

Prepay gasoline purchase made 8:00 p.m. to 5:00 a.m.

Number: AGO 92-55

Date: January 04, 1996

Subject:

Prepay gasoline purchase made 8:00 p.m. to 5:00 a.m.

Mr. Edward D. Foreman
City Attorney
City of Pinellas Park

RE: CONVENIENCE BUSINESSES—CONVENIENCE BUSINESS SECURITY
ACT—MUNICIPALITIES—PREEMPTION— city's requirement of prepayment for gasoline
purchases between 8:00 P.M. and 5:00 A.M. not preempted by s. 812.1725, F.S.

QUESTION:

Does s. 812.1725, F.S.,[1] preempt the City of Pinellas Park from requiring by ordinance that customers prepay for purchases of gasoline made between 8:00 p.m. and 5:00 a.m.?

SUMMARY:

The ordinance requiring prepayment of gasoline purchases made between 8:00 p.m. and 5:00 a.m. operates to protect the business against economic loss and is not, therefore, a security standard to protect the safety of the employees or patrons of a convenience business preempted by s. 812.1725, F.S.

The City of Pinellas Park has adopted an ordinance regulating the operation of convenience stores, which, in part, provides that "[a]ll convenience food stores shall require that customers purchasing gasoline between the hours of 8:00 P.M. to 5:00 A.M. pay for the gasoline prior to dispensing it." [2] There is a question whether this prescription is a safety standard which would be preempted by s. 812.1725, F.S.

Section 812.1725, F.S., as created by s. 4, Ch. 92-103, Laws of Florida, provides:

"A political subdivision of this state may not adopt, for convenience businesses, [3] security standards which differ from those contained in ss. 812.173 and 812.174, and all such differing standards, whether existing or proposed, are hereby preempted and superseded by general law, except any local ordinance in effect prior to September 1988 and determined by the Department of Legal Affairs to provide more stringent security standards than those contained in ss. 812.173 and 812.174 shall not be preempted and superseded by general law for a period of 2 years from the date this act becomes law."

Specified security devices and standards for every convenience business are contained in s. 812.173(1), F.S., as amended by s. 5, Ch. 92-103, Laws of Florida, as follows:

- "(a) A security camera system capable of recording and retrieving an image to assist in offender identification and apprehension.
- (b) A drop safe or cash management device for restricted access to cash receipts.
- (c) A lighted parking lot illuminated at an intensity of at least 2 foot-candles per square foot at 18 inches above the surface.
- (d) A conspicuous notice at the entrance which states that the cash register contains 50 or less.
- (e) Window signage that allows a clear and unobstructed view from outside the building and in a normal line of sight of the cash register and sales transaction area.
- (f) Height markers at the entrance of the convenience business which display height measures.
- (g) A cash management policy to limit the cash on hand at all times after 11 p.m."

Further security measures include prohibiting window tinting and requiring a silent alarm.[4] In instances where a murder, robbery, sexual battery, aggravated assault, aggravated battery, or kidnapping or false imprisonment has occurred at a convenience business after July 1, 1989, and has arisen out of the operation of the convenience business, the business must implement one of the following: having two employees on the premises after 11:00 p.m. and before 5:00 a.m.; installing safety enclosures; providing a security guard after 11:00 p.m. and before 5:00 a.m.; locking the business from 11:00 p.m. to 5:00 a.m. and transacting business through an indirect pass-through; or closing the business from 11:00 p.m. to 5:00 a.m.[5]

It is the stated intent of the legislation to "prevent violent crimes and thereby to protect employees and the consumer public at late-night convenience businesses." [6] Thus, the security standards imposed in the legislation offer protection against physical harm to the employees of the business as well as the public which patronizes the business.

The requirement of prepayment for gasoline purchases made after 8:00 p.m. and before 5:00 a.m. operates to protect the business against a loss of proceeds resulting from "drive off" thefts of gasoline. It is not a safety standard for protection of the physical well-being of the employees or the consuming public and, therefore, may not be characterized as an attempt by the city to impose a safety standard which differs from those prescribed in ss. 812.173 and 812.174, F.S., as amended by Ch. 92-103, Laws of Florida.

Accordingly, the ordinance requiring prepayment of gasoline purchases made after 8:00 p.m. and before 5:00 a.m. in the City of Pinellas Park would not be preempted by s. 812.1725, F.S.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/t

[1] As created by s. 4, Ch. 92-103, Laws of Florida.

[2] Section 16.117(L), Ord. 2032, City of Pinellas Park Code of Ordinances.

[3] Section 812.171, F.S., as amended by s. 2, Ch. 92-103, Laws of Florida, defines "convenience business" as "any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, and that is open for business at any time between the hours of 11 p.m. and 5 a.m."

[4] Section 812.173(2) and (3), F.S., as amended by s. 5, Ch. 92-103, Laws of Florida.

[5] Section 812.173(4), F.S., as amended by s. 5, Ch. 92-103, Laws of Florida.

[6] Section 812.172, F.S., as amended by s. 3, Ch. 92-103, Laws of Florida.