

STATE OF MICHIGAN
IN THE COURT OF APPEALS
(ON APPEAL FROM THE GENESEE COUNTY CIRCUIT COURT)

RPF OIL COMPANY, a Michigan corporation,

MCOA No. 344735

Plaintiff-Appellee,
V

LC No. 17-109107-CZ
Hon Judith A. Fullerton

GENESEE COUNTY and GENESEE COUNTY
HEALTH DEPARTMENT, Individually, jointly
and severally,

Defendants-Appellants. _____/

DEFENDANTS-APPELLANTS' BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

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STATEMENT OF APPELLATE JURISDICTION

Defendants-Appellants Genesee County and Genesee County Health Department (collectively, the County) seek appellate review of the May 21, 2018 ruling and May 31, 2018 order denying the County's motion for summary disposition and granting the plaintiff's motion for summary disposition on its claim for declaratory judgment under MCR 2.116(I)(2). (Apx 000001-000020). On July 2, 2018, the court entered an order stating that, "unless or until" those orders were overturned, the County "shall not enforce the Tobacco 21 ordinance." (Apx 000021-000023). This Court has jurisdiction because the July 2, 2018 order was final pursuant to Michigan court rules.

The Defendants-Appellants noticed this appeal on July 23, 2018. This appeal is being filed under MCR 7.202(6), 7.203(A)(1), and 7.204(A). This Court has jurisdiction under Mich Const 1963, art 1, § 20 (as amended at the November 1994 general election) and as implemented by MCL 600.308(1); MCL 770.3.

STATEMENT OF THE QUESTION PRESENTED

DID THE TRIAL COURT ERR WHEN IT GRANTED THE PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION AND ISSUED A DECLARATORY JUDGMENT THAT THE COUNTY'S TOBACCO 21 REGULATION IS PREEMPTED BY MICHIGAN'S AGE OF MAJORITY ACT, MCL 722.52?

Plaintiff-Appellee RFP Oil answers, "No."

Defendants-Appellants answer, "Yes."

The trial court answers, "No."

INTRODUCTION

The trial court in this case permanently enjoined a Genesee County public health regulation, known as Tobacco 21, that raised the minimum age for purchase of tobacco products to 21 to address one of the most pressing and costly epidemics in Michigan. And it did so based entirely on an unprecedented (and mistaken) view that the Michigan Age of Majority Act, MCL 722.52—a law passed in the early 1970s setting the default age of adulthood for state law purposes—categorically preempts *all* local laws that impose age-based restrictions above the age of 18. But no court in Michigan has ever found that the Age of Majority Act preempts *any* local law. And no court anywhere in the *country* has ever found that any of the now 360 local laws increasing the tobacco sales age to 21—like Genesee County’s regulation—are preempted by any other state’s age of majority statute. That makes sense. Like other states’ age-of-majority laws, Michigan’s Age of Majority Act, by its plain language, establishes only a background definition for “the age of majority or legal age” in *state* law, but it does not prohibit the state or *localities* from imposing heightened age restrictions in specific circumstances.

What led the trial court astray? It believed that the analysis contained in the nonbinding Attorney General Opinion No. 7294 required the conclusion that the County’s regulation directly conflicts with the Age of Majority Act and is therefore preempted. That was error. The Attorney General’s opinion misconstrues the Act’s plain language and ignores the Act’s legislative history entirely. Contrary to the Attorney General’s opinion, under Michigan’s strict requirements for conflict preemption, the Act does not preempt the County’s regulation. Were it otherwise, dozens of run-of-the-mill county and city regulations that restrict various rights and privileges to those over 18 years old would

immediately become targets of preemption. This Court should reverse the trial court's conclusion and hold as a matter of law that the County's Tobacco 21 regulation is not preempted by the Age of Majority Act.

STATEMENT OF FACTS AND PROCEEDINGS

A. To combat a costly and deadly epidemic, Genesee County and the Board of Health prohibited the sale of tobacco products to individuals under 21 years of age.

Genesee County's "Regulation to Prohibit the Sale of Tobacco Products to individuals under 21 years of age" provides that "No person shall sell, give, or furnish any tobacco product . . . to an individual under 21 years of age." § 1005.1. (Apx 000037).

In adopting this regulation, the County responded to an "urgent public health challenge" within the County—approximately 30% of Genesee County residents reported smoking every day and almost every smoker (close to 95%) reported starting by age 21. § 1003. Those statistics are not just academic—they translate into disease and death. Within the state, as the Board's uncontroverted evidence revealed, more than 16,000 adults die every year from smoking-related diseases and nearly "one in ten Michigan youth who are alive today will die early from smoking-related diseases." *Id.* The Board's findings also made clear that the cost of smoking is not limited to the loss of lives. Annually, smoking costs Michigan residents approximately \$9.4 billion dollars in "direct healthcare expenses and lost productivity." *Id.*

To address this crisis, the Genesee County Board of Health engaged in a substantial effort to study and analyze appropriate public health interventions under its broad, state-delegated authority to adopt "necessary or appropriate" regulations to "properly safeguard the public health," MCL 333.2441, 333.2435. Under this authority, county health departments have an "affirmative duty" to "take measures to safeguard human health." *McNeil v Charlevoix Cnty*, 484 Mich 69, 85 (2009) (citing MCL 333.2433(1)). That duty includes a requirement that these departments must "continually and diligently endeavor

to prevent disease, prolong life, and promote the public health,” including “particularly” the “prevention and control of health problems” of “vulnerable population groups.” MCL 333.2433(1).

