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OPINION	:	No. 04-206
of	:	July 12, 2004
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THE HONORABLE DARIO FROMMER, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following question:

May a city enact an ordinance restricting vehicle engine idling for the purpose of controlling or mitigating vehicle emissions?

CONCLUSION

A city may enact an ordinance restricting vehicle engine idling for the purpose of controlling or mitigating vehicle emissions if (1) the city has been delegated authority to do so by an air pollution control district or by an air quality management district, (2) the ordinance imposes more stringent engine idling requirements than imposed by such district and is otherwise authorized by law, or (3) the ordinance seeks to abate a nuisance.

ANALYSIS

A city is considering whether to enact an ordinance that would regulate vehicle engine idling[1] by operators of delivery trucks and other commercial vehicles at industrial and commercial facilities. The ordinance would restrict the location and duration of engine idling, thereby reducing vehicular emissions that contribute to poor air quality and unhealthful local conditions.[2] We are asked whether a city may enact the described ordinance. We conclude that it may under specified conditions.

California Constitution, article XI, section 7, confers on each city and county the power to "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." In *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885, the Supreme Court examined the scope of this constitutional grant of authority:

> "Under the police power granted by the Constitution, counties and cities have plenary authority to govern, subject only to the limitation that they exercise their power within their territorial limits and subordinate to state law. (Cal. Const., art. XI, § 7.) Apart from this limitation, the 'police power [of a county or city] under this provision . . . is as broad as the police power exercisable by the Legislature itself.' [Citation.]"

Requiring local ordinances to be "not in conflict with general laws" means that where a local ordinance conflicts with general law, it is void. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 290; *A & B Cattle Co. v. City of Escondido* (1987) 192 Cal.App.3d 1032, 1038.) In *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, the court described when such a "conflict" arises:

> " 'A conflict exists if the local legislation' "duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." [Citations.]
>
> "Local legislation is 'duplicative' of general law when it is coextensive

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[1] Vehicle engine "idling" is commonly understood as keeping the engine of a vehicle running while the vehicle is stationary. (See Cal. Code Regs., tit. 13, § 2480, subd. (h)(7).) We adopt that definition here.

[2] In enacting Health and Safety Code section 40720 restricting vehicle engine idling by trucks at marine terminals, the Legislature declared: "Idling trucks emit air contaminants, including oxides of nitrogen (NO_x), carbon dioxide (CO_2), and particulate matter." (Stats. 2002, ch. 1129, § 1.)

therewith. [Citation.]

> "Similarly, local legislation is 'contradictory' to general law when it is inimical thereto. [Citation.]
>
> "Finally, local legislation enters an area that is 'fully occupied' by general law when the Legislature has expressly manifested its intent to 'fully occupy' the area [citations] or when it has impliedly done so . . . ." (*Id*. at pp. 897-898.)

In light of these governing constitutional principles, may a city ordinance regulate vehicle engine idling for purposes of controlling or mitigating vehicle emissions? The answer to this question requires consideration of the state statutory scheme that regulates vehicle emissions.[3]

The Legislature has enacted a comprehensive statutory scheme (Health & Saf. Code, Division 26, §§ 39000-44474; "Division 26")[4] to provide "an intensive, coordinated state, regional, and local effort to protect and enhance the ambient air quality of the state" (§ 39001). Local and regional authorities[5] have primary responsibility for nonvehicular sources of air pollution, while the State Air Resources Board (§§ 39500-39905; "Board") has primary responsibility for the control of air pollution caused by motor vehicles. Specifically, section 39002 states:

> "Local and regional authorities have the primary responsibility for control of air pollution from all sources other than vehicular sources. The control of vehicular sources, except as otherwise provided in this division,

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[3] We are not concerned here with issues of federal preemption involving the federal Clean Air Act. (42 U.S.C. § 7401 et seq.; see *Engine Manufacturers Association v. South Coast Air Quality Management District* (2004) __ U.S. __ [124 S. Ct. 1756].) However, we note that the federal act contains the following provision: "nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce . . . any requirement respecting control or abatement of air pollution . . . ." (42 U.S.C. § 7416.) It also states that "nothing in [the federal act's provisions concerning motor vehicle emission standards] shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles." (42 U.S.C. § 7543(d).)

