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OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION

of

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No. 81-806

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THE HONORABLE BRUCE YOUNG, ASSEMBLYMAN, SIXTY-THIRD DISTRICT, has requested an opinion on the following question:

May a city regulate swap meets of personal property, as defined in Business and Professions Code section 21161, by measures in addition to land use and zoning regulations such as ordinances requiring permits or placing conditions on the conduct of swap meets?

CONCLUSION

A city may regulate swap meets of personal property, as defined in Business and Professions Code section 21161, by measures in addition to land use and zoning regulations, such as ordinances requiring permits or placing conditions on the conduct of swap meets, except that it may not supersede, supplant or supplement the reporting requirements of Business and Professions Code sections 21660–21667.

ANALYSIS

In 1978, the Legislature enacted Business and Professions Code¹ sections 21660–21667 (Stats. 1978, ch. 1117, § 1, pp. 3418–3421, amended by Stats. 1980, ch. 1163, § 1, pp. 724–726) on the subject of “swap meets.”² The legislative intent and the extent of intended regulation were specified in section 21660 which provides, in part, as follows:

“It is the intent of the Legislature in enacting this article to require the statewide reporting of personal property exchanged, sold or offered for sale or exchange at ‘swap meets’ in a uniform manner designed to permit the correlation of such reports with other reports of law enforcement agencies in order to assist in tracing and recovering stolen property and with the State Board of Equalization to detect possible sales tax evasion.

¹Unless otherwise indicated, all further statutory references will be to the Business and Professions Code.

²Section 21661 provides definitions of terms used in the statutes:

“As used in this article:

(a) ‘Swap meet’ means any event:

(1) At which two or more persons offer personal property for sale or exchange; and

(2) At which a fee is charged for the privilege of offering or displaying personal property for sale or exchange; or

(3) At which a fee is charged to prospective buyers for admission to the area where personal property is offered or displayed for sale or exchange; or

(4) Regardless of the number of persons offering or displaying personal property or the absence of fees, at which used personal property is offered or displayed for sale or exchange if such event is held more than six times in any 12-month period.

(b) ‘Swap meet operator’ means any person, partnership, organization or corporation which controls, manages, conducts or otherwise administers a swap meet.

(c) ‘Vendor’ means any person, partnership, organization or corporation who exchanges, sells, or offers for sale or exchange any personal property at a swap meet.

(d) ‘Personal property’ means:

(1) All serialized items of merchandise.

(2) All personal property commonly sold at swap meets which statistically is found through crime reports to the Attorney General to constitute a significant class of stolen goods. A list of such personal property shall be supplied by the Attorney General to all local law enforcement agencies. Such lists shall be reviewed periodically by the Attorney General to insure that it addresses current problems with stolen goods.”

“This article shall apply to swap meet operators and vendors, as defined herein, unless the personal property or the transaction is specifically exempt herein and shall not be superseded or supplanted by any provisions or ordinances or charters of any city, county, or city and county, nor supplemented by any such ordinances or charters or provisions. Nothing herein contained shall be deemed to affect the land use and zoning regulatory power of a local agency, nor be construed to require any local agency to permit swap meets where such local land use or zoning regulations prohibit such operations.

Generally, the legislative scheme requires a swap meet vendor to prepare a written report on certain personal property, particularly serialized merchandise, offered or displayed for sale (sections 21661 and 21663). The swap meet operator collects the reports from each vendor and submits the reports to the appropriate local police agency; the local police agency, in turn, transmits them to the California Department of Justice upon request and also makes them available to the State Board of Equalization (section 21664). The operators and vendors retain copies which are subject to inspection by certain peace officers and representatives of the State Board of Equalization (section 21665).

A vendor must provide a purchaser upon request with a written receipt disclosing the vendor’s name and address when the selling price exceeds fifteen dollars; the operator must give the vendor written advance notice of the kinds of property which may not be offered for sale or exchange at the swap meet and the vendor must refrain from offering or displaying such property (section 21666).

