

Specific Judicial Challenges and Legislative Actions against Local Legislation

Greenville, South Carolina Payday Loan Ordinance

The City of Greenville passed an ordinance in 2006 requiring that a licensed payday lender that lease property in commercial areas to close when their current leases expire because the concentration of similar businesses was having a detrimental impact on vulnerable neighborhoods. QuickCash/Southern Fast Loans of South Carolina, Inc challenged the constitutionality of the ordinance in *QuickCash/Southern Fast Loans of South Carolina, Inc. v City of Greenville*. The case also states the City has denied the business due process and interfered with a contract. The case is still pending in the court systems and awaiting a hearing on the Temporary Restraining Order.

Milwaukee, Wisconsin Title and Payday Loan Ordinance

The court in *Title Lenders, Inc. d/b/a USA Payday Loans v. Board of Zoning Appeals*, Milwaukee County, Circuit Court, Case No. 04-000115, July 29, 2004. reviewed the City of Milwaukee Board of Zoning's decision to deny Loan Max's application to open a title loan business in an area where other title and payday loan businesses were already located. The Alderman for that area opposed the request based not upon inconsistencies with the local land use plan but because he objected to the interest rates charged. The City zoning board considered: 1) protection of public health, safety and welfare, 2) protection of property, 3) traffic and pedestrian safety and, 4) consistency with the comprehensive plan. When Loan Max sought judicial review of the Board's decision, the court was bound by these standards: 1) whether the Board kept within its jurisdiction, 2) whether it proceeded on a correct theory of law, 3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment and, 4) whether the Board might reasonably make the order or determination in question, based on the evidence. The Board denied the special use permit because the payday loan entity: 1) attracts clientele that are in financial trouble or unable to manage money; 2) may attract robbers and other criminals to the area and, 3) did not comport with the efforts of the Department of City Development to develop the area. The Board was also concerned that there was another payday loan agency in the immediate area. The Court upheld the denial of the special use permit.

Oakland, California Predatory Lending Ordinance

The California Constitution has a home rule provision: Article XI, Section 7 "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinance regulation not in conflict with general law." Charter cities such as Oakland, California may adopt and enforce ordinances that conflict with general state laws, provided the subject of the regulation is a "municipal affair" rather than one of "statewide concern." Cal.Const., Art. XI, §5, Oak City Charter, §106. Pursuant to California law "A conflict exists if the ordinance duplicates or is coextensive with a state law, is contradictory or inimical to the state law, or enters an area either expressly or impliedly fully occupied by general law. The Court struck down Oakland's predatory lending

ordinance because even though the state Legislature did not expressly preempt the field of mortgage lending, the Court found field preemption by implication because the state law "fully occupied the field" of regulation of predatory practices in home mortgage lending. The Court found local regulation is invalid if it attempts to impose additional requirements in a field which is fully occupied by statute. Factors California Courts consider as indicia of legislative intent to "fully occupy a field of regulation" are: 1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern, 2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action or, 3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality. *American Financial Services Association v. City of Oakland, et al.*, 34 Cal.4th 1239 (2005)

Jacksonville, Florida Payday Loan Ordinance

The City of Jacksonville enacted a payday loan ordinance reducing the interest rate to 36% per annum and adding consumer protections not provided by the Florida Deferred Presentment Act. The ordinance also included distance requirements between payday lenders and area military bases. All sections, except those relating to zoning, were overturned by the Court in a summary final judgment. The Court found the interest rate sections of the ordinance created unlawful price controls which conflicted with a state law that expressly preempted local price control legislation. The Court also found express preemption by applying the Florida mortgage predatory lending law to payday loan transactions. The Court found the mortgage law prohibited enactment or enforcement of local laws regulating all financial entities licensed by the Florida Office of Financial Regulation. The Court also found that the Florida Deferred Presentment Act implicitly preempted the field of payday loan legislation and, if not, there was a direct conflict between the local ordinance and state payday lending law because the local ordinance reduced the rates lenders were allowed to charge by state law. The Court also found the arbitration provisions were preempted by the Federal Arbitration Act (FAA), rendering arbitration agreements valid and enforceable, finding the FAA's breadth is consistent with Congress's liberal federal policy favoring agreements to arbitrate. Under the FAA, which applies in both state and federal courts, states may not "require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration." The Court disregarded the City's argument that payday lending involves relatively small loans and does not encompass loans that involve interstate commerce, finding that Courts, not legislators, determine when a transaction involves interstate commerce. The Court found a legislative body may not simply declare that certain categories of transactions do not involve interstate commerce. *Advance America, Cash Advance Centers of Florida, Inc. v. The Consolidated City of Jacksonville, Florida*, In the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida, Case No. 16-2005-CA-7025-MA, summary judgment order entered June 1, 2005. After the summary judgment order was entered the City repealed the entire ordinance including the zoning provisions which were upheld by the Court.