The Tobacco 21 regulation provides a critical intervention breaking the cycle of tobacco addiction, disease, and ultimately death. By raising the tobacco-purchase age to 21, youth have less access to tobacco products. And that’s key for fighting this public health crisis. Most smokers “transition from experimental to regular smoking before age 21,” § 1003, and because of how brain development works, if public health authorities can delay initiation to after 21, then the people who begin to smoke later in life are less likely to become addicted more likely to successfully quit. Raising the minimum legal age of access not only “delay[s] initiation and reduce[s] tobacco prevalence” across the board, but also likely delivers “the largest proportionate reduction in initiation” among smokers between the age of 15–17 because it cuts off their main source of supply—those between the ages of 18–20. *Id.* As the Board found, “young adults between ages 18 and 20 are more likely than adults over the age of 21 to purchase tobacco for minors.” *Id.* And Genesee County houses the fifth highest number of public schools in the state, and nearly half of all high school students in the County reported that they had “easy access to cigarettes.” *Id.* Accordingly, the Board concluded that by raising the tobacco-purchase age above that of a high school senior, the regulation could interrupt the chain of “easy” tobacco access for youth.

In adopting the regulation, the Board sought to replicate the success of identical Tobacco 21 regulations in other localities, which have effectively reduced the “prevalence of youth smoking” by nearly half within five years. *Id.* At the time, more than 200 localities in fourteen states had enacted regulations restricting the sale of tobacco products to those

over the age of 21. *Id.* That number has only grown while this litigation impedes Genesee County residents from benefitting from this critical public health measure.¹

Accordingly, on January 24, 2017, after laying out its detailed findings regarding the public health implications of the regulation, the Board of Health held a public hearing to allow Genesee County residents an opportunity to participate in the decision-making process and to “receive public comment on the regulation.” (Apx 000048). The Board then “unanimously endorsed” the regulation and passed it along to the Genesee County Board of Commissioners for consideration. *Id.* On February 14, 2017, the Board of Commissioners adopted the Regulation in full.

B. Michigan’s Age of Majority Act.

Michigan’s Age of Majority Act provides that “a person who is at least 18 years of age on or after January 1, 1972, is an adult of legal age for all purposes whatsoever, and shall have the same duties, liabilities, responsibilities, rights, and legal capacity as persons heretofore acquired at 21 years of age.” MCL 722.52. As evinced by the plain text, the statute did two things: it (1) “dealt with the legal capacity of adulthood,” by establishing a background definition for “the age of majority or legal age,” and (2) revised any preexisting state laws on the books that “prescribe[d] duties, liabilities, responsibilities, rights and legal capacity of persons 18 years of age through 20 years of age different from persons 21 years of age.” *Mich Dep’t of Civil Rights ex rel Smilnak v City of Warren*, 136 Mich App 103, 112 (1984).

¹ Since the Board considered the Tobacco 21 Regulation, more localities across the country have raised the tobacco-sales age to 21. Now 360 municipalities and counties in 22 states have raised the age to 21. As it stands, more than a quarter of all Americans are covered by a Tobacco 21 law. See <https://tobacco21.org/> (last visited November 2, 2018).

In passing the Age of Majority Act, the Legislature did not create any new rights; instead, it changed the age at which already existing rights contained in already-enacted laws were acquired. Michigan law was replete with references to rights that attached to someone who was an “adult” or were denied to those who were “minors.” The Age of Majority Act therefore set forth a default rule—for those rights in the Michigan code that generally attached to adults, it made clear that they attach to anyone who is 18. And, for rights that Michigan statutes had already (or “heretofore”) said attached at age 21, those were now changed to age 18.

Nothing in the text of the Act or its legislative history suggests that the Legislature intended the law to focus on, target, or otherwise preempt local city and county regulations. *See* Governor’s Special Commission on the Age of Majority (Feb. 1971) (Apx 000062-000080). In large part, the Age of Majority Act was prompted by Congress’s decision to lower the federal voting age to 18, and the impending ratification of the 26th Amendment. (Apx 000067). Michigan had to decide whether to change its voting age to match federal law, and that led to consideration of altering other *state* laws that assumed age 21 was the age of adulthood. To that end, the Governor appointed a Commission to study the impact of changing the age of majority to 21. (Apx 000073-000074). The Commission’s report does not once mention preemption and the appendix it compiled listing the laws that would be affected by changing the age of majority does not reference a single local law. (Apx 000075–000077). Likewise, when the Act was proposed, the Legislature’s debate centered on the bill’s effect on voting rights, the appropriate age for alcohol consumption, and certain individual state statutes, but included no discussion of, or reference to, municipal codes and regulations. Ultimately, the Legislation included a

nonexclusive list of “public acts”—i.e., state laws—that would be superseded by the Act, *see* MCL 722.53, but not a single local law is listed. Indeed, nowhere in any part of the Age of Majority Act did the Legislature include, or make any reference to, an impact on local ordinances or regulations. Tellingly, in the almost 50 years since the Age of Majority Act was enacted, no Michigan court has ever found it to preempt a local law.

