointly and severally obligated to comply with the provisions of this Ordinance and subject to the penalties for violation hereof.

Sec. 5. Special Considerations:

A. Special consideration may be given to Disabled Individuals, Elderly Individuals, and Low Income Individuals as part of the Town of Newtown's effort to correct any Blight in the Town of Newtown.
B. If an individual cannot maintain a reasonable level of upkeep of his or her owner-occupied residence because the individual is a Disabled Individual, Elderly Individual or Low Income Individual and no Capable Person can be identified to provide such upkeep, the Town of Newtown may provide the Disabled Individual, Elderly Individual or Low Income Individual with a reasonable amount of time to correct the problem, the duration of which shall be at the discretion of the Anti-Blight Enforcement Officer.
C. Additionally, assistance in finding reasonable solutions to the Blight may be offered by the Town of Newtown, should circumstances indicate such special consideration is necessary and will remediate the Blight.
D. Historic Structures shall not be exempted from this Ordinances but, by their virtue of being a Historic Structure may be considered for a 90-day

demolition hold and/or subject to an archeological survey if determined to be historically significant by the Anti-Blight Enforcement Officer and the Town Historian.

E. Historic Structures determined to be a Nuisance or Blight by definition of this Ordinance and deemed irreparable or, by declaration of the Anti-Blight Enforcement Officer, as advised by the Town Historian, to have lost their historical value, shall not qualify for the special consideration described in sub-section (D) of this Section 5.

Sec. 6. Complaints, Warning Notice

A. Any individual, civic organization or agency or department of the Town of Newtown may file a complaint of a violation of this Ordinance with the Anti-Blight Enforcement Officer.

B. If the Anti-Blight Enforcement Officer has reason to believe that any person or persons has violated the provisions of this Ordinance, the Anti-Blight Enforcement Officer shall serve a notice of such violation on the Owner/Occupants of the subject property (the "Warning Notice").

C. The Warning Notice shall include the following:
   1) A description of the subject property sufficient for identification;
   2) A description of the violation alleged to exist and requested remedial action as determined by the Anti-Blight Enforcement Officer;
   3) An order requiring the remedial action to be taken within a period of not more than 60 days of the notice, unless otherwise cited in the Warning Notice or decided by the Anti-Blight Enforcement Officer.
   4) A statement that the amount of fines, penalties, costs and fees to be imposed for non-compliance shall apply for each infraction per day after the deadline in the Warning Notice in the amount of $100.00, and that the Owner/Occupants will be responsible for administration costs, including but not limited to attorney's fees as permitted by law.

D. A copy of the Warning Notice shall be recorded in the land records of the Town of Newtown, and any subsequent purchaser of the property shall be subject to such Warning Notice.

E. The Warning Notice shall be sufficient if delivered personally upon the Owner/Occupants, sent by both regular and certified mail return receipt requested to the last known address of the Owner/Occupants, or posted in a conspicuous place in or about the property affected by the Warning Notice.

Sec. 7. Enforcement

A. At any time within twelve months from the expiration of the final period for the uncontested payment of fines, penalties, costs or fees pursuant to the Written Notice, if the remedial actions specified in the Warning Notice are not taken, the Anti-Blight Enforcement Officer shall issue a written citation to the Owner/Occupants of the subject property ("Citation").

B. The Citation shall be in writing and include:

1) A description of the property, as sufficient for identification, specifying the violation alleged to exist and the remediation required;

2) Detailed information regarding the contents of the Warning Notice (which may be a copy of such Warning Notice) and the failure of the Owner/Occupants to take the remedial actions specified therein within the time prescribed in the notice and order;

3) The amount of the fines, penalties, costs, or fees due for non-compliance; and

4) A statement that the Owner/Occupant may contest his or her liability and request a hearing before a Citation Hearing Officer by delivering in person or by mail written notice to the Anti-Blight Enforcement Officer within ten days of the date of the Citation; and

5) A statement that if the Owner/Occupant does not demand such a hearing, an assessment and judgment shall be entered against him and that such judgment may issue without further notice.

