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MUNICIPAL ORDINANCE - ARIZONA

State ex rel. Brnovich v. City of Tucson

Supreme Court of Arizona - August 17, 2017 - P.3d - 2017 WL 3526556

Attorney General sought special action relief alleging that charter city's ordinance that allowed city police department to destroy forfeited or unclaimed firearms might violate state constitution and statutes that governed disposal of unclaimed property and that prohibited any political subdivision from facilitating destruction of a firearm.

The Supreme Court of Arizona held that:

- Statute that authorized Attorney General to investigate whether city ordinance violated state law and to file special action did not violate separation of powers doctrine;
- Supreme Court's special action jurisdiction was mandatory;
- Statutes displaced city's ordinance; and
- A balancing test is neither helpful nor appropriate in resolving issues under the home rule charter provision, disapproving *Tucson v. State*, 191 Ariz. 436, 957 P.2d 341.

Statute that authorized Attorney General to investigate, following request by a state legislator, whether charter city ordinance that allowed city police department to destroy forfeited or unclaimed firearms violated state law, and to file special action if Attorney General concluded that ordinance might violate state law, did not violate separation of powers doctrine, since any investigative and enforcement powers under statute were exercised by executive branch, neither requesting legislator nor legislature as a whole controlled exercise of such powers, practical consequence of statute was to encourage compliance with state law, not to coerce, control, or interfere with executive powers or prerogatives, and Attorney General's conclusion was legal opinion, not exercise of judicial function.

Supreme Court's special action jurisdiction was mandatory under statute that required Attorney General to file special action after concluding, following investigation requested by a legislator, that charter city's ordinance that allowed city police department to destroy forfeited or unclaimed firearms might violate state laws, where state constitution's catch-all provision governing the Supreme Court's subject-matter jurisdiction allowed legislature to expand Supreme Court's original jurisdiction as long as doing so did not otherwise violate constitution, statutory special action was not constitutionally impeded or nullified, and mandatory statutory jurisdiction did not unconstitutionally invade Supreme Court's rule making authority concerning procedural matters.

Statutes that governed disposal of unclaimed property and that prohibited any political subdivision from facilitating destruction of a firearm regulated matter of statewide interest, and, thus, displaced charter city's ordinance that allowed city police department to destroy forfeited or unclaimed firearms, since statutes implicated state's police powers with respect to disposition of forfeited or unclaimed property, conduct of law enforcement officers, including their handling of unclaimed property, and regulation of firearms, and statutes set forth comprehensive scheme regarding firearms and unclaimed or forfeited property.

A balancing test, to determine whether local or statewide interests are paramount, is neither helpful

nor appropriate in resolving issues under the home rule charter provision of the constitution when there is a state statute that conflicts with a city ordinance; disapproving *Tucson v. State*, 191 Ariz. 436, 957 P.2d 341.