



SPRING 2020 CASE LAW NOTES

K&W Automotive, LLC v. Town of Barrington, C.a. No. P.C.-2018-0471 (Jan. 31, 2020)

The R.I. Supreme Court recently issued a decision on a local issue of increasing interest to many in the midst of the current worldwide health crisis: can a municipality enact science-based public health laws to protect its residents from a known risk of disease and death? What if such a law is more restrictive than similar state laws? What are the limits we impose on a local health ordinance?

Background

On June 5, 2017, the Town of Barrington, Rhode Island enacted Ordinance No. 2017-7 (the "June Ordinance"), making it "unlawful to sell or possess with the intention of selling tobacco products without a tobacco dealer's license." The June Ordinance imposed conditions upon license holders, including a prohibition of sales to anyone under twenty-one (21) or the sale of flavored tobacco products.

In November 2017, Barrington repealed the June Ordinance and enacted a new ordinance, No. 2017-17 (the "Tobacco Ordinance") intended to reduce access to tobacco products by young people and to generally reduce the appeal of tobacco to younger people. The Tobacco Ordinance prohibited the sale of tobacco products to persons under the age of 21 (rather than 18) and limited the sale of flavored tobacco products. The Tobacco Ordinance provided for enforcement by an increasing series of fines for a first and subsequent offenses. A number of local businesses, including gas stations and e-cigarette and cigar vendors, challenged the Tobacco Ordinance, arguing that it constituted a violation of the Rhode Island Constitution, and was preempted by state law.

In June 2018, several public health organizations, including the Campaign for Tobacco-Free Kids, filed an amicus brief at the Providence Superior Court in support of the town's authority to enact the ordinance. Other "friends of the court" filers included the American Cancer Society Cancer Action Network, the American Heart Association, American Lung, and the City of Providence.

On July 19, 2018, the Rhode Island Superior Court ruled that, despite the fact that tobacco control and efforts to protect youth are "an absolute necessity" the Town of Barrington lacked authority to pass such an ordinance. The court reasoned first that the Tobacco Ordinance primarily concerned public health and safety and that, therefore "the [state's] police power [was not] implicated." From there, the court applied a three-part test set forth in a 1992 R.I. Supreme Court case, *Town of East Greenwich v. O'Neil*, 617 A.2d 104 (R.I. 1992).

Essentially, the Superior Court's decision on the Tobacco Ordinance was premised on the idea that the town had neither express nor implied authority to set age limits to qualify for

purchase of tobacco, nor authority to restrict the sales of certain tobacco products (in this case, flavored products). The court conceded that it "welcome[d] a review up on the seventh floor [at Supreme Court] . . . There's some [times] that I wouldn't mind being told I'm wrong; this would be one of them." As the hearing justice anticipated, the matter was appealed, and the Supreme Court weighed in.

The Rhode Island Supreme Court wrestled with a question of authority – did the Town of Barrington, under its constitutionally authorized Home Rule Charter, have the authority to enact such an ordinance? A bit of history: in June 1951, Rhode Island ratified the 28th Amendment to the Rhode Island Constitution [now the 13th Amendment]. It granted municipalities the right to self- government in all local matters. R.I. Const., art. 13, § 1. Specifically, the Rhode Island Constitution provides:

"Every city and town shall have the power at any time to adopt a charter, amend its charter, enact and amend local laws relating to its property, affairs and government not inconsistent with this Constitution and laws enacted by the general assembly in conformity with the powers reserved to the general assembly." R.I. Const., art. 13, § 2.

Rhode Island's highest court has long held that Home Rule allows a municipality to legislate on matters of "purely local concern." They may not, however, legislate on matters of "statewide concern," which are exclusively within the power of the state's general assembly. Matters of "statewide concern" include areas such as education, elections, police powers, conduct of business, and taxation. The *O'Neil* case, relied on by Superior Court in its decision on the Tobacco Ordinance, set forth criteria for deciding whether an issue is of local or statewide concern:

1. is uniform regulation throughout the state necessary or desirable?
2. is a particular matter traditionally within the domain of one entity?
3. will the action have a significant effect upon people outside the town or city?

The Rhode Island Supreme Court reasoned that the Superior Court had analyzed these issues correctly in its initial decision, ruling that Barrington's home rule charter did not give the town the authority over issues of statewide concern, and that regulating tobacco sales is just such a matter. The Supreme Court further held that, as Barrington did not have regulatory authority in this area, an analysis of any state preemption of local ordinances was unnecessary.