



Time for Pennsylvania to Rein Municipal Regulations on Business

Summary: Philadelphia and Pittsburgh have enacted regulations on businesses that should not be permitted by state law. Because of Philadelphia's exemption from the law that prohibits regulations not explicitly permitted by the state it is not being challenged in court for the regulations it passes while Pittsburgh has been sued. It is recommended that the Commonwealth amend the state's Home Rule Charter law to remove Philadelphia's exemption and disallow any municipalities from enacting regulations not expressly permitted by the state.

On January 23rd, Philadelphia's Mayor signed into law an ordinance that prohibits businesses asking applicants for employment questions about their salary history. In 2015 the City enacted an ordinance mandating sick leave for employees of businesses in Philadelphia. The sick leave law has not been challenged in court although there are companies considering a suit against the salary inquiry prohibition law—albeit based on a very thin argument that alleges first amendment rights violation.

Bear in mind that Pittsburgh also enacted a mandated sick leave ordinance in 2015 that was challenged in court and overturned. The City quickly appealed and a final ruling has not been handed down but the law is not currently in effect. The court's decision was reached rapidly because the language in the Commonwealth's Home Rule Charter and Optional Plans law of 1972 is very clear. Home rule municipalities are simply not allowed to dictate duties, responsibilities or other requirements on businesses, occupations or employers that are not expressly provided by state law or applicable in every part of the state or applicable to municipalities or to a class or classes of municipalities.

So, why has Philadelphia not had a lawsuit filed to overturn the mandated sick leave ordinance or the salary inquiry prohibition? (As mentioned earlier, a suit might be forthcoming on the salary issue.) In short, because the Home Rule Charter and Optional Plans law explicitly excludes Philadelphia from the provisions of the statutes. The absence of an existing state law preventing Philadelphia from imposing requirements that dictate duties and responsibility prompted the Pennsylvania Senate to pass legislation in April 2015 that would have negated Philadelphia's sick leave mandate. It would have also prohibited other municipalities from passing mandated sick leave laws as well.

The bill never passed out of the House because of opposition and the threat of a highly probable veto. However, an updated version of the bill (SB 128) is being reintroduced. Whether it will be signed into law remains to be seen. A veto seems to be the likely outcome and an override in the House is improbable.

Despite the poor prospects of the bill being signed into law, Pittsburgh and other home rule municipalities will still face the constraint imposed by the Home Rule Charter law. But if history is a guide Pittsburgh will undoubtedly keep enacting ordinances that run afoul of the law. Then too, Philadelphia will continue to have a lot of leeway in its ability to impose burdens on businesses within that city. This stems from the fact that Philadelphia was granted home rule status back in the 1950s well before the 1972 Home Rule law. Apparently the authors of that legislation deliberately chose to allow Philadelphia to retain all the powers and authority either explicitly or implicitly bestowed by the Commonwealth at the time of the City acquiring home rule status.

The irony is that despite exempting Philadelphia, the authors of the 1972 law saw very clearly the dangers that could occur if home rule municipalities were to interpret home rule as providing the opportunity to impose regulations on businesses. Regulations that are putatively designed to achieve political or social objectives are inconsistent with the freedom businesses need to operate profitably and competitively. As a result of anticipating such overreach, the authors of the home rule law included the language that precludes home rule municipalities from trying to impose regulations not explicitly permitted by Commonwealth statutes.

And while SB 128 is a good start toward addressing the regulatory situation in Philadelphia, there is a simpler and more far reaching way to deal with Philadelphia as well all other municipalities that might be considering enacting business regulations. The General Assembly should write a new short law or amend the Home Rule Charter and Optional Plans Law to: (1) remove the exemption of Philadelphia from the requirements of the law and (2) mandate that all municipalities, whether home rule or not, are to be bound by the language in 53 Pa CS section 2962, paragraph F.

The language would be rewritten with the amendment shown in bold as follows: ***Commonwealth municipalities shall not determine duties, responsibilities or requirements placed upon businesses, occupations and employers, including the duty to withhold, remit or report taxes or penalties levied or imposed upon them or upon persons in their employment, except as expressly provided by statutes which are applicable in every part of this Commonwealth or which are applicable to all municipalities or to a class or classes of municipalities. This subsection shall not be construed as a limitation in fixing rates of taxation on permissible subjects of taxation.***

Moreover, the amendment to the Home Rule Law or the new law should contain language making the law retroactive until January 1st 2015.

The end result would be that no municipality, especially Philadelphia, could take upon itself the power to impose political or social desiderata on businesses unless allowed by the Commonwealth.

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