

Bond Case Briefs

Municipal Finance Law Since 1971

MUNICIPAL ORDINANCE - CALIFORNIA

City and County of San Francisco v. Post

Court of Appeal, First District, Division 2, California - April 11, 2018 - Cal.Rptr.3d - 2018 WL 1737212

State brought action against landlord for violating city housing discrimination ordinance.

The Superior Court granted preliminary injunction in State's favor. Landlord appealed.

The Court of Appeal, sitting by assignment, held that:

- Fair Employment and Housing Act's (FEHA) field of exclusivity did not preempt ordinance;
- FEHA did not preempt city ordinance; and
- FEHA did not preempt ordinance by implication.

Fair Employment and Housing Act's (FEHA) field of exclusivity reached no further than provision governing prohibition of discrimination based on tenant's "source of income," and thus FEHA did not preempt city ordinance that further defined "source of income" to include Section 8 housing vouchers; FEHA expressed intention to occupy only field of regulation that it explicitly covered.

Local ordinance protecting tenants receiving rental assistance, including Section 8 housing vouchers, paid directly to their landlords was not preempted by Fair Employment and Housing Act (FEHA) provision governing prohibition of discrimination based on tenant's "source of income," even though FEHA provision limited "source of income" to income paid directly to tenant, since FEHA did not reach discriminatory practice of landlords refusing to rent to Section 8 program participants.

Fair Employment and Housing Act's (FEHA) provision governing prohibition of discrimination based on tenant's "source of income" was not contradicted by local ordinance further defining "source of income" to include Section 8 housing vouchers, and thus FEHA did not preempt ordinance by implication, since FEHA neither expressly authorized landlords to abstain from participating in Section 8, nor promoted the practice, and landlord who did not discriminate against Section 8 tenants complied with both FEHA and ordinance.