[4] All section references are to the Health and Safety Code unless otherwise indicated.

[5] "Local and regional authorities" are the governing bodies of cities, counties, and districts. (§ 39037.) "District" means either "an air pollution control district or an air quality management district . . . ." (§ 39025.)

shall be the responsibility of the State Air Resources Board. . . ."

Similarly, section 40000 provides:

> "The Legislature finds and declares that local and regional authorities have the primary responsibility for control of air pollution from all sources, other than emissions from motor vehicles. The control of emissions from motor vehicles, except as otherwise provided in this division, shall be the responsibility of the state board."

Vehicle engine idling is a "vehicular source" of air pollution. As such, its regulation is a responsibility of the Board, except as provided in Division 26. (§§ 39002, 40000.)[6]

The key statute requiring our interpretation is section 40717, which specifically authorizes the imposition of vehicle engine idling restrictions. Section 40717 provides:

> "(a) A district shall adopt, implement, and enforce transportation control measures for the attainment of state or federal ambient air quality standards to the extent necessary to comply with Section 40918, 40919, or 40920.
>
> ". . . . . .
>
> "(e) A district may delegate any function with respect to the implementation of transportation control measures to any local agency, if all of the following conditions are met:
>
> "(1) The local agency submits to the district an implementation plan that provides adequate resources to adopt and enforce the measures, and the district approves the plan.
>
> "(2) The local agency adopts and implements measures at least as stringent as those in the district plan.

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[6] Consistent with this statutory allocation of responsibilities, the Board recently adopted a regulation limiting engine idling by school buses and commercial vehicles at or near schools. (Cal. Code Regs., tit. 13, § 2480.) The Board's regulation defers its requirements to "any local ordinance or requirement as stringent as, or more stringent than" set forth in the regulation. (Cal. Code Regs., tit. 13, § 2480, subd. (e)(3).) The extent to which the regulation of certain sources of vehicular pollution, such as engine idling, may be shared by the Board, the districts, and cities and counties is beyond the scope of this opinion.

"(3) The district adopts procedures to review the performance of the local agency in implementing the measures to ensure compliance with the district plan.

"(4) Multiple site employers with more than one regulated worksite in the district have the option of complying with the district rule and reporting directly to the district. Employers that exercise this option shall be exempt from the local agency trip reduction measure.

"(f) A district may revoke an authority granted under this section if it determines that the performance of the local agency is in violation of this section or otherwise inadequate to implement the district plan.

"(g) For purposes of this section, 'transportation control measures' means any strategy to reduce vehicle trips, vehicle use, vehicle miles traveled, *vehicle idling*, or traffic congestion for the purpose of reducing motor vehicle emissions.

"(h) Nothing in this section shall preclude a local agency from implementing a transportation control measure that exceeds the requirements imposed by an air pollution control district or an air quality management district if otherwise authorized by law." (Italics added.)[7]

Section 40717 is an exception to the general rule stated in sections 39002 and 40000 ("except as otherwise provided in this division"). It gives districts, cities, and counties limited regulatory authority with respect to the adoption and enforcement of "transportation control measures" (§ 40717, subds. (a), (e)), including a "strategy to reduce . . . vehicle idling . . . for the purpose of reducing motor vehicle emissions" (§ 40717, subd. (g)).

Section 40717 provides two means for a city to adopt transportation control measures. The first is the process set forth in subdivision (e), allowing a district to delegate any function with respect to the implementation of transportation control measures under specified conditions. Pursuant to this delegation, these measures, including strategies to reduce vehicle engine idling, would constitute part of a district's efforts to attain state or federal ambient air quality standards. (See § 40717, subd. (a).) The measures adopted by

[7] Sections 40918, 40919, and 40920 prescribe a set of measures to be included in the attainment plans for districts having moderate, serious, and severe air pollution, respectively. (See 76 Ops.Cal.Atty.Gen. 11, 14, 18 (1993).) An additional category for districts having extreme air pollution was added in 1992. (§ 40920.5.) Increasingly stringent transportation control measures are required for each successive category. (§§ 40918, subd. (c); 40919, subd. (d); 40920, subd. (c).)

the city would have to be at least as stringent as those contained in the district plan. (§ 40717, subd. (e)(2).)

