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PREEMPTION OF LOCAL LAW BY STATE LEGISLATURE

N.Y. CONST. art. IX, § 2(c):

In addition to powers granted in the statute of local government 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 relate 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

COURT OF APPEALS

Incorporated Village of Nyack v. Daytop Village, Inc.⁶⁶⁸
(decided November 25, 1991)

The Village of Nyack (Village), brought this appeal seeking to reverse the appellate court order that stayed an injunction against Daytop Village, Inc. (Daytop), from operating a residential drug rehabilitation home in a zone sited for commercial use.⁶⁶⁹ Daytop claimed that village zoning laws were preempted by the State's Mental Hygiene Law.⁶⁷⁰ The court of appeals, finding no inherent inconsistency between local zoning laws and state policy for the treatment of substance abuse, held that Daytop must comply with the Village's zoning process.⁶⁷¹

668. 78 N.Y.2d 500, 583 N.E.2d 928, 577 N.Y.S.2d 215 (1991).

669. *Id.* at 504, 583 N.E.2d at 929, 577 N.Y.S.2d at 216.

670. *Id.* at 506, 583 N.E.2d at 930, 577 N.Y.S.2d at 217; *see* N.Y. MENTAL HYG. LAW §§ 19.01-19.25 (McKinney 1988).

671. *Daytop Village*, 78 N.Y.2d at 504, 583 N.E.2d at 929, 577 N.Y.S.2d

Daytop proposed to operate a residential substance abuse treatment program in a former hotel located in a commercial zone in the Village of Nyack.⁶⁷² Daytop applied for and received a certificate of approval from the New York State Division of Substance Abuse Services. However, Daytop failed to apply for a variance from the Village to operate a residential drug treatment facility in a commercial zone.⁶⁷³

Consequently, the Village obtained a temporary injunction from the supreme court restraining Daytop from operating its facility pending application for and receipt of such variance.⁶⁷⁴ The appellate division reversed, holding that under the doctrines of inconsistency and preemption, Daytop need not comply with local zoning laws because the laws tended to inhibit the implementation of a comprehensive state-wide policy for the treatment of substance abuse.⁶⁷⁵

The court of appeals, in reversing the appellate division's order, found that the Village's interest in regulating development within its borders was not preempted by state regulation of the licensing of substance abuse facilities.⁶⁷⁶ The court stated that the test of preemption is "not whether the local law prohibits conduct which is permitted by State law" but whether the state, in acting upon a subject, "has evidenced a desire that its regulations should pre-empt the possibility of varying local regulations."⁶⁷⁷

Pursuant to section 2(c) of article IX of the New York State Constitution, "local governments do possess broad authority to enact legislation that promotes the welfare of their citizens [However,] they cannot adopt laws that are inconsistent with the Constitution or with any general law of the State."⁶⁷⁸

at 217.

672. *Id.* at 503-04, 583 N.E.2d at 929, 577 N.Y.S.2d at 216.

673. *Id.* at 504, 583 N.E.2d at 929, 577 N.Y.S.2d at 216.

674. *Id.*

675. *Id.* at 504, 583 N.E.2d at 929, 577 N.Y.S.2d at 216-17.

676. *Id.* at 508, 583 N.E.2d at 932, 577 N.Y.S.2d at 219.

677. *Id.* at 508, 583 N.E.2d at 931, 577 N.Y.S.2d at 218-19 (quoting *People v. Cook*, 34 N.Y.2d 100, 109, 312 N.E.2d 452, 457, 356 N.Y.S.2d 259, 267 (1974)).

678. *Id.* at 505, 583 N.E.2d at 929-30, 577 N.Y.S.2d at 217.

If the state has demonstrated that it intended to preempt an entire field, then any local laws regulating that field are held to be inconsistent and will not be given effect.⁶⁷⁹ It is presumed that local laws, if “permitted to operate in a field preempted by State law, would tend to inhibit the operation of the State’s general law and thereby thwart operation of the State’s overriding policy concerns.”⁶⁸⁰ The legislature’s intent to preempt a particular area can be inferred from a declaration of policy or from a comprehensive detailed scheme in a given area. However, the fact that both “State and local laws touch upon the same area is insufficient to support a determination that the State has preempted”⁶⁸¹ all local regulation.

