



CITY OF STAMFORD, CONNECTICUT
INTER-OFFICE CORRESPONDENCE

To: Jonathan Jacobson
From: Dana B. Lee Esq. /S DLEE
Copy: Thomas Cassone, Esq.
Date: January 19, 2024
RE: Preemption Issues Involving Ordinance on Motor Vehicle Excessive Noise

I. Issue:

Can the City enact an ordinance that prohibits the sale and offer for sale of a muffler or exhaust device which increases the noise emitted by that system?

II. Brief Answer:

The City must allow the sale of devices that increase noise emitted by the system up to the maximum permissible sound level readings allowed by state law. The City may prohibit the sale of devices that would increase the noise of the systems above those levels.

III. Background:

The proposed ordinance would be modeled after the State of New York's SLEEP Act. Briefly, New York's SLEEP Act, as recently amended, prohibits, among other things, modifying, selling, and offering to sell motor vehicle exhaust and muffler systems that amplify the noise emitted by that system.

The state of Connecticut has a similar law, except that the law does not prohibit the sale or the offer for sale of exhaust and muffler system devices. See Connecticut General Statute § 14-80¹. General Statute § 14-80 requires motor vehicles to be "operated, equipped, constructed, and

¹ **§ 14-80. Mechanical equipment**

(a) Each motor vehicle and the devices on such vehicle shall be operated, equipped, constructed and adjusted to prevent unnecessary or unusual noise.

(b) Each motor vehicle operated by an internal combustion engine shall be equipped, except as hereinafter provided, with a muffler or mufflers designed to prevent excessive, unusual or

unnecessary exhaust noise. The muffler or mufflers shall be maintained by the owner in good working order and shall be in use whenever the motor vehicle is operated. No person, including a motor vehicle dealer or repairer or a motorcycle dealer, shall install, and no person shall use, on a motor vehicle, a muffler or mufflers lacking interior baffle plates or other effective muffling devices, a gutted muffler, a muffler cutout or a straight exhaust except when the motor vehicle is operated in a race, contest or demonstration of speed or skill as a public exhibition pursuant to subsection (a) of section 14-164a, or any mechanical device which will amplify the noise emitted by the vehicle. No person, including a motor vehicle dealer or repairer or a motorcycle dealer, shall remove all or part of any muffler on a motor vehicle except to repair or replace the muffler or part for the more effective prevention of noise. No person shall use on the exhaust system or tail pipe of a motor vehicle any extension or device which will cause excessive or unusual noise.

(c) The engine of every motor vehicle shall be equipped and adjusted to prevent excessive fumes or exhaust smoke.

(d) All pipes carrying exhaust gases from the motor shall be constructed of, and maintained with, leak-proof metal. Exhaust pipes shall be directed from the muffler or mufflers toward the rear of the vehicle and shall be approximately parallel with the longitudinal axis of the vehicle and approximately parallel to the surface of the roadway, or shall be directed from the muffler upward to a location above the cab or body of the vehicle so that fumes, gases and smoke are directed away from the occupants of the vehicle. Exhaust pipes on a passenger vehicle shall extend to the extreme rear end of the vehicle's body, not including the bumper and its attachments to the body, or shall be attached to the vehicle in such a way that the exhaust pipes direct the exhaust gases to either side of the vehicle ensuring that fresh ambient air is located under the vehicle at all times. The Commissioner of Motor Vehicles may adopt regulations in accordance with the provisions of chapter 541 to establish safety standards for passenger vehicles equipped with exhaust pipes located in front of the rear axle.

(e) Every motor vehicle shall, when operated on a highway, be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle.

(f) No vehicle shall be equipped with, nor shall any person use on a vehicle, any siren, whistle or bell as a warning signal device, except as otherwise permitted by this section. Any motor vehicle may be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal. Any authorized emergency vehicle may be equipped with a siren, whistle or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred feet and of a type approved by the Department of Motor Vehicles. Such signal shall not be used unless the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which event the driver of the vehicle shall sound the signal when reasonably necessary to warn pedestrians and other drivers of the approach of the vehicle.

adjusted to prevent unnecessary and unusual noise.” C.G.S. § 14-80(a). The statute also requires motor vehicles to be equipped with muffler systems “designed to prevent excessive, unusual or unnecessary exhaust noise.” *Id.*, at § 80(b).

In addition, General Statute § 14-80a² prohibits the operation of a motor vehicle in a manner that exceeds the “total noise” levels established by regulations adopted by the Commissioner of Motor Vehicles. See, C.G.S. § 14-80(a, c); Regs., Conn. State Agencies § 14-80a-1a through § 14-80a-10a.

General Statute § 14-80a(b) does prohibit the sale and offer for sale of new vehicles which produce noise that exceeds the maximum total noise levels.

IV. Analysis:

(g) Any person who violates any provision of this section shall be fined one hundred fifty dollars for each offense.

² § 14-80a. Maximum noise levels. Regulations

(a) No person shall operate a vehicle or combination of vehicles, nor shall the owner of any vehicle allow the vehicle to be operated, at any time or under any condition of grade, surface, speed, load, acceleration, deceleration or weather condition in such a manner as to exceed the decibel levels established under subsection (c) of this section. This subsection applies to the total noise generated by a vehicle and shall not be construed as limiting or precluding the enforcement of any other motor vehicle noise provisions of this title.

(b) No person shall sell or offer for sale a new vehicle which produces a maximum decibel level which exceeds the decibel levels established under subsection (c) of this section.