The second means by which a city could adopt a measure to limit vehicle engine idling is set forth in subdivision (h) of section 40717, which refers to the implementation of a transportation control measure "otherwise authorized by law." As long as the measure exceeds the requirements imposed by the district and the measure is so authorized, it may be implemented by the city. The constitutional police power authority of a city provides the requisite "authorization" as long as its exercise is a reasonable means of promoting the health, safety, or welfare of the public. (See 83 Ops.Cal.Atty.Gen. 195, 196-202 (2000).)

The third means specified in Division 26 for adopting a city ordinance restricting vehicle engine idling is found in section 41509, which states:

> "No provision of this division, or of any order, rule, or regulation of the state board or of any district, is a limitation on:
>
> "(a) The power of any local or regional authority to declare, prohibit, or abate nuisances.
>
> "[. . . . .]"

Air pollution has long been regarded as a type of nuisance. (See *Dauberman v. Grant* (1926) 198 Cal. 586, 590 [soot and smoke may constitute a nuisance]; *Sullivan v. Royer* (1887) 72 Cal. 248, 249.) As the United States Supreme Court observed in *Washington v. General Motors Corp.* (1972) 406 U.S. 109, 114: "Air pollution is, of course, one of the most notorious types of public nuisance in modern experience." A city has the power to adopt general police regulations to prevent nuisances. (*Suzuki v. City of Los Angeles* (1996) 44 Cal.App.4th 263, 278; *People v. Johnson* (1954) 129 Cal.App.2d 1, 6.) Of course, like any ordinance, the means specified to accomplish the goals of promoting the public health, safety, or welfare must be reasonably appropriate to the intended purpose. (See *Sunset Amusement Co. v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 72; *Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109, 1128; 7A McQuillan, Municipal Corporations (3d ed. 1989) § 24.496, pp. 78-80.)

The three means identified in Division 26 for adoption of a city ordinance regulating vehicle engine idling are not only "consistent" with state laws rather than "in conflict with" state laws, but each *represents* state law. An ordinance adopted under one of

these statutory provisions would carry out state law by further reducing air pollution from vehicular sources, one of the principal goals of Division 26. In sum, the Legislature has expressly granted to cities and counties a role in implementing transportation control measures, including those meant to reduce vehicle engine idling. "Preemption by implication of legislative intent may not be found when the Legislature has expressed its intent to permit local regulations. Similarly, it should not be found when the statutory scheme recognizes local regulations." (*People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 485; see *Valley Vista Services, Inc. v. City of Monterey Park* (2004) 118 Cal.App.4th 881, 887-888.)[8]

We conclude that a city may enact an ordinance restricting vehicle engine idling for the purpose of controlling or mitigating vehicle emissions if (1) the city has been delegated authority to do so by an air pollution control district or an air quality management district, (2) the ordinance adopted imposes more stringent engine idling requirements than imposed by such district and is otherwise authorized by law, or (3) the ordinance seeks to abate a nuisance.[9]

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[8] Further indication of the Legislature's intent may be found in section 40717.8, subdivision (c), which provides that reducing the amount of vehicle engine idling before and after an "event" may be part of a local agency's emission reduction strategy for an "event center." An event center may be regulated as an "indirect source of air pollution," which includes developments that attract direct vehicular sources of air pollution. (See 79 Ops.Cal.Atty.Gen. 214, 215 (1996); 76 Ops.Cal.Atty.Gen., *supra*, at p. 13.)

[9] In light of the role given to districts, cities, and counties in Division 26 with respect to imposing vehicle engine idling restrictions, it is unnecessary to determine whether the Board's jurisdiction over vehicular sources of air pollution is exclusive only as to emission standards. (See §§ 43000, 43013, 43101.)