

# CONFLICT BETWEEN STATE STATUTE AND MUNICIPAL ORDINANCE

*Union Sand & Supply Corp. v. Village of Fairport*  
172 Ohio St. 387, 176 N.E.2d 224 (1961)

Plaintiff sought to enjoin the enforcement of a municipal ordinance fixing the maximum weights of vehicles using streets and highways within the village limits. The ordinance empowered the mayor to reduce the maximum weights up to twenty-five per cent when the weather or physical condition of the streets required. The Ohio Revised Code permitted heavier maximum weights than those permitted by village ordinance.<sup>1</sup> Plaintiff maintained that the ordinance was in conflict with the state statute, and for that reason was invalid. The Ohio Supreme Court affirmed the lower court, holding the ordinance enforceable and not in conflict with the Ohio Revised Code.<sup>2</sup>

Article XVIII, section 3 of the Ohio Constitution gives municipalities the power to pass police regulations so long as they do not conflict with general laws.<sup>3</sup> The court in the principal case acknowledged that there is no judicially established method for determining when there is a conflict and asked for legislative assistance in the future.<sup>4</sup> In deciding cases of conflict between statutes and ordinances, the courts have employed various techniques.<sup>5</sup> The most frequently used test is: "Does the ordinance permit or license that which the statute forbids or prohibits and vice versa?"<sup>6</sup> In applying it the courts have not been consistent,<sup>7</sup> and the test is not satisfactory in cases of conflict-by-implication.<sup>8</sup>

The Ohio Supreme Court in *Froelich v. City of Cleveland*<sup>9</sup> upheld a

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<sup>1</sup> Ohio Rev. Code § 5577.04 (1953).

<sup>2</sup> *Union Sand & Supply Corp. v. Village of Fairport*, 172 Ohio St. 387, 176 N.E.2d 224 (1961).

<sup>3</sup> *Wilson v. Zanesville*, 130 Ohio St. 286, 199 N.E. 187 (1935); *Fitzgerald v. City of Cleveland*, 88 Ohio St. 338, 103 N.E. 512 (1913).

Ohio Const. art. 18, § 3 (1912): "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

<sup>4</sup> *Union Sand Corp. v. Fairport*, *supra* note 3, at 391: "It is apparent that the situation presented in the instant case is a perplexing one and might well be the subject of study on the part of both the General Assembly and the legislative bodies of the various municipalities throughout the state, to the end that some satisfactory solution might be reached."

<sup>5</sup> See *Leis v. Cleveland R.R. Co.*, 101 Ohio St. 162, 148 N.E. 73 (1920).

<sup>6</sup> *Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923).

<sup>7</sup> See *Cleveland v. Betts*, 168 Ohio St. 486, 154 N.E.2d 917 (1958); *Cincinnati v. Correl*, 141 Ohio St. 535, 49 N.E.2d 412 (1943); *Cleveland v. Baker*, 83 Ohio L. Abs. 502, 167 N.E.2d 119 (Ct. App. 1960).

<sup>8</sup> See, e.g., *Neil House v. Columbus*, 144 Ohio St. 248, 58 N.E.2d 665 (1944); *Schneiderman v. Sesanstein*, 121 Ohio St. 80, 167 N.E. 154 (1929).

<sup>9</sup> 99 Ohio St. 376, 124 N.E. 212 (1929).

vehicle weight ordinance similar to that involved in the principal case in the face of a General Code section prohibiting municipalities from decreasing weight limits on vehicles traveling their roads.<sup>10</sup> The court said that the Home Rule Amendment to the Constitution of Ohio<sup>11</sup> authorizes cities to exercise the power of self-government and that the proper exercise of this power is not pre-empted by general laws. It classified this matter as one of administrative management,<sup>12</sup> and implied that in these matters the municipality was supreme. A later case, *Schneiderman v. Sesanstein*, held a municipal regulation limiting automobile speed to fifteen miles per hour unconstitutional when the state regulation prescribed twenty-five miles per hour as being reasonable and proper.<sup>13</sup> The court found conflict due to a General Code provision similar to the one before the *Froelich* court which prohibited the diminishing of provisions of the disputed statute.<sup>14</sup> In 1937, an ordinance limiting the weight of trucks below that permitted by state statute was held to be in conflict.<sup>15</sup> This seems consistent with *Schneiderman*. *Schneiderman*, however, did not overrule *Froelich*, but only cited it without mentioning any conflict.<sup>16</sup> These cases would seem to indicate that no consistent rule has been developed even in the narrow area of speed and weight limitations on vehicles.

The earlier cases such as *Froelich* accorded great weight to the powers given to local government, but the courts have recently been uncertain as to the limits of that power. This uncertainty stems from the vague wording of the amendment itself.<sup>17</sup> It may be that a court's disposition toward self-government will affect its decision as to whether there is a conflict.

It is submitted that an approach which would give more consistent results in determining when there is a conflict would be to (1) determine

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<sup>10</sup> A recent case upholding the validity of ordinances restricting the weights of trucks is *Perkins v. Village of Quaker City*, 165 Ohio St. 120, 133 N.E.2d 595 (1956).

<sup>11</sup> Ohio Const. art. XVIII, § 3 (1912).

<sup>12</sup> *Fordham & Asher*, "Home Rule Powers in Theory and Practice," 9 Ohio St. L.J. 18, 52 (1948).

<sup>13</sup> *Schneiderman v. Sesanstein*, *supra* note 8.

<sup>14</sup> *Schneiderman v. Sesanstein*, *supra* note 8, at 87, 167 N.E. at 160: "The legislative body of the municipality has no authority to prescribe a rate of speed or fix or prescribe a standard contrary to or inconsistent with the provisions of a statute." The court also found a conflict-by-implication, holding that a statute which provides a greater speed than that authorized as unlawful implies that driving at a lesser speed is not unlawful, and that a municipal ordinance setting lower speed limits conflicts with the statute. The ordinance would seem to conflict with a purpose to facilitate transportation and commerce.

