



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
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July 29, 2022

Kelly McElreath, Town Clerk
Town of Plymouth
26 Court Street
Plymouth, MA 02360

Re: Plymouth Annual Town Meeting of April 2, 2022 -- Case # 10492
Warrant Article # 17 (Zoning)
Warrant Articles # 14 and 20 (General)

Dear Ms. McElreath:

Articles 14, 17, and 20 - We approve Articles 14, 17, and 20 from the April 2, 2022, Plymouth Annual Town Meeting. Our comments on Article 20 are detailed below.

Article 20 - Under Article 20 the Town voted to amend the Town's general by-laws to add to Chapter 23, "Animals," a new Article VI, "Fur Products," that prohibits the sale of fur products in the Town. We approve the by-law's ban on the sale of fur products because it is within the Town's Home Rule and statutory authority and is not preempted by or otherwise in conflict with state statutes regulating the sale of fur products.¹

I. Description of Article 20

The new Article VI prohibits the sale of fur products in the Town. The by-law defines "fur product" as follows:

Any article of clothing or covering for any part of the body, or any fashion accessory, including, but not limited to, handbags, shoes, slippers, hats, earmuffs, scarves, shawls, gloves, jewelry, keychains, toys or trinkets, and home accessories and décor, that is made in whole or part of fur. "Fur product" does not include any of the following:

¹ In decisions issued to the Towns of Brookline on June 23, 2022 (Case # 10476), Wellesley on May 18, 2021 (Case # 9970), and Weston on November 10, 2021 (Case # 10199), we approved similar general by-law banning the sale of fur products.

- A. An animal skin or part thereof that is to be converted into leather, or which in processing will have the hair, fleece, or fur fiber completely removed;
- B. Cowhide with the hair attached thereto;
- C. Lambskin or sheepskin with the fleece attached thereto; or
- D. The pelt or skin of any animal that is preserved through taxidermy or for the purpose of taxidermy.

The by-law exempts from its prohibition: (1) used fur products by an individual (excluding a retail transaction), non-profit organization, or second-hand stores, including a pawn shop; (2) fur products used in the practice of religion; (3) fur products used for traditional tribal, cultural, or spiritual purposes by a member of a federally recognized or state recognized Native American tribe; or (4) fur products where the activity is expressly authorized by federal or state law. The by-law imposes a \$300.00 penalty for violation of its provisions.²

II. Attorney General's Standard of Review of General By-laws

Our review of Article 20 is governed by G.L. c. 40, § 32. Pursuant to G.L. c. 40, § 32, the Attorney General has a “limited power of disapproval,” and “[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws.” Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986) (requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law). The Attorney General does not review the policy arguments for or against the enactment. Amherst, 398 Mass. at 798-99 (“Neither we nor the Attorney General may comment on the wisdom of the town’s by-law.”) Rather, in order to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796. Where the Legislature intended to preempt the field on a topic, a municipal by-law on that topic is invalid and must be disapproved. Wendell v. Attorney General, 394 Mass. 518, 524 (1985).

In determining whether a by-law is inconsistent with a state statute, the “question is not whether the Legislature intended to grant authority to municipalities to act...but rather whether the Legislature intended to deny [a municipality] the right to legislate on the subject [in question].” Wendell, 394 Mass. at 524. “This intent can be either express or inferred.” St. George Greek Orthodox Cathedral of Western Mass. v. Springfield, 462 Mass. 120, 125-26 (2012). Local action is precluded in three instances, paralleling the three categories of federal preemption: (1) where the “Legislature has made an explicit indication of its intention in this respect”; (2) where “the State legislative purpose can[not] be achieved in the face of a local by-law on the same subject”; and (3) where “legislation on a subject is so comprehensive that an inference would be justified that the Legislature intended to preempt the field.” Wendell, 394 Mass. at 524. “The existence of