C. RPF Oil seeks to enjoin the County’s regulation and the trial court holds that the Age of Majority Act preempts the County’s regulation.

On May 12, 2017—just before the Tobacco 21 regulation was scheduled to come into effect—Plaintiff, RFP Oil Company, filed a complaint and motion for preliminary injunction, arguing that the County’s regulation was preempted by the Age of Majority Act or, in the alternative, the Youth Tobacco Act. On the same day, Defendants stipulated to an order prohibiting enforcement of the law until the Court heard arguments on the preliminary injunction motion. Given the potential harm to Plaintiff, the Court preliminarily enjoined the Tobacco 21 regulation.

On May 21, 2018, the trial court ruled that RPF Oil’s request for declaratory relief should be granted and held that the Tobacco 21 regulation was preempted by the Age of Majority Act (the court said nothing about the Youth Tobacco Act). (Apx 000014–000015). On May 31, 2018, the trial court entered an order to this effect and then (Apx 000018–000019), on July 2, 2018, it enjoined the County from enforcing the regulation “unless or until” its preemption ruling is “overturned on appeal,” (Apx 000021–000022). This appeal follows.

STANDARD OF REVIEW

A trial court's grant of declaratory relief is "a question of law that is reviewed de novo by this Court." *Twp of Casco v Sec'y of State*, 261 Mich App 386, 395 (Ct App 2004). The trial court properly grants summary disposition to the opposing party under MCR 2.116(I)(2) if the court determines that the opposing party, rather than the moving party, is entitled to judgment as a matter of law. *Sharper Image Corp v Dep't of Treasury*, 216 Mich App 698, 701 (1996).

ARGUMENT I

THE TRIAL COURT ERRED BY HOLDING THAT MICHIGAN'S AGE OF MAJORITY ACT PREEMPTS THE COUNTY'S TOBACCO 21 REGULATION

Under Michigan's basic conflict-preemption standard, holding that Michigan's Age of Majority Act preempts the County's tobacco regulation requires a finding that the state and county laws are in direct conflict. That is an exacting standard. As the Michigan Constitution provides, local lawmaking authority is to be "liberally construed in [localities'] favor." Const 1963, art 7, §§ 22, 34. As a result, establishing a direct conflict between a local regulation and a state statute requires *first*, that the conflicting provisions "cover[] the same subject," *Rental Prop Owners Ass'n of Kent Cnty v Grand Rapids*, 455 Mich 246, 262 (1997), and *second*, that the local regulation "permits what the statute prohibits or . . . prohibits what the statute permits." *People v Llewellyn*, 401 Mich 314, 322 n 4 (1977).

Michigan's Age of Majority Act satisfies neither element of this settled conflict-preemption test. Because the trial court's holding that the Age of Majority Act directly conflicts with, and therefore preempts, the County's Tobacco 21 regulation conflicts with the relevant guideposts—the plain text of the Age of Majority Act, its legislative history, or the settled principles of preemption—its decision cannot stand. This Court should reverse.

A. The Age of Majority Act does not conflict with the Tobacco 21 regulation because it does not address the same subject matter.

The first conflict-preemption requirement is a longstanding part of Michigan law: A "direct conflict" exists only when the two allegedly conflicting regulations address the same subject matter. More than fifty years ago, the Michigan Supreme Court explained that a municipal ordinance may directly conflict only "with a statute covering the same subject." *Miller v Fabius Twp Bd*, 366 Mich 250, 256–57 (1962); *see also Palmer v Twp of Superior*, 60

Mich App 664, 677 (1975) (noting that *Miller* “set out [the] guide” for conflict preemption). This rule applies even where there is some overlap between the two allegedly competing regulations. In *Rodriquez v Township of Delta*, 2016 WL 520011 at *1 (Mich Ct App Feb 9, 2016), a fireworks dealer challenged a town ordinance prohibiting any vendor from selling any goods between the hours of 9:00 p.m. and 9:00 a.m. (unpublished, Apx 000081-000082). In his view, that law was preempted by a Michigan state statute that “prohibits localities from regulating firework sales.” *Id.* The court disagreed. “For direct preemption to exist, the conflicting provisions must address the same subject.” *Id.* Because the local ordinance was not a fireworks-specific regulation, the court ruled, there was no direct conflict and thus no preemption. *Id.*; compare with *Ter Beek v Wyoming*, 495 Mich 1 (2014) (holding that a city ordinance penalizing possession of marijuana was preempted by Michigan’s Medical Marijuana Act, which immunized qualifying patients’ marijuana use). The upshot of this rule is clear: unless a state law and the challenged local ordinance specifically regulate the same subject matter, there is no preemption.

