

Bond Case Briefs

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MUNICIPAL ORDINANCE - CALIFORNIA

Kirk v. City of Morgan Hill

Court of Appeal, Sixth District, California - September 30, 2022 - Cal.Rptr.3d - 2022 WL 4592168

City residents and firearms interest group brought action for declaratory relief to challenge city ordinance requiring that the theft or loss of a gun be reported within 48 hours, alleging ordinance was preempted by a state law requiring that missing guns be reported within five days.

The Superior Court granted summary judgment for the city, and residents and interest group appealed.

The Court of Appeal held that:

- Ordinance was not duplicative of state statute;
- Ordinance did not contradict state statute;
- Statute did not expressly occupy the field; and
- Statute did not preempt ordinance by implication.

City ordinance requiring that the theft or loss of a gun be reported within 48 hours was not duplicative of state statute requiring that missing guns be reported within five days, and thus was not preempted on that ground; ordinance imposed a more stringent requirement, and thus was not coextensive with state law.

City ordinance requiring that the theft or loss of a gun be reported within 48 hours did not obstruct application of state statute requiring that missing guns be reported within five days, and thus ordinance was not preempted on grounds it contradicted state law; statute set a minimum standard and merely established the outer limit for when a report must be made, it was also permissible under the statute to notify law enforcement before the five days had elapsed, and purpose of the statute to ensure prompt reporting of missing firearms was furthered by and was consistent with the ordinance.

State statute requiring that missing guns be reported within five days did not contain language precluding municipalities from issuing their own requirements for reporting missing guns, and thus did not expressly occupy the field or preempt, on that ground, city ordinance requiring that the theft or loss of a gun be reported within 48 hours.

State statute requiring that missing guns be reported within five days did not preempt by implication city ordinance requiring that the theft or loss of a gun be reported within 48 hours; state concern reflected by the statute was that local law enforcement authorities be promptly notified of a lost or stolen gun, statute was entirely tolerant of local regulation furthering its purpose by requiring even earlier notification, and local interest at stake justified any burden on transient citizens.