<sup>15</sup> *Lakewood v. Johnson*, 8 Ohio Op. 205 (Lakewood Mun. Ct. 1937), *dismissed for want of debatable question*, 133 Ohio St. 110, 11 N.E.2d 1022 (1937).

<sup>16</sup> *Richter Concrete Corp. v. Reading*, 166 Ohio St. 279, 142 N.E.2d 525 (1957). The court indicated in dicta that *Froelich* was a precedent for the power of a municipality to pass an ordinance to protect its streets.

<sup>17</sup> *Fordham & Asher*, *supra* note 12, at 54; *State ex rel. Canada v. Phillip*, 168 Ohio St. 191, 151 N.E.2d 722 (1958); *Benjamin v. Cole*, 167 Ohio St. 103, 146 N.E.2d 851 (1957).

whether the ordinance is a police regulation, and (2) determine whether that police regulation and general law have conflicting *purposes*. If the impact of the ordinance is primarily limited to persons or property within the community, then it should be considered a matter of self-government, a subject best disposed of by the community's electorate through its local council. If, on the other hand, the impact of the ordinance extends substantially beyond the limits of the municipality and affects interests not represented on the city council, then the ordinance may be considered a police regulation with the consequence that the state legislature shall have the last word should a conflict of policy arise.<sup>18</sup>

In order to determine whether there is a conflict, the courts will have to determine the legislative purposes of the statute and of the ordinance. One difficulty courts encounter in searching for legislative intent is the lack of published legislative histories in Ohio. This may oblige the court to determine what proper purposes may be served by both laws, and then to decide whether they are reconcilable under all the circumstances of the case before it.<sup>19</sup> In this connection, courts should try to determine if the statute was intended to be exclusive or merely supplemental. If exclusive, then any municipal regulation in the area covered by the statute will by definition conflict.<sup>20</sup> If supplemental, then the municipalities could enact ordinances dealing with the same subject. Also one can look to prior cases to determine if there has been a judicial policy developed with regard to statutes dealing with a particular subject matter. Perhaps the most helpful rule of statutory construction in conflict cases is that of *pari materia*, i.e., determining the legislative policy by examining other statutes dealing with the general subject matter.<sup>21</sup>

There was no direct conflict involved in the principal case, but there was a possibility of conflict-by-implication if one views the state law as limiting the weights of vehicles to facilitate all other commerce and transport, consistent with its desire to minimize damage to streets. When the municipality sets a lower weight limit, it may restrict commerce and transport authorized by state law, thus causing a conflict. The court in *Fairport*

<sup>18</sup> *Supra* note 3.

<sup>19</sup> In traffic regulations of the kind the instant court dealt with, the following are feasible purposes of the statutes:

- a. Safety
- b. Convenience and comfort
- c. Maintenance and cost
- d. Facilitating transportation and commerce

The first three of these purposes would be complemented by such an ordinance, and the only possible conflict would be with facilitating transportation and commerce.

<sup>20</sup> *Fremont v. Keating*, *supra* note 10.

<sup>21</sup> In *Akron v. Scalera*, 135 Ohio St. 65, 19 N.E.2d 279 (1939), the city enacted an ordinance prohibiting beer sales on Sunday, and General Code 6064-1 said intoxicating liquors should not be sold on Sunday. This regulation was ruled constitutional as the statutes on this subject put various restrictions on the sale of beer, and a sub-division of the state could completely prohibit the sale of beer.

sought the legislative intent. An outstanding indication of the legislature's intent was the fact that the legislature repealed the very section on which the court had relied in *Schneiderman* to invalidate a similar municipal ordinance. This evidences a purpose to allow municipalities to legislate in the area of weight limits without fear of impeding transportation or commerce. So, the possibility of a conflict by implication never materialized, especially when one considers the delegation of authority expressly made in Revised Code sections 715.22 and 723.01 which specifically give municipalities power to regulate trucks and prevent injury to streets.<sup>22</sup> The result of the case, therefore, appears to be correct.

The problems the Home Rule Amendment presents can never be completely eradicated without legislative action.<sup>23</sup> The Ohio law in this area is confused, and it must be observed that the courts will hesitate to rule that there is a conflict unless it is clear and direct.<sup>24</sup> The instant case holds that a municipality may enact an ordinance prescribing lower weight limits than those authorized by the state. In addition, the case may indicate a greater willingness to sustain local ordinances, particularly when other statutes contain at least a generalized grant of power to municipalities on the same subject.

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<sup>22</sup> Ohio Rev. Code § 715.22 reads in part:

Any municipal corporation may:

- (A) Regulate the use of carts, drays, wagons, hackney coaches, omnibuses, automobiles, and carriages kept for hire or livery stables purposes;
- (B) License and regulate the use of the streets by persons who use vehicles, or solicit or transact business thereon;

. . . .

- (D) Regulate the transportation of articles through such highways and prevent injury to such highways from overloaded vehicles.

Ohio Rev. Code § 723.01 provides:

Municipal corporations shall have special power to regulate the use of the streets. The legislative authority of such municipal corporation shall have the care, supervision, and control of public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipal corporation and shall cause them to be kept open, in repair, and free from nuisance.

<sup>23</sup> Fordham & Asher, *supra* note 12, at 54.

<sup>24</sup> *Cincinnati v. Luckey*, 85 Ohio Op. 463, 87 N.E.2d 894 (1949), *aff'd* 153 Ohio St. 247, 91 N.E.2d 477 (1950).