That rule defeats any claim that the Age of Majority Act preempts the County’s Tobacco 21 regulation here. The County’s regulation does not purport to set an age of legal majority; it does not define in any broad manner who is an adult or a minor under state or local law. Instead, it just restricts the sale of tobacco products to older adults. That means it does not “cover the same subject” as the Age of Majority Act, which provides, as a general matter, that “a person who is at least 18 years of age on or after January 1, 1972, is an adult of legal age for all purposes whatsoever, and shall have the same duties, liabilities, responsibilities, rights, and legal capacity as persons heretofore acquired at 21 years of age.” MCL 722.52. Because Michigan’s Age of Majority Act sets forth only a general

determination of the age of legal capacity (amending preexisting state law), and does not even speak to local age-based restrictions, it does not trigger preemption. *See, e.g., John's Corvette Care, Inc v City of Dearborn*, 204 Mich App 616, 620 (1994) (concluding that, where the statute does not “expressly preempt municipal regulation” and there is no “express legislative history” indicating that a “state statute preempts [an] ordinance,” conflict preemption is unwarranted).

Indeed, Michigan has a law specifically governing youth tobacco sales—the Youth Tobacco Act, MCL 722.641. But that law—as even the Attorney General acknowledges—does not prohibit a local government from setting a higher age for tobacco sales. (Apx 000056). If the *specific* statute the Legislature enacted to govern tobacco sales age does not preempt local laws changing the sales age, certainly the *general* Age of Majority Act should not.

B. The Tobacco 21 regulation does not prohibit anything that the Age of Majority Act permits.

As to the second conflict-preemption requirement, the County’s regulation also does not prohibit anything that the Age of Majority Act permits. The Age of Majority Act creates no new rights itself; instead, it sets a default age at which adulthood attaches for the purpose of state statutory rights. And in doing so, it does not prohibit or otherwise restrict either the State or a municipality from changing the age at which certain rights, privileges, or obligations attach. A law that sets a floor does not also operate to impose a ceiling on what local governments can require. *See, e.g., Mich Gun Owners, Inc v Ann Arbor Pub Schs*, 502 Mich 695 (2018) (Viviano, J., concurring) (explaining that, “in order for a state law to conflict with and preempt a local regulation, the state law must *expressly* permit something the local regulation prohibits”).

Here, the County’s regulation “enlarges upon the provisions of a statute by requiring more than the statute requires” and therefore does not trigger conflict preemption. *City of Detroit v Qualls*, 434 Mich 340, 385 (1990) (quoting 56 Am Jur 2d, Municipal Corporations, § 374). That “creates no conflict” because the County’s regulation simply sets a higher age—above the state’s floor—for the purchase of a particular product. *Id.* As the Michigan Supreme Court has explained, “[t]he mere fact that the state . . . has made certain regulations does not prohibit a municipality from exacting additional requirements.” *Id.* And that is especially true where, as here, the Age of Majority Act does not afford people above 18 an express right to purchase tobacco products. On that point, the Act is silent, leaving room for local regulation. *See Mich Gun Owners*, 502 Mich 695, at *14 (Viviano, J., concurring) (explaining that conflict preemption does not exist where the state statute “do[es] not address” the particular topic of the local regulation “much less afford an express right” relating to it). As a result, because “nothing in the plain language” of the Act “expressly forecloses” a county from “set[ting] a higher standard” for the sale of tobacco products—the *sine qua non* of conflict preemption—there is no conflict and thus no preemption. *Associated Builders & Contractors v City of Lansing*, 305 Mich App 295, 414–15 (2014).

Michigan’s long history of local, age-based regulation bears this out. Michigan localities have imposed similar heightened age requirements across a broad range of contexts. And Genesee County’s regulation is just one among the dozens of local laws and regulations that “enlarge[] upon the provisions of a statute by requiring more than the statute requires,” with respect to age. *Grand Rapids*, 455 Mich at 262. Consider just a few examples:

- Detroit and Lansing, among others, immunize possession of small amounts of marijuana on private property from penalties under their respective municipal controlled substances ordinances—but only for individuals over 21 years of age. *See* Detroit Code § 38-11-50 (safe harbor for possession of small amounts of marijuana on private land for those over 21); Lansing Code § 8-501 (same); *see also* EL Code § 26-56(a); Portage Code § 5.14;
- Multiple towns prohibit anyone under 21 years of age from being employed as a police officer. CS Code § 40.001(a) (St. Clair Shores); Portage Code § 46-64 (reserve force only); Midland Code § 19-2(b); BC Code § 2-46(2) (Bay City);
- Multiple towns prohibit anyone under 21 years of age from obtaining a license to lease a motorcycle. *See* AA Code § 7:353(1) (Ann Arbor); Shelby Code § 14-242; SCS Code § 21.026;
- Multiple towns prohibit anyone under 21 years of age from managing a smoker’s lounge. *See* Southfield Code § 7-711; Canton Code § 18-704; Troy Code ch 77, no 10; Shelby Code § 14-548;
- Detroit restricts the operation of public fireworks displays only to persons “at least twenty-one (21) years of age.” Detroit Code § 19-1-46(b)(2);
- Dearborn requires that any person applying for a license to use, handle, or transport explosives must “be at least 21 years of age.” Dearborn Code § 5-102(1);
- Dearborn also prohibits anyone under 21 years of age from obtaining a license to install or repair HVAC systems. Dearborn Code § 5-691.

