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Pa. must lasso municipal business regs

By Colin McNickle

The Pennsylvania Legislature must act posthaste to stop municipalities from enacting regulations on businesses that should not be allowed by state law, says the president of the Allegheny Institute for Public Policy.

No municipality should be able to assign to itself “the power to impose political or social desiderata on businesses,” unless permitted by the commonwealth, says Jake Haulk.

The latest example of this kind of regulatory intrusion came on Jan. 23 in Philadelphia. Mayor Jim Kenney signed an ordinance prohibiting businesses from asking job applicants for their salary history.

Never mind that salary history can provide valuable insight to a prospective employee’s work ethic and productivity, a predictor of future performance. And just how Philadelphia arrived at this point requires a brief tutorial in legislative sausage-making.

It was in 1972 that the Pennsylvania General Assembly passed the Home Rule Charter and Optional Plans law. And its intent is very clear, the think tank president says:

“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 to a class or classes of municipalities,” Haulk reminds.

But the sausage-makers specifically excluded Philadelphia from the prohibitions. Apparently, the authors 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 in the 1950s.

“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,” Haulk says.

“Regulations that are putatively designed to achieve political or social objectives are inconsistent with the freedom businesses need to operate profitably and competitively,” he stresses.

“As a result of anticipating such overreach, the authors of the home rule law included language that precludes home rule municipalities from trying to impose regulations not explicitly permitted by commonwealth statutes.”

Witness the Pittsburgh experience. In 2015 it passed legislation, in violation of the law, requiring businesses to offer paid sick leave to its employees. It was challenged in court and overturned. The city appealed, a ruling is pending, but the sick leave law is not in effect.

Philadelphia also enacted a sick leave mandate that same year. Thus far, it has not been challenged.

The Pennsylvania Senate attempted to remedy the sick leave overreach in 2015 but it never cleared the state House. An updated version of the measure is being reintroduced but faces an uncertain future.

Haulk says there is a simpler and more far reaching way to deal with Philadelphia and all other municipalities considering enacting business regulations.

The General Assembly should write a new, short law or amend the Home Rule Charter and Optional Plans law to, first, remove Philadelphia’s exemption from the law’s requirements and to, second, mandate that all municipalities, whether home rule or not, be expressly proscribed from such intrusions into businesses’ operations (*as prescribed in 53 Pa CS section 2962, paragraph F*).

And, Haulk says, any amended or new law should be retroactive to Jan. 1, 2015.

It once was written that government too often is exercised for the double purpose of more complete oppression of its subjects and the extension of its boundaries. Governments in Philadelphia and in Pittsburgh long have shown a propensity for such behavior against the business community.

If past is prologue, they will continue to do so. State legislation to quash such local government malpractice is long overdue.

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