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OPINION	:	
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The Honorable L. B. Elam, County Counsel, County of Sacramento, has requested an opinion on a question which we have phrased as follows:

Does the board of supervisors of a county have the authority to regulate swimming pools and swimming pool heaters for energy conservation purposes?

CONCLUSION

The board of supervisors of a county has authority to regulate swimming pools and swimming pool heaters in the county for energy conservation purposes.

ANALYSIS

Article XI, section 7, of the California Constitution provides: "A county or city may make and enforce within its limits all local, police, sanitary and other ordinances

and regulations not in conflict with general laws.” A county’s power under this provision can be applied only within its own territory and is subject to displacement by general state law but otherwise is as broad as the police power exercisable by the Legislature itself. (*Birkenfield v. City of Berkeley* (1976) 17 Cal. 3d 129, 140.)

The Warren-Alquist State Energy Resources Conservation and Development Act (Pub. Res. Code, § 25000¹ *et seq.*) was enacted in 1974. As justification for the regulations imposed by that act, the Legislature made several findings, including the following:

“The Legislature hereby finds and declares that electrical energy is essential to the health, safety and welfare of the people of this state and to the state economy, and that it is the responsibility of state government to ensure that a reliable supply of electrical energy is maintained at a level consistent with the need for such energy for protection of public health and safety, for promotion of the general welfare, and for environmental quality protection.” (§ 25001.)

“The Legislature further finds and declares that the present rapid rate of growth in demand for electric energy is in part due to wasteful, uneconomic, inefficient, and unnecessary uses of power and a continuation of this trend will result in serious depletion or irreversible commitment of energy, land and water resources, and potential threats to the state’s environmental quality.” (§ 25002.)

“It is further the policy of the state and the intent of the Legislature to employ a range of measures to reduce wasteful, uneconomical, and unnecessary uses of energy, thereby reducing the rate of growth of energy consumption, prudently conserve energy resources, and assure statewide environmental, public safety, and land use goals.” (§ 25007.)

These legislative findings establish the basis upon which the Legislature invokes the state’s police powers to regulate waste of energy resources. Since the county’s police power within its boundaries is as broad as that of the state, the county may enact energy conservation regulations under its police power insofar as such regulations do not conflict with the general laws of the state. (*Birkenfield v. City of Berkeley, supra*, 17 Cal. 3d 129.)

¹ Section references are to the Public Resources Code unless otherwise specified.

In *Lancaster v. Municipal Court* (1972) 6 Cal. 3d 805, 807–808, the Supreme Court stated:

“ ‘ . . . Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates (*Chavez v. Sargent*, 52 Cal. 2d 162, 176; *In re Portnoy*, 21 Cal. 2d 237, 240; *Pipoloy v. Benson*, 20 Cal. 2d 366, 370), contradicts (*Ex Parte Daniels*, 183 Cal. 636, 642–645), or enters an area fully occupied by general law, either expressly or by legislative implication (*In re Lane, supra*, 58 Cal. 2d 99, 102; *Abbott v. City of Los Angeles, supra*, 53 Cal. 2d 674, 682–688; *Chavez v. Sargent, supra*, 52 Cal. 2d 162, 176–178). If the subject matter or field of the legislation has been fully occupied by the state, there is no room for supplementary or complementary local legislation . . . ”

We must, therefore, examine the general law to determine if county regulation of swimming pools and pool heaters for energy conservation purposes would be in conflict therewith.

Section 25402 provides:

“The commission [the State Energy Resources Conservation and Development Commission (§ 25104)] shall, after one or more public hearings, do all of the following, in order to reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy:

“(a) *Prescribe, by regulation, lighting, insulation climate control system, and other building design and construction standards which increase the efficiency in the use of energy for new residential and new nonresidential buildings.* Such standards shall be cost effective, when taken in their entirety, and when amortized over the economic life of the structure when compared with historic practice. The commission shall periodically update the standards and adopt such revisions as in its judgment it deems necessary. In prescribing standards for insulation, the commission shall take into consideration the standards developed pursuant to Chapter 11 (commencing with Section 19870) of Part 3 of Division 13 of the Health and Safety Code, which standards shall only be operative until the date one year after the date that the commission adopts regulations for energy insulation for residential buildings pursuant to this subdivision. Six months after the commission adopts regulations pursuant to this subdivision, no city, county, city and county, or state agency shall issue a permit for any building unless the building satisfies the standards prescribed by the commission pursuant to this subdivision or subdivision (b) of this section which are in effect on the date

an application for a building permit is filed.

