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ATTORNEY GENERAL OF TEXAS

March 9, 2020

The Honorable Rodney W. Anderson
Brazos County Attorney
300 East 26th Street, Suite 1300
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Opinion No. KP-0293

Re: Whether the Texas Pawnshop Act preempts municipal regulation of dealers in secondhand personal property who also transact business as a pawnshop (RQ-0306-KP)

Dear Mr. Anderson:

You ask whether the Texas Pawnshop Act (“Act”) preempts an ordinance adopted by the home-rule City of College Station requiring persons, including pawnbrokers, who purchase certain used personal property for the purpose of resale to electronically report information about these transactions to law enforcement and to maintain the property for a specified time before reselling (“Ordinance”).¹ The Act defines “pawnbroker” as a person engaged in the business of “lending money on the security of pledged goods” or “purchasing goods on condition that the goods may be redeemed or repurchased by the seller for a fixed price within a fixed period.” TEX. FIN. CODE § 371.003(6). You tell us, however, that the Ordinance does not apply to “pawnbroker transactions of lending money on the security of pledged goods or conditioning the purchase of good[s] on redemption by the seller.” Request Letter at 2. Rather, you explain the Ordinance applies only when a pawnbroker purchases used goods in a transaction that would not ordinarily require a pawnshop license, i.e., a secondhand-dealer transaction. *See id.* Thus, we understand your inquiry to generally ask whether the City may regulate pawnbrokers when they purchase used personal property in the same manner as other second-hand dealers. *See id.* at 1–2.

Home-rule cities possess the “full power of local self-government.” TEX. LOC. GOV’T CODE § 51.072(a). But article XI, section 5 of the Texas Constitution provides that home-rule city ordinances must not “contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” TEX. CONST. art. XI, § 5(a). Thus, “[w]hile home-rule cities have all power not denied by the Constitution or state law, and thus need not look to the Legislature for grants of authority, the Legislature can limit or withdraw that power by general law.” *City of Laredo v. Laredo Merch.’s Ass’n*, 550 S.W.3d 586, 592–93 (Tex. 2018) (“Deciding whether uniform statewide regulation or nonregulation is preferable to a patchwork of local regulations is the Legislature’s prerogative.”). But while preemption of local laws may be express or implied, the Legislature’s “intent to impose the limitation must appear with

¹See Letter and attachments from Honorable Rodney W. Anderson, Brazos Cty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Sept. 12, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”) (attachments on file with the Op. Comm.) (“Attachments”).

unmistakable clarity.” *Id.* at 593 (quotation marks omitted) (“Absent an express limitation, if the general law and local regulation can coexist peacefully without stepping on each other’s toes, both will be given effect or the latter will be invalid only to the extent of any inconsistency.”).

Section 371.005 of the Act provides that the “legislature has *exclusive authority* regarding the *operation of pawnshops*, except for a matter delegated by this chapter to the commissioner.” TEX. FIN. CODE § 371.005 (emphases added); *see id.* § 371.003(2) (“‘Commissioner’ means the consumer credit commissioner.”).² Thus, the Legislature unmistakably expressed its preemptive intent. *Id.* § 371.005; *see Hollingsworth v. City of Dallas*, 931 S.W.2d 699, 703 (Tex. App.—Dallas 1996, writ denied) (“This provision, enacted in 1991, appears to be preemptive.”) (discussing predecessor statute) (citing Tex. Att’y Gen. Op. No. DM-253 (1993)). The Act’s preemption of local control, however, only applies to the operations of pawnshops. TEX. FIN. CODE § 371.005. Thus, the issue is whether the Ordinance falls within the Act’s ambit, i.e., does the ordinance attempt to govern a pawnshop operation that the Legislature exclusively regulates. *See City of Laredo*, 550 S.W.3d at 593.