As we have seen (section 21660, *supra*), nothing in these statutes was intended to affect the land use and zoning regulatory power of a local agency, nor to be construed to require such agency to permit swap meets where such regulations prohibit them.

We are asked whether or not a city may require a permit, or may impose other conditions not relating to land use and zoning upon the conduct of a swap meet. The type of permit referred to in the first part of the question is a local permit to engage in a business, such as those permits required by Chapter X of the Los Angeles Municipal Code (LAMC).³ Specifically, we have been directed, as examples, to LAMC, Chapter X, Article 3, Division

³Such permit is a license to engage in a certain activity, subjecting the licensee to specified conditions. Usually the payment of a fee is required before a license is granted. Also, the licensee may have to establish his or her qualifications to engage in the trade or business (9 McQuillin, *Municipal Corporations*, §§ 2601 *et seq.* (3d ed. 1950)).

9, sections 103.309–103.311 which require permits from the Board of Police Commissioners to engage in the secondhand sales trade, such as secondhand auto parts dealer, secondhand book dealer and secondhand dealer-jewelry.

At the outset we note the narrow purpose and scope of the state “swap meet” legislation. The purpose of the statutes is to establish a uniform, statewide reporting system to locate stolen property and sales tax evasions. The purpose is accomplished by directing vendors to disclose specific information to law enforcement, by allowing operators to limit the types of merchandise sold and by requiring vendors to furnish their names and addresses to customers on sales exceeding fifteen dollars.⁴ The Legislature’s expression that there be no local regulation on these particular subjects is found in section 21660

“This article shall apply to swap meet operators and vendors, as defined herein, unless the personal property or the transaction is specifically exempt herein and *shall not be superseded or supplanted by any provisions or ordinances or charters of any city, county, or city and county, nor supplemented by any such ordinances or charters or provisions*. Nothing herein contained shall be deemed to affect the land use and zoning regulatory power of a local agency, nor be construed to require any local agency to permit swap meets where such local land use or zoning regulations prohibit such operations.” (Emphasis added).

This language is an express and unambiguous preclusion of local regulation on the subject of reporting property offered for sale and exchange at swap meets. State occupation of a field of law is determined by the express statutory language or by implication when the statute’s scope and purpose disclose an intent to totally exclude local control. (*Lancaster v. Municipal Court* (1972) 6 Cal. 3d 805, 808; *Younger v. Berkeley City Council* (1975) 45 Cal. App. 3d 825, 830.) Accordingly, we conclude that insofar as the subject of written reporting for law enforcement purposes of items offered for sale and exchange at swap meets is concerned, this field of legislation is preempted by sections 21660–21667 and local agencies lack power to legislate in this field. Any ordinance purporting to regulate such field would be void.

A question remaining to be answered is whether or not the state has occupied the entire field of law relating to swap meets thereby voiding all local legislation on the subject. We conclude that the state has not preempted the subject in its entirety

⁴This latter provision, section 21666(a), would allow a customer to identify the person selling stolen property and then report this to the police. This might be personal property of a type not required to be reported by section 21663.

Article XI, section 7, of the California Constitution provides that “[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 law.” Also, Government Code section 37100 provides that “[t]he legislative body [of a city] may pass ordinances not in conflict with the constitution and laws of the State or the United States.” These provisions are applicable to general law cities and to charter cities. However, as to charter cities, California Constitution, article XI, section 5(a), confers an additional power to “make and enforce all ordinances and regulations in respect to municipal affairs” without being restricted by general state law (*Birkenfeld v. City of Berkeley* (1976) 17 Cal. 3d 129, 141; *Harmon v. City and County of San Francisco* (1972) 7 Cal. 3d 150, 161; *Bishop v. City of San Jose* (1969) 1 Cal. 3d 56, 61–63.) Consequently, cities may enact laws not in conflict with general state law except, as to charter cities, a conflict is permitted if the law relates to a municipal affair and the state has not occupied the field. (See *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal. 3d 296, 315–316.)