Sec. 8. Appeal Procedure

If a person who is issued a Citation does not make an uncontested payment of the fines, penalties, costs, or fees due for non-compliance as specified by the Citation to the Town, they shall adhere to the procedure in the "Code of the Town of Newtown" Section ~~260-12, Appeals procedure, Sections B – E (Fire Lanes ordinance), available at http://www.newtown-ct.gov/public_documents/newtownct_police/Ord%20Folder/ordinances/229 (last visited October 3, 2012).~~132-10, Appeals procedure, Sections B – E.

Sec. 9. Penalties for Offenses; Prejudgment Lien

A. If any person has been served with a Warning Notice pursuant to this section, and has failed to correct such deficiencies within the time period prescribed by the notice as determined upon subsequent inspection by the Anti-Blight Enforcement Officer, fines in the amount of $100 per day shall accrue beginning on the day after the expiration of the time period prescribed by such notice.

B. In accordance with the provisions of Connecticut General Statutes § 7-148aa, any unpaid fines imposed by this Ordinance and costs of remediation, shall constitute a lien upon the real estate against which the fine was imposed from the date of such fine. Each such lien may be continued, recorded and released in the manner provided by the general statutes for continuing, recording and releasing property tax liens. Each such lien shall take precedence over all other liens filed after July 1, 1997, and encumbrances except taxes and may be enforced in the same manner as property tax liens.

C. In addition to all other remedies and any fines imposed herein, the provisions of this code may be enforced by injunctive proceedings in Superior Court. The Town of Newtown may recover from any

Owner/Occupant or other responsible person any and all costs and fees, including reasonable attorneys' fees expended by the Town of Newtown in enforcing the provisions of this Ordinance.

Sec. 10. Authorization to Freeze Assessment of Rehabilitated Buildings

A. To better achieve the rehabilitation of Blight, the Town Assessor is authorized to freeze the assessment of any Premises that was the object of enforcement action under this Ordinance and, subsequently, been rehabilitated.
B. Upon recommendation by the Anti-Blight Enforcement Officer and approval by the Legislative Council, the Town of Newtown shall freeze the assessment of any Premises that has been substantially rehabilitated to reflect the value of the structure prior to rehabilitation and shall be applicable for a period of five (5) years.
C. No property owner shall receive this benefit if it is determined the property owner caused the condition that contributed to such enforcement.
D. If the Premises again becomes the object of enforcement action pursuant to this Ordinance during the five-year period, the adjusted assessment may be revoked at the discretion of the Anti-Blight Enforcement Officer or the Town Assessor.

Sec. 11. Severability

A. In the event that any part or portion of this Ordinance is declared invalid for any reason, all the other provisions of this Ordinance shall remain in full force and effect.

Sec. 12. Contextual Terms and Provisions

A. Where terms are specifically defined or the meaning of such terms is clearly indicated by their context, that meaning is to be used in the interpretation of this Ordinance.
B. Where terms are not specifically defined in this ordinance but are defined by Town Charter, such terms shall have the same meaning for the interpretation and enforcement of this Ordinance.
C. Where terms are not specifically defined in this ordinance, they shall have their ordinarily accepted meaning or such meaning as the context may imply.
D. The provisions of this Ordinance shall not be construed to prevent enforcement of other Town codes, ordinances or regulations.
E. In any case where a provision of this Ordinance is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance, regulation or other provision of the Charter, Town Code, or State of Connecticut law, the provision which establishes the higher standard for

the promotion and protection of the health and safety of the people of the Town of Newtown shall prevail.

This Ordinance shall become effective on the _______ day, of ____________, 2012, upon action by the Legislative Council and notice of publication in a local newspaper.

SIGNED ON ________day, this __________________ month of 2012:

BY ____

E. Patricia Llodra; First Selectman

BY ____

Jeffery Capeci; Chairperson, Legislative Council