To answer that question, we first generally address whether a pawnbroker’s purchase of used personal property falls within the scope of pawnshop operations preempted by the Act and then address the Ordinance’s provisions specifically. Regarding the scope of the Act, you suggest that when a pawnbroker purchases used personal property without conditioning the sale on possible future redemption by the seller the transaction falls outside the parameters of the Act. *See* Request Letter at 2; *see also* TEX. FIN. CODE § 371.003(6) (defining “pawnbroker,” in part, as a person engaged in the business of purchasing goods on the condition that seller can redeem). Therefore, you contend that the City may regulate these transactions. *See* Request Letter at 1–3. The Act, however, does not support such a limitation in its scope. Rather, the Act broadly provides the Legislature with exclusive authority over the “the operation of pawnshops.” TEX. FIN. CODE § 371.005. And subchapter D of the Act—titled “Operation of Pawnshops”—defines a broad scope of activities falling within the operations of a pawnshop. *Id.* §§ 371.151–.183. Specific to your question, numerous provisions of subchapter D contain requirements and procedures for pawnbrokers who buy personal property. For example, section 371.174 requires a pawnbroker who purchases goods to require identification of the seller. *Id.* § 371.174(a). And section 371.177 prohibits a pawnbroker from purchasing used personal property from a person other than another pawnbroker unless a record is established that contains specific information regarding both the seller and the property. *Id.* § 371.177. Moreover, section 371.181 requires pawnbrokers to monitor all property for fraud, including “goods *purchased, accepted in pawn, or otherwise acquired.*” *Id.* § 371.181 (emphases added). These sections do not limit their application to sales conditioned on the seller having the opportunity to redeem the goods. *See id.* §§ 371.174(a), .177, .181. Rather, the Legislature included the purchase of personal property within the scope of operations regulated by the Act. Thus, we must determine whether the Act preempts the Ordinance’s specific provisions.

The Ordinance contains two key components relevant here. *See* Attachments at 1–5. First, the Ordinance requires second-hand dealers—including pawnbrokers—who purchase certain used

²The Commissioner “has the authority to regulate only a business practice that requires a pawnshop license.” TEX. FIN. CODE § 371.005.

personal property to record specific information about the sale into an online database referred to as an electronic inventory tracking system. *See id.* at 4. The data the pawnbroker must provide regarding the sale includes information identifying the seller, describing the property, and digital photographs for certain transactions. *See id.* Law enforcement maintains this database, and a pawnbroker or employee who fails to “use the electronic inventory tracking system” commits a misdemeanor offense. *Id.* at 5. You tell us that the purpose of the Ordinance is to “assist the police department to investigate property crimes and to return stolen property to its rightful owner.” Request Letter at 1.

The Legislature’s purposes in enacting the Act, however, include ensuring a sound system of transferring personal property by and through pawnshops and preventing transactions in stolen property. TEX. FIN. CODE § 371.002(2), (3). To that end, the Act already mandates a process, including recording and law enforcement requirements, for pawnbrokers to acquire personal property. *See id.* §§ 371.174, .177, .181, .182, .204. Section 371.177 requires a pawnbroker who purchases used personal property to establish a record containing: the seller’s name, address, physical description, and driver’s license or other official identifying number; a complete description of the property, including the serial number if available; and the seller’s signed statement that he or she has the right to sell the property. *Id.* § 371.177. And section 371.204 requires a pawnbroker to allow a peace officer to inspect its business records. *Id.* § 371.204. But the Act does not require pawnbrokers to electronically report this information to law enforcement or to take digital photographs of purchased goods. *See id.* §§ 371.174, .181. Thus, the Ordinance creates a more restrictive regulatory framework than that established by the Legislature.

