



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 328

*June 14, 1996*

*The Texas Ethics Commission has been asked to consider whether title 15 of the Election Code, the state campaign finance law, preempts a home-rule city from adopting a campaign finance ordinance. (AOR-365)*

The Texas Ethics Commission has been asked whether the campaign finance laws set out in title 15 of the Election Code, which apply to activity in connection with Texas state elections as well as all local elections in Texas,<sup>1</sup> preempt certain provisions of the Fair Campaign Ordinance adopted by the City of Austin in 1994.

The City of Austin is a home-rule city. The Texas Constitution grants home-rule cities all the powers of self-government not expressly denied them by the legislature. Tex. Const. art. XI, § 5; *Dallas Merchant's & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489 (Tex. 1993). A home-rule city is not required to look for a legislative grant of authority to adopt a particular ordinance but rather must determine whether the legislature has limited the city's authority to adopt the ordinance. *Burch v. San Antonio*, 518 S.W.2d 540, 543 (Tex. 1975). Although the legislature may withdraw an entire field from regulation by home-rule cities, it must do so with unmistakable clarity. *See Dallas Merchant's & Concessionaire's Ass'n*, 852 S.W.2d at 491; *City of College Station v. Turtle Rock Corp.*, 680 S.W.2d 802, 807 (Tex. 1984); *Glass v. Smith*, 244 S.W.2d 645, 649 (Tex. 1951). Limits on the authority of a home-rule city may arise by implication, but only if the provisions of the state law are "clear and compelling" in implying limits. *City of College Station*, 680 S.W.2d at 807 (citing *Lower Colo. River Auth. v. City of San Marcos*, 523 S.W.2d 641 (Tex. 1975)). The entry of the state into a field of regulation does not, by itself, imply that a home-rule city may not adopt regulations in that field. *City of Brookside Village v. Comeau*, 633 S.W.2d 790, 796 (Tex. 1982).

Even if the legislature has not preempted home-rule cities from adopting regulations in a particular field, however, a home-rule city may not enforce an ordinance inconsistent with state law. *Dallas Merchant's & Concessionaire's Ass'n*, 852 S.W.2d at 491; *see* Attorney General Opinion DM-221 at 2-3 (1993) (notice requirements in city ordinance regarding pesticide application are preempted because they are inconsistent with notice requirements in state law). In considering the issue of preemption because of inconsistency, the Texas Supreme Court has stated that an ordinance and state legislation are not inconsistent if both may be given effect. *Dallas Merchant's and Concessionaire's Ass'n*, 852 S.W.2d at 491 (citing *City of Beaumont v. Fall*, 116 Tex. 314, 291 S.W. 202, 206 (Tex. Comm'n App. 1927, judgment adopted)).

The Election Code contains no express language preempting the subject matter of campaign finance from local regulation. Further, although several provisions of title 15 hint that the legislature did not anticipate local campaign finance laws, *see, e.g.*, Elec. Code §§ 252.008 (specific-purpose committee active in more than one political subdivision not required to file with more than one filing authority), 254.095 (local officeholders not required to file under certain circumstances), we cannot say that there is "clear and compelling" evidence the legislature intended to preempt the field of campaign finance regulation. Therefore, a particular provision of the Austin ordinance is preempted by state law only if it is not possible to give effect to both that provision and to the provisions of title 15 of the Election Code.

The Ethics Commission has authority to issue advisory opinions about the application of title 15 of the Election Code. The commission does not have the authority to interpret city ordinances and therefore has no jurisdiction

to determine whether specific provisions of a city campaign finance ordinance are in conflict with title 15.

### **SUMMARY**

The legislature has not preempted the entire subject matter of campaign finance from regulation by home-rule cities. Therefore, a particular provision of a city campaign finance ordinance is preempted by state law only if it is not possible to give effect to both that provision and to the provisions of title 15 of the Election Code.

The Texas Ethics Commission does not have jurisdiction to determine whether specific provisions of a city campaign finance ordinance are in conflict with title 15.

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<sup>1</sup> Title 15 does not apply to activity in Texas in connection with elections for federal offices. Elec. Code § 251.006.