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May 11, 2015

ESTABLISHED 1911

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Mr. Michael McCreery
United Counties Council of Illinois
217 East Adams Street, Suite 101
Springfield, IL 62701

**Re: County Board Enacting Ordinance to Legalize Certain Fireworks
Our File: UNITCC-0601**

Dear Mike:

Question

Can the county board enact a proposed ordinance which legalizes certain fireworks that are illegal under state law, and does so based upon statutory authority “to adopt reasonable rules and regulations for the granting of permits for pyrotechnic and consumer displays”?

Analysis

It is our understanding that a county board is considering enacting a fireworks ordinance authorizing the sale of certain fireworks that are prohibited by State law. We further understand that the “authority” for the county’s stance is found in section 2 of the Pyrotechnic Use Act which states that certain local governments, including the county board “shall have power to adopt reasonable rules and regulations for the granting of permits for pyrotechnic and consumer displays.”¹

“Under Dillon’s Rule, a non-home-rule unit may exercise only those powers specifically granted to it by the Constitution or by statute.”² Our Supreme Court has stated that a non-home rule unit “cannot adopt ordinances under a general grant of power that infringe upon the spirit of state law or are repugnant to the general policy of the state.”³ “Where there is a conflict between a statute and

¹ 425 ILCS 35/2.

² *T&S Signs v. Village of Wadsworth*, 261 Ill. App. 3d 1080, 1086 (2d Dist. 1994), citing Ill. Const. 1970, art. VII, § 6; Constitutional Commentary, at 512.

³ *Hawthorne v. Vill. of Olympia Fields*, 204 Ill. 2d 243, 258-259 (2003).

Mr. Michael McCreery
United Counties Council of Illinois
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an ordinance, the ordinance must give way.”⁴ Here, the proposed ordinance provided to us would legalize certain fireworks that are prohibited by state law and, therefore, would be unlikely to stand up against legal challenge.

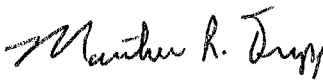
Conclusion

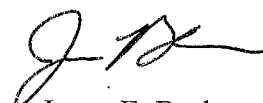
Here, the county proposes to legalize the sale of certain fireworks under the general authority to “adopt reasonable rules and regulations for the granting of permits for pyrotechnic and consumer displays.” A county cannot enact an ordinance under a general grant of power that legalizes conduct that is prohibited by state law. While local governments may sometimes enact ordinances that are more stringent than state statute, we are unaware of any authority allowing a local government to enact an ordinance that is less stringent than state law. This is supported by a part 235.180(a) of the Office of the State Fire Marshal’s Pyrotechnic and Consumer Display Permitting Rules which state that “Nothing in this Part shall prohibit the local governmental authority: (a) from adopting rules or standards that are **more stringent** than this Part.”⁵ For these reasons, it is our opinion that the proposed ordinance provided to us would most likely be found invalid because it legalizes certain fireworks that are prohibited by State law.

Sincerely,

GIFFIN, WINNING, COHEN & BODEWES, P.C.


Herman G. Bodewes


Matthew R. Trapp


Jason E. Brokaw

HGB/MRT/JEB:pa

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Disclaimer: This opinion was prepared by Giffin, Winning, Cohen & Bodewes, P.C. at the request of UCCI and is to be used solely by UCCI and its members. The State’s Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State’s Attorney.

⁴ Hawthorne, 204 Ill. 2d at 259, quoting Village of Mundelein v. Hartnett, 117 Ill. App. 3d 1011, 1015 (2nd Dist. 1983).

⁵ 41 Ill. Adm. Code 235.180 (Emphasis added.).