In addition, section 371.181 requires the Finance Commission to adopt rules specifically allowing: (1) “a consumer who has filed an offense report with a local law enforcement agency to request that a pawnbroker search the records of the pawnshop; and (2) the pawnbroker to assist the consumer and local law enforcement in locating and recovering stolen property.” *Id.* § 371.181(b); *see also id.* § 371.006 (“The Finance Commission of Texas may adopt rules to enforce this chapter.”).³ Thus, the Legislature expressed its clear intent to have the Finance Commission adopt rules regulating how pawnshops assist law enforcement in the recovery of stolen property. *Id.* § 371.181(b). Administrative rules adopted by the Finance Commission require, in part, that pawnbrokers accepting goods in a purchase transaction make certain information “available to the law enforcement agency *electronically or through the production of a separate copy.*” 7 TEX. ADMIN. CODE § 85.406(a) (emphasis added); *see also id.* § 85.420(a)(6) (requiring pawnbroker who accepts goods in purchase transaction to comply with administrative rules in the same manner as pawn transactions, including law enforcement reporting requirements). But the administrative regulations expressly provide that “electronic reporting is *voluntary* and should occur under mutually acceptable terms to the pawnbroker and the law enforcement agency.” *Id.* § 85.406(b) (emphasis added). Additionally, the regulations expressly provide that a “pawnbroker is not required to take a photograph of any . . . purchased goods.” *Id.* § 85.405(e).

³The Finance Commission is responsible for overseeing and coordinating the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner. *Id.* § 11.002(a).

Thus, the Ordinance's requirement that pawnbrokers electronically report to law enforcement certain information about purchase transactions, including digital photographs, expressly conflicts with administrative regulations authorized by the Act. Moreover, as the Legislature already created a procedure for recording the sale of personal property to prevent transactions in stolen property as part of its exclusive governance of pawnshop operations, the City has no authority to create its own procedures for that purpose. *See Tyra v. City of Houston*, 822 S.W.2d 626, 627–28 (Tex. 1991) (concluding statute that provided exclusive procedure for dismissal of firefighters found physically unfit preempted section of municipal ordinance covering same subject). Accordingly, the Act preempts this portion of the Ordinance, making it unenforceable against pawnbrokers. *See City of Laredo*, 550 S.W.3d at 598 (“By rescinding local control that would otherwise exist, the Act forbids home-rule cities from regulating that subject matter.”).

The second key component of the Ordinance generally requires secondhand dealers, including pawnshops, who purchase used personal property to retain the property for a period of 120 hours (five days) after the transaction. *See* Attachments at 5. Section 371.182 of the Act authorizes the Commissioner to “designate a reasonable hold period during which a pawnbroker may not sell or otherwise dispose of an item of goods acquired and offered for sale or other disposition by the pawnbroker.” TEX. FIN. CODE § 371.182. Administrative regulations adopted by the Finance Commission provide that personal property purchased from the public must be held at the pawnshop for a period of at least 20 days or “a period of less than 20 days *if a local jurisdiction has enacted an ordinance that specifies the hold period.*”⁴ 7 TEX. ADMIN. CODE § 85.420(b) (emphasis added); *see* TEX. FIN. CODE § 371.006. Accordingly, local jurisdictions may reduce the hold time for purchased goods to a period of less than 20 days. 7 TEX. ADMIN. CODE § 85.420(b). Therefore, while the Act preempts application of the Ordinance's electronic reporting and digital photograph requirements to pawnbrokers, the reduced holding requirement remains valid.

⁴The pawnbroker and law enforcement may also agree to a reduced hold period if the transaction is reported electronically. 7 TEX. ADMIN. CODE § 85.420(b)(2).

S U M M A R Y

The Pawnshop Act generally vests the Legislature with exclusive authority regarding the operation of pawnshops. The Legislature included a pawnbroker's purchase of personal property, without condition of future redemption by the seller, within the scope of pawnshop operations preempted by the Act.

As part of its exclusive governance, the Pawnshop Act creates procedures for pawnshops to record the sale of personal property and cooperate with law enforcement to prevent transactions in stolen property. A municipality therefore has no authority to create its own procedures for that purpose.

A municipality does have authority to reduce the amount of time pawnbrokers must retain purchased goods to a period of less than 20 days.

Very truly yours,



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