

Alert: Ohio Supreme Court Decides the Cleveland Predatory Lending Ordinance Case

Related Professionals
[Arthur J. Rotatori](#)

Related Services
[Consumer Financial Services Compliance](#)

November 27, 2006

By: [Arthur J. Rotatori](#)

In a 5-2 decision announced November 20, 2006, the Supreme Court of Ohio issued its long-awaited holding in *Am. Financial Servs. Assn. v. Cleveland*, 2006-Ohio-6043. The Supreme Court held that three Cleveland city ordinances were not valid exercises of the city's "home rule" powers because: (1) state statutes setting regulatory guidelines for Ohio residential mortgage lenders are "general laws" that prescribe a uniform statewide regulatory scheme; and (2) provisions of the Cleveland ordinances conflict with state law by prohibiting lending practices within the city that are implicitly permitted under the state statute.

The case turned on the extent of the city's police and regulatory power under Article XVIII of the Ohio Constitution, the so-called "home rule" amendment. Section 3 of Article XVIII states that, "[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

This case involved three local ordinances adopted by the City of Cleveland in 2002, pursuant to the home rule amendment, that prohibited various "predatory" practices by consumer lending institutions doing business in the city. Shortly after they were adopted, the Cleveland ordinances were challenged in a court action initiated by the American Financial Services Association ("AFSA"). AFSA asserted that the Cleveland ordinances were in conflict with legislation enacted earlier in 2002 by the Ohio General Assembly, Sub. H.B. 386, which established regulatory guidelines applicable to all residential mortgage lenders doing business in Ohio. One provision in the bill, codified as O. R.C. §1.63, stated the legislature's intent to "preempt" the entire field of mortgage lending regulation for the state and included language barring local governments anywhere in Ohio from enacting local mortgage lending regulations.

The Cuyahoga County Court of Common Pleas granted summary judgment barring enforcement of the Cleveland ordinances. The city appealed and the 8th District Court of Appeals reversed the trial court's judgment, holding that (i) O.R.C. §1.63 was not a "general law" because it did not contain any regulatory provisions but operated solely to bar local regulations and (ii) that there was no inherent conflict between the ordinances and the state law. The 8th District certified that its decision was in conflict with a 2004 ruling of the 2nd District in a very similar case, *Dayton v. State*, and the Supreme Court agreed to hear arguments in the case to resolve the conflict between appellate districts.

The Supreme Court reversed the 8th District, affirming the reasoning of the 2nd District in *Dayton* and holding that the Cleveland ordinances are unenforceable, the home rule amendment notwithstanding. Four justices joined in a plurality opinion, one justice concurred and two justices dissented.

The plurality used a four-part test for determining whether a legislative enactment qualifies as a "general law." The plurality held that a general statute "must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally."

Analyzing the state mortgage lending laws enacted by the legislature as Sub. H.B. 386, the plurality concluded that, considered as a whole, the legislation met all four criteria and therefore qualified as a general law with which a home-rule city ordinance may not conflict. Without specifically considering the preemptive effect of O.R.C. §1.63, the plurality then concluded that the Cleveland lending ordinances conflicted with the state's regulatory scheme. The rationale for the conclusion was that the Cleveland ordinances prohibited conduct that the state statutes had at least implicitly authorized.

One justice concurred in the judgment only, and entered a separate opinion indicating her belief that the Court should place more emphasis on the concept of preemption as opposed to the conflict analysis reflected in the majority opinion. Each dissenting justice entered separate dissenting opinions. One dissent concluded that, contrary to the plurality's holding, there was no irreconcilable conflict between the Cleveland ordinances and the state statutes as lenders could comply with both regulatory schemes. The other dissent took issue with the plurality's brief treatment of O.R.C. §1.63, concluding that it was not a "general law" that could fit the plurality's four-part test. Both the concurrence and the dissents raised issues concerning the scope of a city's home rule power and the interplay between that power and state law that, arguably, were not convincingly disposed of by the plurality.

Whatever the implications for municipal home rule and state preemption, however, it is clear that the Cleveland ordinances, and all similar local ordinances designed to regulate predatory lending practices, are displaced by state law. Because of the plurality's analysis, it also appears that municipalities will not be able to draft more limited ordinances that could survive a conflict with the state statutes.

If you have any questions concerning this case or need more information, please contact Arthur J. Rotatori at (216) 378-9932 or at .