(c) The Commissioner of Motor Vehicles shall, with the advice of the Commissioner of Energy and Environmental Protection, adopt regulations, in accordance with the provisions of chapter 54,1 establishing (1) the maximum decibel levels permissible for motor vehicles, which shall not exceed the maximum decibel levels established for motor vehicles by federal law or regulation, and (2) the procedure for testing maximum decibel levels. The commissioner shall amend such regulations to reflect industry standards and advancements in technology and shall submit the amended regulations to the standing legislative regulation review committee under section 4-170 not later than October 1, 2024.

(d) Violation of the provisions of this section shall be an infraction.

The question presented requires a determination of whether an ordinance banning the sale and offer for sale of devices that increase noise emitted by muffler and exhaust systems is preempted by state law.

“[A] local ordinance is preempted by a state statute whenever the legislature has demonstrated an intent to occupy the entire field of regulation on the matter ... or ... whenever the local ordinance irreconcilably conflicts with the statute.” (Internal quotation marks omitted.) *Bauer v. Waste Management of Connecticut, Inc.*, 234 Conn. 221, 232 (1995). “[W]hether the legislature has undertaken to occupy exclusively a given field of legislation is to be determined in every case upon an analysis of the statute, and of the facts and circumstances upon which it intended to operate.” (Internal quotation marks omitted.) *Bencivenga v. Milford*, 183 Conn. 168, at 176 (1981).

“A test frequently used to determine whether a conflict exists is whether the ordinance permits or licenses that which the statute forbids or prohibits that which the statute authorizes; if so, there is a conflict. If, however, both the statute and the ordinance are prohibitory and the only difference is that the ordinance goes further in its prohibition than the statute, but not counter to the prohibition in the statute, and the ordinance does not attempt to authorize that which the legislature has forbidden, or forbid that which the legislature has expressly authorized, there is no conflict.” (Internal quotation marks omitted.) *Bauer*, supra, at 235.

Moreover, “(t)he fact that a local ordinance does not expressly conflict with a statute enacted by the General Assembly will not save it when the legislative purpose in enacting the statute is frustrated by the ordinance.” *Dwyer v. Farrel*, 193 Conn. 7, 10–14 (1986).

The application of these principles results in the following conclusions. First, the City must allow the sale of devices that increase noise emitted by the system up to the maximum permissible noise level readings allowed by state law. “(T)he legislature has pre-empted the field of motor vehicle noise.” *Cox v. Colonial Mobile Home Park Inc.*, 1991 WL 253702 at * 4 (Conn. Super. 1991)(Berger, J.) “General Statutes § 14-80a addresses maximum noise levels for all vehicles and instructs the Commissioner of Motor Vehicles to adopt regulations... Pursuant to said mandate, the Commissioner promulgated maximum permissible noise levels for vehicles, effective December 27, 1978, at Section 14-80a-1 et seq, Regulations of Connecticut State Agencies.” *Id.* “The decibel limits found in Section 14-80a-1 are maximum permissible sound level readings. A municipal or other similarly situated ordinance which is more stringent would be in conflict.” *Id.*, citing, *Lizotte v. Conservation Commission*, 216 Conn. 320, 333 (1990); *Aaron v. Conservation Commission*, 183 Conn. 532, 544 (1981).

Since the State has preempted the field of motor vehicle noise, “any ordinance that operates to regulate such field is necessarily preempted.” *Helicopter Associates, Inc. v. Stamford*, 201 Conn. 700, 705 (1986). The case of *Dwyer v. Farrel*, 193 Conn. 7 (1986) is instructive. *Dwyer v. Farrel* involved a determination that a New Haven City ordinance regulating the retail sale of pistols and revolvers was pre-empted by state law. The court found “the New Haven ordinance removes an entire class of persons as potential sellers of handguns at retail. The state permit is rendered an illusory right because a casual seller residing in a non-business zone can have no real hope of ever conforming to the local ordinance. In this respect, the local ordinance

conflicts with the legislative intent as expressed in the applicable statutes. The City has removed the right that the state permit bestows and thus has exceeded its powers.” *Id.*, 14. The concerns raised by the Supreme Court in *Dwyer* would be present in any ordinance that prohibits the sale of devices that are otherwise permitted by state law. General Statute § 14-80 statute informs all persons, including sellers and buyers of automotive aftermarket parts, of the exhaust and muffler devices that are permitted on motor vehicles in Connecticut. A more stringent ordinance prohibiting the sale of otherwise legal devices would operate to regulate the field of motor vehicle noise in Stamford, frustrates the legislative purpose of § 14-80, and is consequently preempted.

Second, and on the other hand, the City may prohibit the sale of devices that would increase the noise of exhaust and muffler systems above the maximum noise levels established by § 14-80a. Such an ordinance would not operate to regulate the field of motor vehicle noise or frustrate the legislative purpose of § 14-80 as the ordinance would only prohibit the sale of devices the use of which is already prohibited. The purpose of the prohibition on sales of such devices would be consistent with the state’s purpose for setting maximum permissible motor vehicle noise levels. Where a municipal ordinance merely enlarges on the provisions of a statute by requiring more than a statute, there is no conflict unless the legislature has limited the requirements for all cases.” (Citations omitted; internal quotation marks omitted.) *Modern Cigarette, Inc. v. Orange*, 256 Conn. 105, 119-20, 130 (2001) (Holding that ordinance banning cigarette vending machines in town was not preempted by state statute prohibiting the machines in places frequented by minors because the ordinance was motivated by the same purpose and simply went farther than the statute to accomplish those purposes.)