These regulations are not—and never have been—preempted by Michigan’s Age of Majority Act because the Age of Majority Act does not expressly forbid additional,

heightened age restrictions imposed through local regulation. To the contrary, as this Court has explained, where the reason for passing such a regulation goes “beyond considerations of mere legal capacity,” *Smilnak*, 136 Mich App at 114, the Age of Majority Act does not preclude the age-based restriction.

State laws governing the sale of other products also reinforce the point. Unlike the law at issue in this case—the Age of Majority Act—the state statutes regarding alcohol, guns, and voting *explicitly* displace local laws. For guns, the law provides: “A *local unit of government* shall not . . . enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of [firearms and ammunition].” MCL 436.1201. Similarly, with voting, state law specifies that a citizen “not less than 18 years of age” is “entitled to register as an elector in the *township, city, or village* in which he or she resides.” MCL 168.492. Equally as clear, the legislature gave the state alcohol commission “the *sole right*” to control alcohol “*within the state*, including the . . . sale thereof.” MCL 436.1201. As these examples show, the Michigan Legislature is perfectly capable of explicitly preempting local laws when it wishes to do so. But there is no such language in the Age of Majority Act, and so that law does not conflict with the Tobacco 21 regulation.

The trial court’s view of preemption, however, turns that settled understanding on its head. Under its theory, the Legislature’s specific regulatory decisions regarding these areas do not matter; *any* regulation—regardless of subject matter—that raises the age restriction to 21 years of age conflicts with, and is preempted by, the Age of Majority Act. But if true, every local age-based regulation in the state of Michigan—from transporting explosives to managing a smoker’s lounge—is likewise preempted by the Act regardless of

the regulatory framework adopted by the Legislature. No principled view of conflict preemption justifies such a radical result, and no court has ever embraced such a sweeping view of preemption precisely because doing so would override scores of democratically enacted local ordinances for no reason at all. The Age of Majority Act—by its plain text and legislative history—does not require such an unprecedented result here.

ARGUMENT II

THE NONBINDING ATTORNEY GENERAL'S OPINION DOES NOT COMPEL A DIFFERENT CONCLUSION BECAUSE IT MISCONSTRUES THE AGE OF MAJORITY ACT'S TEXT AND LEGISLATIVE HISTORY

In reaching a contrary conclusion, the circuit court relied exclusively on the reasoning contained in nonbinding Attorney General Opinion No. 7294. In the court's view, this opinion required the conclusion that the County's regulation directly conflicts with the Age of Majority Act. That is wrong. Nothing in the Attorney General opinion alters the settled preemption principles discussed above. The Attorney General's analysis centers on two points, but both are wrong. So, as in other cases involving the Age of Majority Act, the Court should reject its nonbinding analysis. *See Mich Beer & Wine Ass'n v Att'y Gen*, 142 Mich App 294, 300 (1985) (Attorney General's opinion is not binding on a court because they "do not have the force of law"); *Smilnak*, 136 Mich App at 110 (rejecting Attorney General's opinion that Age of Majority Act preempts challenged law).

First, the Attorney General opined that because the text of the Act is "written in the broadest possible terms by stating that a person who is 18 years of age 'is an adult of legal age for all purposes whatsoever,'" it forbids any future local regulation that might raise the age for selling tobacco. (Apx 000058). But the state's demarcation of who has met the age of majority does not foreclose a locality's (or the state's) ability to place greater limitations on which "adults" are subject to different laws. That is because, without more, a declaration that confers legal adulthood on an individual does not also confer on that individual unfettered access to any particular right, like, for instance, the right to purchase cigarettes. Instead, to determine which specific rights may (or may not) attach at adulthood, a court must consult the relevant underlying substantive law addressing the particular right. And

here, the underlying law that governs tobacco purchases—the Youth Tobacco Act—does not provide any rights that attach at adulthood (*i.e.*, when an individual turns 18). By its terms, as the Attorney General agrees, it sets only a floor stating just that retailers cannot sell to anyone *under* age 18. MCL 722.641 (“[a] person shall not sell . . . a tobacco product to a minor.”) But because the underlying substantive law affords no affirmative right to smoke for all adults, it cannot preempt a local law limiting tobacco purchases to those 21 and over. The age of “adulthood,” in other words, does not control the age of tobacco purchasing.

As this Court has explained, the Age of Majority Act’s “clear purpose” was both narrow and specific. *Smilnak*, 136 Mich App at 103. In passing the Act, the Legislature sought only “to establish 18 as the age at which a minor loses the disabilities and protections of his minority and gains the legal status of an adult.” *Id.* at 112. But legal capacity of adulthood is a background presumption, not an unyielding command. Laws that impose higher age restrictions based on an “aim . . . far beyond considerations of mere legal capacity,” do not implicate the Age of Majority Act. *Id.* at 114 (explaining that the Act “was not intended to preclude the Legislature from making distinctions based on the age of 21”). That explains why this Court found that the Age of Majority Act did not displace a state law passed *before* the Act that requires firefighters to be 21. And it explains why, when the state restricted the drinking age to those 21 or older, the Legislature did not need to repeal or modify the Age of Majority Act. Pub Act 531 (1978). As this Court held, the Act “did not intend to confer” upon 18-year-olds any inalienable rights “notwithstanding [heightened] statutory age requirements” to the contrary. *Smilnak*, 136 Mich App at 113. Under the Age of Majority Act, therefore, the state, counties, and cities still remain free to draw age-based

distinctions in specific circumstances that require more than just meeting the age of majority (18 years of age).

