



2005 - 114

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

April 20, 2005

TROY KING
ATTORNEY GENERAL

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable Roger Bedford
Member, Alabama State Senate
Post Office Box 370
Russellville, Alabama 35653

Clean Indoor Air Act -
Municipalities - Ordinances -
Franklin County

A municipality is not prohibited by state law or constitutional provision from enacting an ordinance with provisions stronger than the Alabama Clean Indoor Air Act, as long as the ordinance is not inconsistent with state law.

Dear Senator Bedford:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Does the state statute or the Constitution of Alabama prohibit a municipality from adopting an ordinance stronger than the Alabama Clean Indoor Act?

FACTS AND ANALYSIS

The Alabama Clean Indoor Air Act, enacted in the 2003 Legislative Session, is codified at sections 22-15A-1 through 22-15A-10 of the Code of Alabama. Smoking of tobacco products is prohibited in public places or at public meetings with certain exceptions. ALA. CODE § 22-15A-4 (Supp. 2004). Certain areas may be designated as smoking areas by persons in charge of public places. ALA. CODE § 22-15A-6 (Supp. 2004).

Enforcement of the act and penalties are provided in the statute. ALA. CODE §§ 22-15A-8 & 22-15A-9 (Supp. 2004). Section 22-15A-10 states that “[n]othing in this chapter shall be construed to restrict the power of any county, city, town, or village to adopt and enforce local laws, ordinances, or regulations that comply with at least the minimum applicable standards set forth in this chapter.” ALA. CODE § 22-15A-10 (Supp. 2004).

According to section 89 of the Constitution of Alabama, “[t]he legislature shall not have power to authorize any municipal corporation to pass any laws inconsistent with the general law of this state.” ALA. CONST. art. IV, § 89.

Section 11-45-1 of the Code of Alabama provides as follows:

Municipal corporations may from time to time adopt ordinances and resolutions not inconsistent with the laws of the state to carry into effect or discharge the powers and duties conferred by applicable provisions of this title and any other applicable provisions of law and to provide for the safety, preserve the health, promote the prosperity, and to improve the morals, order, comfort and convenience of the inhabitants of the municipality, and may enforce obedience to such ordinances.

ALA. CODE § 11-45-1 (1989).

Whether an ordinance is inconsistent with the general law of the State is to be determined by whether the ordinance prohibits anything that the state law permits. *Brooks v. City of Birmingham*, 389 So. 2d 578, 580 (Ala. Crim. App. 1980). A municipal ordinance that enlarges upon provisions of the state statute by requiring more restrictions than state law is not unconstitutional, as long as the state statute is not exclusive. *Id.* As an example, where state alcohol beverage licensing code laws prohibited the sale or serving of alcoholic beverages between 2:00 a.m. on Sunday and 12:01 on Monday, an ordinance of the City of Alexander City prohibiting the sale of alcoholic beverages in a private or public commercial establishment between the hours of 12:00 midnight and 7:00 a.m. merely enlarged upon the statutory provisions of the Alcoholic Beverage Licensing Code and was not inconsistent with state law. *Gibson v. City of Alexander City*, 779 So. 2d 1153 (Ala. 2000).

In the case at hand, the Alabama Clean Indoor Air Act specifically authorizes local governments to adopt local laws, ordinances, and regulations to comply with at least the minimum standards. Nothing in that law, or any other statute or constitutional provision, prohibits a municipality from adopting an ordinance having stronger provisions, as long as the provisions merely enlarge on the Clean Indoor Air Act and are not inconsistent with state law.

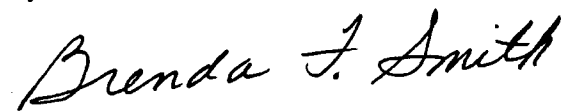
CONCLUSION

A municipality is not prohibited by state law or constitutional provisions from enacting an ordinance with provisions stronger than the Alabama Clean Indoor Air Act, as long as the ordinance is not inconsistent with state law.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division