“(b) Prescribe by regulation, energy conservation design standards for new residential and new nonresidential buildings. Such standards shall be performance standards and shall be promulgated in terms of energy consumption per gross square foot of floor space, but may also include devices, systems, and techniques required to conserve energy. The standards shall be cost effective when taken in their entirety, and when amortized over the economic life of the structure when compared with historic practices. The commission shall periodically review the standards and adopt such revisions as in its judgment it deems necessary. A building that satisfies the standards prescribed pursuant to this subdivision need not comply with the standards prescribed pursuant to subdivision (a) of this section. The commission shall comply with the provisions of this subdivision before January 1, 1981.

“(c) By regulation, prescribe standards for minimum levels of operating efficiency, based on a reasonable use pattern, for all appliances whose use, as determined by the commission, requires a significant amount of energy on a statewide basis. Such minimum levels of operating efficiency shall be based on feasible and attainable efficiencies or feasible improved efficiencies which will reduce the electrical energy consumption growth rate. Such standards shall become effective no sooner than one year after the date of adoption or revision. No new appliance manufactured on or after the effective date of such standards may be sold or offered for sale in the state, unless it is certified by the manufacturer thereof to be in compliance with such standards. One year after the effective date of such standards, no new appliance, regardless of the date of manufacture, may be sold or offered for sale in the state, unless it is certified by the manufacturer thereof to be in compliance with such standards. Such standards shall be drawn so that they do not result in any added total costs to the consumer over the designed life of the appliances concerned.

“ (Emphases added.)

The duties of the State Energy Resources Conservation and Development Commission (the “Commission”) and provisions for local enforcement are set forth in section 25402.1:

“In order to implement the requirements of subdivisions (a) and (b) of Section 25402, the commission shall do all of the following:

“

“(f) The provisions of subdivisions (a) and (b) of Section 25402 and this section shall apply only to new residential and nonresidential buildings on which actual site preparation and construction have not commenced prior to the effective date of rules and regulations adopted pursuant to those sections that are applicable to such buildings. Nothing in those sections shall prohibit either of the following:

“(1) The enforcement of state or local energy conservation or energy insulation standards, adopted prior to the effective date of rules and regulations adopted pursuant to subdivisions (a) and (b) of Section 25402 and this section with regard to residential and nonresidential buildings on which actual site preparation and construction have commenced prior to that date.

“(2) The enforcement of city or county energy conservation or energy insulation standards, whenever adopted, with regard to residential and nonresidential buildings on which actual site preparation and construction have not commenced prior to the effective date of rules and regulations adopted pursuant to subdivisions (a) and (b) of Section 25402 and this section *provided that the city or county files the basis of its determination that the standards are cost effective with the commission and the commission finds that such standards will require the diminution of energy consumption levels permitted by the rules and regulations adopted pursuant to those sections.*

“ (Emphasis added.)

It is clear from that portion of section 25402.1(f)(2) emphasized above that the Legislature did not intend to preempt the field of energy conservation regulation. Thus, we need only to determine whether a county regulation of swimming pools and swimming pool heaters for energy conservation purposes would duplicate or contradict state law. (*Lancaster v. Municipal Court, supra*, 6 Cal. 3d 805.)

We have previously considered the circumstance in which a local regulation “contradicts” state law. In 62 Ops. Cal. Atty. Gen. 90, 95, we said:

“A direct conflict will arise if the local ordinance attempts to permit what the state law prohibits. (See *In re Iverson* (1926) 199 Cal. 582, 587.) Conversely, a direct conflict will arise if the local ordinance attempts to prohibit what state law permits. (*Monterey Oil Co. v. City Court* (1953) 120

Cal. App. 2d 31, 36; *Markus v. Justice Court* (1953) 117 Cal. App. 2d 391, 396, 59 Ops. Cal. Atty. Gen. 461, 478 (1976).)”

We find nothing in the Warren-Alquist State Energy Resources Conservation and Development Act or any other state statute which would, in itself, duplicate or contradict a local regulation of swimming pools and pool heaters for energy conservation purposes. However, the Commission has adopted regulations imposing energy conservation standards for new residential buildings which are set forth in title 24, California Administrative Code, sections T20–1401 through T20–1414. The authority cited for these regulations is sections 25213, 24218(e) and 25402(a) of the Public Resources Code. Section T20–1406 entitled “Water Heating” contains subdivision (c) which reads as follows:

“(c) Swimming Pool Heating.