Second, in the Attorney General’s view, the Act prohibits all “different treatment” between 21- and 18-year-olds. (Apx 000056). But that view likewise reads too much into the Age of Majority Act. The Act was designed to revise age distinctions drawn in preexisting state laws, not to prevent future regulations imposing heightened requirements for specific reasons. That is why it provides only that 18 year olds have the “rights and legal capacity as persons *heretofore* acquired at 21 years of age.” *Id.* (emphasis added). The key limiting phrase “heretofore acquired” refers back in time to only those laws that had previously adopted minimum age requirements of 21 years because it was then the age of majority. *See* Black’s Law Dictionary 726 (6th ed 1990) (explaining that the term “denotes time past, in distinction from time present or time future”). It is a fundamental principle of statutory interpretation that courts “must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory.” *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146 (2002). By the same token, the list of laws superseded by the Age of Majority Act includes only state statutes. *See* MCL 722.53. The principle of *ejusdem generis* instructs that the Legislature only meant to supersede the type of laws enumerated in that list—preexisting state laws. *People v Brown*, 406 Mich 215, 221 (1979) (“the meaning of the general words” in a statute will be construed as “including only things of the same kind, class, character or nature as those specifically enumerated.”). Unsurprisingly, then, courts interpreting similar laws in other jurisdictions have reached just this conclusion. *See, e.g., Peterson v Romero*, 542 P2d 434, 485 (NM Ct App 1975) (concluding that New Mexico’s “similar” Age of Majority Act

was intended to “substitute the age of 18 for the age of 21 when any prior special law fixed an adult age of 21 years”).²

The legislative history, too, cements this understanding. The Governor’s Commission established to investigate the Age of Majority (as well as the Legislature) focused exclusively on state laws already on the books—its appendix of targeted laws contained not a single local city or county ordinance or regulation. (Apx 000075–000077). And throughout the legislative process, the focus was exclusively directed toward specific, then existing state laws. (Apx 000078) (targeting the proposed legislation at those state “provisions of law currently prescribing” an age of majority of 21 years); (Apx 000073) (specifically directing that the law identify any “inconsistencies or inadequacies in the present laws”).

The upshot: The Attorney General’s opinion misconstrues the plain text and completely ignores the legislative history. Adopting it, as the lower court did here, would not only invalidate the critical public health regulation at issue, but would also touch scores of other local regulations around the state that set age limits above 18—a result the Attorney General Opinion fails to even consider. This Court should not adopt its analysis. Fortunately, it is not bound to do so.

² Further undermining this view argument, the Attorney General’s contention that local governments cannot make any distinctions between 18- and 21-year-olds would lead to anomalous results. It would mean that a local government could raise the age for tobacco purchases to 22, but not 21. Certainly, in lowering the age of majority that is not what the Legislature intended.

RELIEF

For the foregoing reasons, Defendants-Appellants Genesee County and Genesee County Health Department request that this Court reverse the trial court's May 21, 2018 ruling and May 31, 2018 order granting declaratory relief to RPF Oil and holding that the Age of Majority Act preempts the County's Tobacco 21 regulation. This Court should also enter any other relief it deems appropriate under the circumstances, including the award of costs and attorneys' fees.

Respectfully submitted.

PLUNKETT COONEY

Dated: November 9, 2018

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**Motion for pro hac vice admission to be filed*

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STATE OF MICHIGAN
IN THE COURT OF APPEALS
(ON APPEAL FROM THE GENESEE COUNTY CIRCUIT COURT)

RPF OIL COMPANY, a Michigan corporation,

MCOA No. 344735

Plaintiff-Appellee,
V

LC No. 17-109107-CZ
Hon Judith A. Fullerton

GENESEE COUNTY and GENESEE COUNTY
HEALTH DEPARTMENT, Individually, jointly
and severally,

Defendants-Appellants. _____/

**APPENDIX OF
DEFENDANT-APPELLANT GENESEE COUNTY AND
GENESEE COUNTY HEALTH DEPARTMENT**

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STATE OF MICHIGAN

SEVENTH JUDICIAL CIRCUIT COURT (GENESEE COUNTY)

RPF OIL COMPANY,

Plaintiff,

v

File No. 17-109107-CZ

GENESEE COUNTY and GENESEE COUNTY
HEALTH DEPARTMENT,

Defendants.

DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

BEFORE THE HONORABLE JUDITH A. FULLERTON, CIRCUIT COURT JUDGE

Flint, Michigan - Monday, May 21, 2018

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None

EXHIBITS

Offered

Admitted

None

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Flint, Michigan

Monday, May 21, 2018 - 11:39 a.m.