The state substance abuse programs established under the New York Mental Hygiene Law⁶⁸² can be cooperative in nature, implemented by a joint effort of state and local officials.⁶⁸³ Having examined the statute, the legislative history and the applicable regulations,⁶⁸⁴ the court concluded that the legislature did not intend the statute’s declaration of policy to preempt local regulation of the location of facilities through the application of zoning laws.⁶⁸⁵ Nor had the Village tailored its zoning laws to block the placement of substance facilities within its borders. The court held the zoning ordinance to be within the authority of the Village to impose, and not preempted by state regulation. Therefore, Daytop was required to obtain a variance before it could lawfully operate its facility.⁶⁸⁶

The Supremacy Clause of the United States Constitution⁶⁸⁷

679. *Id.* at 505, 583 N.E.2d at 930, 577 N.Y.S.2d at 217.

680. *Id.* (quoting *Jancyn Mfg. Corp. v. County of Suffolk*, 71 N.Y.2d 91, 97, 518 N.E.2d 903, 905-06, 524 N.Y.S.2d 8, 11 (1987)).

681. *Id.* (quoting *Jancyn Mfg. Corp.*, 71 N.Y.2d at 99, 518 N.E.2d at 907, 524 N.Y.S.2d at 12).

682. N.Y. MENTAL HYG. LAW §§ 19.01-19.25 (McKinney 1988).

683. *Daytop Village*, 78 N.Y.2d at 507, 583 N.E.2d at 931, 577 N.Y.S.2d at 218.

684. N.Y. COMP. CODES R. & REGS. tit. 14, §§ 1010-1030 (1984).

685. *Daytop Village*, 78 N.Y.2d at 507, 583 N.E.2d at 931, 577 N.Y.S.2d at 218.

686. *Id.* at 508, 583 N.E.2d at 931-32, 577 N.Y.S.2d at 219.

687. U.S. CONST. art. VI, cl. 2.

similarly provides that federal laws shall preempt inconsistent state and local laws. Congress' intent to supersede state law in a given area may be explicit in the terms of the statute.⁶⁸⁸ Otherwise, such intent may be implied when the scheme of federal regulation is "so pervasive" or if the federal interest involved is "so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject."⁶⁸⁹ Finally, "[e]ven when Congress has not chosen to occupy a particular field, preemption may occur to the extent that state and federal law actually conflict."⁶⁹⁰ Such conflict exists when the local law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."⁶⁹¹

In *Wisconsin Public Intervenor v. Mortier*, the plaintiff, a property owner, challenged a town ordinance requiring a permit for the aerial application of pesticides to private land.⁶⁹² The plaintiff, who was denied such a permit, claimed that the regulation of pesticides by local governments was preempted by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).⁶⁹³

FIFRA is a comprehensive federal statute regulating the production, labeling, sale and use of pesticides.⁶⁹⁴ The plaintiff claimed that the town ordinance stood "as an obstacle to the statute's goals of promoting pesticide regulation that is coordinated solely on the federal and state levels"⁶⁹⁵ The Court found, instead, that FIFRA implied a regulatory partnership which included local government as well.

The Court stated that FIFRA "does not expressly or impliedly preclude regulatory action by political subdivisions with regard to

688. *Wisconsin Pub. Intervenor v. Mortier*, 111 S. Ct. 2476, 2481 (1991).

689. *Id.* at 2481-82 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

690. *Id.* at 2482.

691. *Id.* (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

692. *Id.* at 2480.

693. *Id.* at 2479; *see also* 7 U.S.C. §§ 136-136y (1989 & Supp. 1991).

694. *Wisconsin Pub. Intervenor*, 111 S. Ct. at 2479-80.

695. *Id.* at 2487.