St. Ann, Missouri Ordinance Prohibiting Payday Lenders Within the City Limits

Sunshine Enterprises was licensed by the state to operate a business providing unsecured, under-\$500 loans, but was denied a merchant's license by the City of St. Ann pursuant to a city ordinance prohibiting the operation of short-term loan establishments within the city. The ordinance defined a short-term loan establishment as a business engaged in providing short-term loans to the public as a primary or substantial element of its operations and prohibited their operations in all zoning districts of the City of St. Ann. Sunshine challenged the city's ordinance as being a complete prohibition, rather than a regulation, and therefore in conflict with state law. The Court held cities may not enact ordinances that conflict with state statutes or regulations. The Court found while ordinances that are regulatory are allowed, those that prohibit activities permitted by state law are in conflict and invalid. Because the state law allowed the operation of lending businesses and the Court determined that Sunshine's primary business was lending, Sunshine was in compliance with state law and its operations could not be prohibited by the city ordinance. The Court held that it was the city's burden to show that the ordinance did not conflict with state law, and the City of St. Ann was unable to do so. *State of Missouri, ex rel. v. Sunshine Enterprises of Missouri, Inc. d/b/a Sunshine Title and Check Advance*, Case Number: SC83502, Appeal from the Circuit Court of St. Louis County, January 8, 2002.

St. Louis, Missouri Title Loan Ordinance

Missouri Title Loans appealed the denial of a permit to operate a title lending business within an area of St. Louis zoned for limited commercial purposes. The ordinance set requirements for businesses to satisfy for operation in this particular commercial zone. The St. Louis Board found that Missouri Title Loans did not satisfy those requirements. The ordinance provided the commercial district's purpose was to establish and preserve the commercial and professional facilities found useful in close proximity to residential areas, so long as the uses were compatible with the residential uses. The types of businesses allowed in the commercial district included general office uses, financial institutions, and other similar uses. Title Loans challenged the denial of its permit by stating that it was a financial institution as defined in the St. Louis code. The Court looked to the definition of "financial institution" and determined by state law that Title Loans was not a bank, savings and loan association, or similar to one, and therefore did not qualify as a financial institution for the purposes of the ordinance. Title Loans further alleged that it intended to use the property for general office purposes allowing it to qualify for the permit. The Court held "general offices," as used in the code, referred to general business offices where employees do not engage in regular contact with the public, and the operations of Title Loans did not fit this category. Title Loans further argued that it qualified for a conditional use permit as allowed under a separate section of the code, claiming that it would satisfy the required standards. The code would allow a business to operate under a conditional basis if the business would contribute to the general welfare and convenience of the location, would not reduce or impair property values, and would not impact the adjacent uses or community facilities in a negative way. The Court accepted testimony from numerous sources that Title Loans would not satisfy

the standards and would have an adverse impact on property values and the ability to attract other businesses to the area. Because the evidence supporting the denial of the permit was competent and substantial, the Court upheld the Board of Adjustment's decision and denied the permit. *Missouri Title Loans, Inc. v. City of St. Louis Board of Adjustment*, Case Number: ED77866, Appeal from the Circuit Court of the City of St. Louis, decided May 1, 2001.