THE COURT: We're going to do RPF Oil against Genesee County and Genesee County Health Department and it's 17-109107-CZ. Today is the date and time to hear Defendants' motion for summary disposition and Mr.--who's going to argue, Ms. Stowers, are you going to do that?

MS. STOWERS: No, your Honor. It's going to be argued by *pro hac vice* counsel Rachel Bloomekatz.

THE COURT: Ms. Rachel Bloomekatz and, Mr. Clifford Knaggs present on behalf of Plaintiff.

MR. KNAGGS: Correct.

THE COURT: All right, let's proceed and the Court has reviewed the newest material submitted by everybody and I have reviewed *Llewellyn* and so go forward, thank you.

MS. BLOOMEKATZ: Okay, good morning, your Honor.

THE COURT: Morning.

MS. BLOOMEKATZ: Thank you. This Court, as you said, is undoubtedly very familiar with this case. We're on, I believe, our third motion for summary disposition on the preemption issue and, of course, the County has submitted extensive briefing. So, really, I'm here to answer any questions or concerns that your Honor has. I would be remised, your Honor, though not to mention and not to highlight the unprecedented nature of this case. It really--

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THE COURT: It's definitely unique.

MS. BLOOMEKATZ: It's definitely unique and also in precedent both here in Michigan and nationally. Here in Michigan, in the 50 years since the Age of Majority Act has been enacted not a single court has ever found a local law to be preempted by the Age of Majority Act. As highlighted in our brief, there are local laws, dozens of them throughout the case--throughout the state, excuse me, that make these age based distinctions for people who are older than 18 just like the Tobacco 21 Regulation here and those include, you need to be older to operate a dance hall, or to purchase fireworks, or to run amusement park devices. They're--they're--really littered all over our local statutes are age based restrictions that are over 18 and you would be the first judge in Michigan to say that a government can't do that. It really would append sort of the basic regulatory framework for local laws and this has national implications. You'd be first judge in the country to say that any state's Age of Majority Act preempts a tobacco 21 ordinance. So just like here in Michigan, after the federal voting age changed from 21 to 18, all across the states, over 40 states enacted similar Age of Majority Acts and now we have over 300 cities and towns across the country and 19 states that have similar tobacco 21 ordinances, none has been found preempted by any of these other similar Age of Majority Acts and really there's no basis

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1 here for that unprecedented ruling. Under the high bar for
2 conflict preemption, as set forth by the Michigan Supreme
3 Court, neither the Youth Tobacco Act nor the Age of Majority
4 Act preempts Genesee County's Tobacco 21 Regulation. So,
5 really, I'm happy to answer your Honor's questions about
6 specifics of law and I'm happy to respond to the Plaintiff's
7 argument but I--I do understand that we've briefed this quite
8 heavily and have been here multiple times before.

9 THE COURT: Okay, thank you. Mr. Knaggs, go ahead.
10 Thank you, sir.

11 MR. KNAGGS: Thank you, your Honor. We agree that
12 this case is ripe for decision. It's--it's a declaratory
13 judgment action; it's a question of law. There's really
14 nothing to put to a jury and there are no facts in dispute.
15 But I, in response, suggest that the Court that, actually,
16 it's the Plaintiff that is entitled to relief and I'd ask for
17 that pursuant to MCR 2.116(I)(2). I briefed the issue. This
18 is a clear--it is as the *Ter Beek* case says, this is not a
19 complex analysis. *Llewellyn* tells us that if the regulation
20 prohibits something that the state allows or allows something
21 that the state prohibits it is a direct conflict and therefore
22 it is preempted and cannot be enforced. I go--I go through
23 the *Ter Beek* case, it's hard for me to pronounce.

24 THE COURT: I know, that's a hard one.

25 MR. KNAGGS: It is. It's--I--I'm not even sure if

1 that's--

2 THE COURT: I agree.

3 MR. KNAGGS: --a correct pronunciation. That was a
4 case where there was a city ordinance, City of Wyoming, that
5 said you can't use your property in a way that violates
6 federal law and this related to the Medical Marijuana Act.
7 That--that ordinance was challenged based upon the preemption
8 intent--preemptive intent that was set forth in the Medical
9 Marijuana Act. So these were two areas of regulation totally
10 different from each other, one being zoning; one being medical
11 marijuana. The court in that case held that the language in
12 that act did preempt the ordinance as it related to
13 prohibition of the use of medical marijuana by a qualified
14 patient.

15 Similar here, while we're talking about youth
16 tobacco or tobacco 21 and age of majority, there's still a
17 direct conflict because the Youth Tobacco Act and now the
18 ordinance says that you can't sell to persons under 21 years
19 of age. The Youth Tobacco Act says you can't sell to a minor
20 but that's defined by the Age of Majority Act. And it's also
21 important to note that--that the Youth Tobacco Act was
22 specifically preempted when it was enacted or a year after it
23 was--the Age of Majority Act was enacted. So there's a clear
24 intent to apply to the use, sale, possession of tobacco
25 products. The state law says if you're 18 years of all--years

1 of age, you can purchase, use, and possession tobacco and
2 consequently, if you're a vendor, a store keeper, you can
3 lawfully sell to someone 18 years of age or older and now the
4 ordinance says you can't. It's a clear case of direct
5 conflict and preemption, your Honor.