² The by-law also includes a Section 6, “Effective date,” that provides “This by-law shall take effect[.]” Section 6 does not include a specific effective date. However, general by-law take effect once they are approved by this Office and the Town Clerk satisfies the posting and publication requirements in G.L. c. 40, § 32. The Town should discuss the by-law’s effective date with Town Counsel and whether Section 6 should be amended at the future Town Meeting.

legislation on a subject, however, is not necessarily a bar to the enactment of local ordinances and by-laws exercising powers or functions with respect to the same subject[, if] the State legislative purpose can be achieved in the face of a local ordinance or by-law on the same subject[.]” Bloom v. Worcester, 363 Mass. 136, 156 (1973); see Wendell, 394 Mass. at 527-28 (“It is not the comprehensiveness of legislation alone that makes local regulation inconsistent with a statute. . . . The question . . . is whether the local enactment will clearly frustrate a statutory purpose.”).

III. Article 20’s Ban on the Sale of Fur Products Is Not in Conflict with State Law

A. General Municipal Authority to Adopt By-laws Banning Certain Activities

Towns have used their Home Rule powers to prohibit, within their borders, certain commercial activities that state statutes generally recognize as lawful and that are widely accepted in the remainder of the Commonwealth--for example, coin-operated amusement devices, or self-service gas stations. Amherst, 398 Mass. at 798 n.8. The Supreme Judicial Court has upheld such by-laws and has overturned the Attorney General’s disapproval of them where they did not create any specific conflict with state law. Amherst, *id.*; see also Milton v. Attorney General, 372 Mass. 694, 695-96 (1977). The Attorney General thus has no power to disapprove a by-law merely because a town, in comparison to the rest of the state, has chosen a novel, unusual, or experimental approach to a perceived problem.

B. The Town’s Ban on the Sale of Fur Products is Not Preempted by State Law

Because Article 20 bans the sale of fur products, we address Article 20’s consistency with several state laws regulating fur products, including, G.L. c. 94, § 227A, c. 131, § 28, and c. 266, § 79. For the reasons provided below, we cannot conclude that Article 20’s ban on the sale of fur products is in conflict with or preempted by these statutes.

As noted earlier, the Attorney General must approve a by-law unless it conflicts with state law. Amherst, 398 Mass. at 796. Municipalities have “considerable latitude” in legislating, and so there must be a “sharp conflict” with state law before a local enactment may be disapproved. Bloom, 363 Mass. at 154. (add full cite) “The legislative intent to preclude local action must be clear.” *Id.* at 155.

Under this analysis we have considered the possible preemptive effect of several state laws regulating fur products, including, G.L. c. 94, § 227A, c. 131, § 28, and c. 266, § 79. General Laws Chapter 94, Section 227A imposes labeling requirements on natural, dyed or imitation furs, sold at retail within the state. Section 227A also prohibits misrepresentations: (1) as to the place from which the fur or other material came; (2) as to the manufacturer of the article; or (3) as to any other matter. Moreover, G.L. c. 266, § 79 makes it a crime to sell or exchange manufactured imitation furs as the genuine furs of certain animals. In addition, G.L. c. 131, § 28 requires a license from the Director of Fisheries and Wildlife before a person can purchase or receive the skins or pelts of any fur-bearing mammals from trapper or hunter. While these three statutes regulate certain aspects of the sale of fur products, we determine that they do not constitute state-wide, comprehensive legislation that preempts a local by-law prohibiting the sale of fur products.

Although these statutory requirements are broad, we find in them nothing that explicitly preempts local law, nothing that conflicts with Article 20, and no intention to “occupy the field” of fur sale regulation and thereby preclude municipal efforts towards banning fur sales. Because Article 20’s ban on the sale of fur products is not in conflict with or preempted by state law we approve it.

IV. Conclusion

The by-law’s ban on the sale of fur products is within the Town’s Home Rule and statutory authority. Moreover, we are unable to conclude that the by-law’s ban on fur sales is preempted by or otherwise conflicts with the state statutes regulating the sale of fur products. On these grounds we approve Article 20.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

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