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

“It is settled that a local municipal ordinance is invalid if it attempts to impose additional requirements in a field that is preempted by general law. (*In re Lane*, 58 Cal. 2d 99, 102 [22 Cal. Rptr. 857, 372 P.2d 897]; *Abbott v. City of Los Angeles*, 53 Cal. 2d 674, 681 [3 Cal. Rptr. 158, 349 P.2d 974, 82 A.L.R. 2d 385]; *Agnew v. City of Los Angeles*, 51 Cal. 2d 1, 5 [330 P.2d 385].) Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates (*Chavez v. Sargent*, 52 Cal. 2d 162, 176 [339 p. 2d 801]; *In re Portnoy*, 21 Cal. 2d 237, 240 [131 P.2d 1]; *Pipoly v. Benson*, 20 Cal. 2d 366, 370 [125 P.2d 482, 147 A.L.R. 515]), contradicts (*Ex parte Daniels*, 183 Cal. 636, 642–645 [192 P. 442, 21 A.L.R. 1172]), 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, even if the subject were otherwise one properly characterized as a ‘municipal affair.’ (*In re Hubbard*, 62 Cal. 2d 119, 125 [41 Cal. Rptr. 393, 396 P.2d 809]; *In re Zorn*, 59 Cal. 2d 650 [30 Cal. Rptr. 811, 381 P.2d 635]; *In re Lane*, *supra*, 58 Cal. 2d 99; *Abbott v. City of Los Angeles*, *supra*, 53 Cal. 2d 674.)”

Our concern is not with an ordinance which would duplicate, contradict or expand upon the provisions of sections 21660–21667. We focus upon the local interest in

requiring swap meet operators and/or vendors to obtain business licenses and in imposing other conditions not relating to stolen property, sales tax, land use and zoning.

The tests for determining whether or not the Legislature has occupied a particular field are found in *Galvan v. Superior Court* (1969) 70 Cal. 2d 851, 859–860 and other authorities: (1) has the subject matter been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern? (2) though the subject matter has been only partially covered by state law, is the state law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action? and (3) though the subject matter has been only partially covered by state law, is the subject of such a nature that the adverse effects of a local ordinance on the transient citizens of the state outweigh the possible benefit to the municipality?

Turning to *Galvan*'s first test, an examination of sections 21660–21667 does not disclose a comprehensive or detailed plan to regulate swap meets. Rather, as we have seen, the legislative scheme is limited to the reporting to police authorities of particular information relating to vendors and their merchandise and to ancillary matters of written receipts to purchasers and written notice of items barred from sale at the swap meet. Other possible matters for regulation, such as fees, number and size of meets and duration, health and safety, traffic control, are not part of this general law. We find that sections 21660–21667 do not so fully and completely cover the matter of swap meets so as to indicate a statewide and exclusive concern about their operation. Indeed, the Legislature has expressly indicated a contrary intent in section 21660 by specifying that the legislation would not affect local land use and zoning regulatory power.

As to *Galvan*'s second test, the Legislature, in section 21660, has stated its concern only on the tracing and recovery of stolen property and the detecting of possible sales tax evasions. Other matters relating to swap meets ordinarily subject to local police power are not touched upon.

Finally, on the third *Galvan* test, local regulation requiring permits and/or imposing additional conditions beyond those specified in sections 21660–21667 would not seriously interfere with the movement of citizens in this state. We view a swap meet as being essentially a local marketplace. It is either a one-time event or an event conducted periodically or regularly at a fixed site, usually out-of-doors. Since swap meets are primarily a local attraction, we do not believe that local regulation would impose an adverse burden upon the transient citizens of the state which would outweigh local benefits.

We conclude, therefore, that a city may require a permit, or impose other conditions in addition to land use and zoning regulations upon the conduct of swap meets, except that it may not supersede, supplant or supplement the reporting requirements of Business and Professions Code sections 21660–21667.
