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Pre-Emption of Local Law by State Legislature

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PRE-EMPTION OF LOCAL LAW BY STATE LEGISLATURE

N.Y. CONST. art. IX, § 2(c):

In addition to powers granted in the statute of local governments or any other law, (i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the following subjects, whether or not they related to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government

SUPREME COURT, APPELLATE DIVISION

SECOND DEPARTMENT

Board of Education of Farmingdale Union Free School District v.
Gulotta⁸³⁴
(decided January 8, 1990)

Plaintiffs alleged that Local Laws 1987, No.4 which added a new title, D-6, to chapter 21 of the Nassau County Administrative Code⁸³⁵ was unconstitutional because it attempted to expand upon an issue which the state legislature intended to preempt from further regulation. The County Executive and the Board of Supervisors intended to promote the safety and welfare of its citizens by enacting title D-6, which regulated school bus companies within the County of Nassau. It contained provisions:

(1) requiring that school bus companies obtain licenses before,

834. 157 A.D.2d 642, 549 N.Y.S.2d 740 (2d Dep't 1990).

inter alia, owning, maintaining or operating transportation services, (2) authorizing safety inspections of school buses, and (3) conferring wide powers on the County Commissioner of Consumer Affairs to administer the law.⁸³⁶

The court held that the state legislature had intended to pre-empt this area of the law from further regulation and, therefore, Local Law 1987, No.4 of Nassau County was unconstitutional.⁸³⁷ Article IX, section 2(c) of the state constitution forbids such additional regulation.⁸³⁸

Although the Vehicle and Traffic Law (VTL),⁸³⁹ the Education Law,⁸⁴⁰ and the Transportation Law⁸⁴¹ provide regulation of school buses within the state, Nassau County sought to expand such regulation, pursuant to its police powers, "to insure the safety and the protection of its residents with respect to the safe operation of school buses within the County of Nassau."⁸⁴² The law provided for special licenses to be obtained before one could own, operate or maintain a transportation service. In addition, it required safety inspections, and provided the County Commissioner of Consumer Affairs with broad administrative powers.

The court stated that "[l]egislative intent to pre-empt a field need not be expressly stated but may be implied, and impermissible inconsistency may be found even where no direct conflict exists if the local law operates to inhibit the operation of a State law so as to thwart its overriding policy concerns."⁸⁴³ The court

835. NASSAU COUNTY, N.Y., CODE tit. D-6, § 21-16.0 (1987).

836. *Farmingdale School Dist.*, 157 A.D.2d at 643, 549 N.Y.S.2d at 741-42.

837. *Id.* at 643, 549 N.Y.S.2d at 742.

838. *Id.* (citing, *inter alia*, N.Y. CONST. art. IX, § 2(c)).

839. N.Y. VEH. & TRAF. LAW §§ 375(20), (21-b) (McKinney 1986).

840. N.Y. EDUC. LAW §§ 3623, 3624 (McKinney 1981 & Supp. 1991).

841. N.Y. TRANSP. LAW §§ 140(2)(a), (2)(c) (McKinney Supp. 1991).

842. *Farmingdale School Dist.*, 157 A.D.2d 642, 642, 549 N.Y.S.2d 741, 741 (quoting NASSAU COUNTY, N.Y., CODE tit. D-6, § 21-16.0 (1987)).

843. *Farmingdale School Dist.*, 157 A.D.2d at 643, 549 N.Y.S.2d at 742 (citing Consolidated Edison Co. of N.Y. v. Town of Red Hook, 60 N.Y.2d 99, 105, 456 N.E.2d 487, 490, 468 N.Y.S.2d 596, 599 (1983)).

went on to state that since the VTL,⁸⁴⁴ the Education Law⁸⁴⁵ and the Transportation Law⁸⁴⁶ provide for a grand scheme of legislation in this area, the legislature intended for such laws to be all encompassing and to preempt any further regulation.⁸⁴⁷ Therefore, title D-6 was held to be in violation of the New York State Constitution.

844. N.Y. VEH. & TRAF. LAW §§ 375(20), (21), (21-b) (McKinney 1986).

845. N.Y. EDUC. LAW §§ 3623, 3624 (McKinney 1981 & Supp. 1991).

846. N.Y. TRANSP. LAW §§ 140(2)(a), (2)(c) (McKinney Supp. 1991).

847. *Farmingdale School Dist.*, 157 A.D.2d at 644, 549 N.Y.S.2d at 742.