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MUNICIPAL ORDINANCE - CALIFORNIA

People v. Nguyen

Court of Appeal, Fourth District, Division 3, California - January 10, 2014 - Cal.Rptr.3d - 14 Cal. Daily Op. Serv. 317

Defendant was charged with being a sex offender in a city park or recreational facility without written permission from the city's police chief. The Superior Court sustained defendant's demurrer. The People appealed. The Appellate Division of the Superior Court certified the appeal for immediate transfer to the Court of Appeal.

The Court of Appeal held that:

- City ordinance requiring sex offenders to obtain permission from police chief to enter parks or recreational facilities was subject to field preemption by state laws regulating daily life of sex offenders, and
- Court of Appeal could not sever preempted portion of ordinance by replacing it with a ban on entering such facilities.

The state impliedly preempts a field when (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.

City ordinance prohibiting sex offenders whose victims were minors from entering parks and recreational facilities without permission from police chief was subject to field preemption by the Penal Code sections regulating daily life of sex offenders to reduce the risk the offender will commit another offense, since those sections were all closely related and established a patterned approach, the subject area of sex offenders was historically dominated by state regulation, and the requirement to seek permission from the police chief was a de facto registration requirement that went beyond the Penal Code's standardized registration requirements for sex offenders.

Replacing preempted city ordinance prohibiting sex offenders whose victims were minors from entering parks and recreational facilities without permission from police chief with an outright ban on such offenders entering parks and recreational facilities would not be a proper exercise of the Court of Appeal's power to sever the preempted portion of an ordinance, since it was not "volitionally separable," absent evidence that the city intended to adopt a complete ban on sex offenders entering a city park or recreational facility.