“(1) Any new or replacement fossil fueled swimming pool heater system shall be equipped with all of the following:

“(A) An ON-OFF switch mounted on the outside of the heater for easy access to allow shutting off the operation of the heater without adjusting the thermostat setting and to allow restarting without relighting the pilot light.

“(B) A permanent weatherproof plate or card, easily readable giving instructions for the energy efficient operation of the swimming pool and for the proper care of swimming pool water when a swimming pool cover is used. This subsection shall apply after January 1, 1980.

“(C) A length of plumbing (36” minimum) between the filter and the fossil fuel heater to allow for the future addition of solar heating equipment.

“(2) Any new or replacement fossil fueled swimming pool heater installed after January 1, 1982, shall have a thermal efficiency of at least 75% when tested in accordance with ANSI Z21.56–1975.

“(3) Outdoor pools equipped with a fossil fuel heater shall also be equipped with a pool cover.

“(4) Time clocks shall be installed on any new or replacement pool circulation pump not already so equipped so that the pump can be set to run in the off-peak electric demand period (unless required to operate an active solar pool heating system) and for the minimum time necessary to maintain

the water in a clear and sanitary condition in keeping with applicable public health standards. Where public health standards require twenty-four hour operation, time clocks shall not be required.

“(5) All new pools shall be equipped with directional inlets for good mixing of the pool water.”

Section T20–1406(c), quoted above, is part of article 1, subchapter 4 in chapter 2, division T20 of title 24 of the California Administrative Code. Subchapter 4 commences as follows:

“SUBCHAPTER 4. ENERGY CONSERVATION

“Article 1. Energy Conservation Standards for New Residential Buildings

“T20–1401. General Provisions. (a) Scope. (1) This Article applies to all new hotels, motels, apartment houses, lodging houses, dwellings, and other residential buildings which are heated or mechanically cooled. Notwithstanding the above, this Article shall not apply to residential buildings in which 100 percent of the required energy for heating and cooling is derived from a nondepletable energy source.

The regulations in article 1, by their own terms, apply only to residential buildings which are “heated or mechanically cooled” and in any event do not apply where “the energy for heating and cooling is derived from a nondepletable energy source.

In the request for this opinion we were asked to consider whether the authority to regulate residential and nonresidential buildings for energy conservation purposes under section 25402 includes the authority to regulate swimming pools and pool heaters for such purposes. We conclude that swimming pools and pool heaters are subject to regulation under section 25402.

The statute provides significant definitions applicable to section 25402. Sections 25130 and 25131 provide as follows:

“§ 25130.

“ ‘Nonresidential’ building means any building which is heated or cooled in its interior, and is of an occupancy type other than Type H, I, or J, as defined in the Uniform Building Code, 1973 edition, as adopted by the

International Conference of Building Officials.”

“§ 25131.

“ ‘Residential building’ means any hotel, motel, apartment house, lodginghouse, single [sic] and dwelling, or other residential building which is heated or mechanically cooled.”

Section 25130 indicates that the Legislature used the word “building” in the same sense it is used in the Uniform Building Code, 1973 edition. “Building” is defined broadly in section 403 of the Uniform Building Code as “any structure used or intended for supporting or sheltering any use or occupancy” and occupancy’ is defined as “the purpose for which a building, or part thereof, is used or intended to be used.” Since a swimming pool is a structure intended to support a use, it would fall within the broad definition of “building” under the Uniform Building Code. If the pool is “heated” it would come within the definitions contained in sections 25130 and 25131. We believe the word “heated” in these definitions refers to heat provided by some device designed to increase water temperatures artificially and not to any increases in water temperatures which may result naturally from the elements or solar radiation. We conclude that heated swimming pools may be regulated under section 25402.

Returning to the authority of the county to regulate swimming pools and swimming pool heaters for energy conservation purposes, we must compare any such regulation with applicable state law, including the regulations in T20–1406 authorized by section 25402 and the procedural requirements of section 25402.1(f)(2). We conclude that a board of supervisors of a county does have authority to regulate swimming pools in the county for energy conservation purposes provided such regulations do not duplicate or contradict state statutes or regulations of state agencies adopted pursuant to statute and the statutory procedural requirements for the adoption of county regulations are met.
