

Pawnbrokers, additional local fees

Number: INFORMAL

Date: October 09, 2006

The Honorable Randy Johnson
Representative, District 41
99 West Plant Street
Winter Garden, Florida 34787-3139

Dear Representative Johnson:

You ask whether a municipal or county ordinance imposing additional fees on pawnbrokers in the form of inspection and transaction fees is preempted by or conflicts with section 539.001(20), Florida Statutes. Your inquiry is prompted by a Fort Lauderdale city ordinance imposing a yearly fee of \$250 for police inspections of pawnshops and a \$1.50 fee per transaction for police review and processing of such transactions.

While this office must presume the validity of any duly enacted ordinance or statute, the following informal comments are offered in an effort to be of assistance.

Section 539.001(20), Florida Statutes, provides:

"CONFLICTING ORDINANCES.—Any county or municipality may enact ordinances that are in compliance with, but not more restrictive than this section, except that local ordinances may not restrict hours of operations other than between midnight and 6 a.m. Any ordinance that conflicts with this subsection is void. Nothing in this section shall affect the authority of a county or municipality to establish land use controls or require a pawnbroker to obtain a local occupational license."

The provision was part of legislation creating the Florida Pawnbroking Act, Chapter 539, Florida Statutes, which imposes certain reporting requirements on pawnbrokers.[1] A review of the legislative history indicates that the Legislature was aware that a county or municipality would be incurring additional costs as a result of complying with the reporting requirements of the act.[2] While the analysis acknowledges certain costs to the private sector, it makes no mention of costs imposed by a local government.[3]

Moreover, the analysis, in commenting on the effects on competition, private enterprise, and employment markets, states that "[t]here should be no adverse effect on competition *since all pawnbrokers are treated the same.*" (e.s.) Such a statement would appear to imply an intent to "level the playing field" for pawnbrokers throughout the state. The imposition of additional charges on pawnbrokers by a county or municipality appears to be contrary to such intent.

In *City of Miami v. Quik Cash Jewelry & Pawn, Inc.*,[4] however, the district court considered the validity of a city ordinance imposing fees to cover the cost of police conducted inspections of pawnshops and for processing transaction forms by the pawnshop detail of the police

department. As with the Fort Lauderdale city ordinance, the fees imposed by the City of Miami included a yearly fee of \$250 as well as an additional charge of \$1.50 for each pawn form submitted to the police department for processing. The court determined such fees represented users fees which could be imposed by the city for use of city services, benefitting only a particular segment of the population, *i.e.*, the pawnbrokers. While the validity of the ordinance was upheld, the issue of whether the ordinance was preempted by section 539.001(20), Florida Statutes, or conflicted with the provisions of that statute was not raised or addressed by the court.[5]

This office has no authority to comment upon the validity of the decision of the district court of appeal and, as noted above, must presume the validity of a duly enacted ordinance. In light of the above, it may be advisable for the Legislature to clarify its intent.

Sincerely,

Charlie Crist
Attorney General

CC/tjw

[1] See Ch. 96-242, Laws of Florida.

[2] See Fiscal Analysis on House Bill 0919 (the companion bill to SB 2812 which passed as Ch. 96-242, Laws of Florida), stating that "[u]nder this bill, pawnbrokers are required to file daily reports with the appropriate law enforcement officials. Therefore, there may be some recurring costs associated with this filing with the local law enforcement agencies."

[3] The analysis refers to the annual registration of not more than \$300 established in the bill plus the actual cost of background checks in addition to a security bond. The analysis also recognizes that "registrants will be required to maintain certain records for specified time periods and provide daily reports to the appropriate law enforcement official" but does not recognize any fee for such service.

[4] 811 So. 2d 756 (Fla. 3rd DCA 2002), *review denied*, 837 So. 2d 411 (Fla. 2003).

[5] While the courts have generally stated that in the absence of an interdistrict conflict, a district court decision binds all Florida trial courts, *see, e.g., Stanfill v. State*, 384 So. 2d 141 (Fla. 1980); *Weiman v. McHaffie*, 470 So. 2d 682, 684 (Fla. 1985); *State v. Hayes*, 333 So. 2d 51, 53 (Fla. 4th DCA 1976); *Pardo v. State*, 596 So. 2d 665 (Fla. 1992); an exception has been recognized when an issue was not presented to and therefore not addressed by the court decision. *See, e.g., City of Miami Beach v. Traina*, 73 So. 2d 860 (Fla. 1954) (lower court had right to find that special acts granted city the right to regulate the method of sale of alcoholic beverages from service bars, despite earlier holding of district court in which the question of the force of such special acts was not properly presented and was not, therefore, decided); *In re Blankenship's Estate*, 122 So. 2d 466 (Fla. 1960) (effect of decision as binding precedent must in each

instance be determined by the breadth of the court decision and the questions decided in it); *City of Miami v. Stegemann*, 158 So. 2d 583 (Fla. 3d DCA 1963).