6 They're trying to suggest that, well, under their
7 interpretation--under the Defendants' interpretation, they're--
8 --they're on that, that they got general--generalized powers
9 they can enact whatever they want. We know that they're only
10 limited authority, they can only enact what the legislature
11 allows them to enact and they've stepped over the line in this
12 case. We'd ask that you grant relief for the Plaintiff.

13 THE COURT: Anything further?

14 MS. BLOOMEKATZ: Yes. Thank you. I'd like to
15 clarify, your Honor, you just hear the--heard the Plaintiff
16 here said that the law says that you can sell to anyone over
17 18 and that that's what the state law says but I'd actually
18 like your Honor to look at the text of the state law in the
19 Youth Tobacco Act because manifestly that's not what it says.
20 The Youth Tobacco Act says a person shall not sell, give, or
21 furnish a tobacco product to a minor, that's someone 18 years
22 old. So you can't sell to someone who is under 18 but it
23 doesn't say that you can or necessarily have a right to sell
24 anyone who is above 18 year old--18 years old and that makes
25 it very different from a lot of other laws and laws that the

1 Plaintiff has cited. For example, if you look at Michigan's
2 gun laws, it says that a police chief in a city or a
3 commissioner shall issue a license to purchase to anyone who's
4 over 18 as long as there's some other requirements met. They
5 actually give rights and say--and therefore there would be a
6 direct conflict. We don't have that in this case. Here, the
7 state law has just set a floor. It sort of set a baseline and
8 said certainly in state law you can't sell to anybody
9 underneath this, but it's silent as to anything that's more--
10 more restrictive. The Michigan Supreme Court and the Michigan
11 Court of Appeals, in case after case, has said when a law is
12 silent like that there's no direct conflict when a local
13 government decides to be more protective.

14 You can look for example at the *USA Cash #1* case
15 versus *City of Saginaw*, that's 285 Mich App 262. That's a
16 case where the state law already made, essentially, pawn
17 dealers, second hand merchants, have a reporting requirement.
18 You had to report all your transactions weekly. Well, local
19 government came in and said no, we want you to report all of
20 your transactions every four--48 hours after it happens and
21 we're also going to charge you a fee. The plaintiff in the
22 case made exactly the same argument that the Plaintiff is
23 making here. The Court of Appeals, following Michigan Supreme
24 Court precedence, said no, it is certainly fine for local
25 governments to enlarge upon what the state was done as long as

1 the state doesn't clearly set forth something that conflicts.
2 Here, a right for people 18 and over to purchase tobacco
3 which, again, is nowhere in the text of the Youth Tobacco Act.
4 And I would mention even the Attorney General's opinion agrees
5 on that.

6 The Age of Majority Act doesn't get the Plaintiff
7 any further. The Age of Majority Act is this background
8 definition of who is an adult for state law purposes and I'll
9 mention that it was some very strong language saying you're an
10 adult of legal age for all purposes but really what's that--
11 what that is doing is saying for state law purposes, for all
12 rights that were "heretofore acquired" and the statute uses
13 that language. All those rights that were "heretofore
14 acquired" under state law that you used to get when you were
15 21 you now get at your--when you're 18. The Age of Majority
16 Act itself doesn't confer or grant any rights. You have to go
17 to state law to see what rights accrue when you become an
18 adult. Right--for example, the--the state statutory code is
19 replete with examples of rights that accrue when you become an
20 adult. You can inherit property; you can voluntarily commit
21 yourself to a mental institution; you can bring a case in
22 court as a Plaintiff in your own name. None of that comes
23 from the Age of Majority Act itself. Those are all areas in
24 Michigan codes that tell you what rights accrue to an adult as
25 opposed to a minor. And what the Age of Majority Act did is

1 it changed the age of an adult from 21 to 18, it didn't
2 actually give any specific rights itself.

3 And, again, the Plaintiff here acknowledges that,
4 yes, the Age of Majority Act changed the age of the Youth
5 Tobacco Act but, again, that only changed the minimum floor
6 for selling tobacco in the state. Now, nowhere in the state
7 could you sell to anyone under 18; again, didn't set any sort
8 of ceiling. I think, if you look at many indications in the--
9 in the Age of Majority Act, you can see that it's not looking
10 to preempt state law at all. The statute, itself, includes a
11 long list of statutes that are superseded and changed by the
12 Age of Majority Act. In that entire list there is not a local
13 law mentioned. It's sort of a cardinal rule of statutory
14 construction when a statute gives you a list of examples that
15 you're going to interpret those general rules and the statutes
16 and interpret it so that you're only preempting or superseding
17 things that are of the same type or in kind. You can also see
18 that the statute says it's superseding laws including but not
19 limited to these "public acts." We all, of course, know that
20 the public acts, that's the formal word for state statutes,
21 you know, the Public Acts of 1973 or whatnot.

22 And I'd also like to point to the legislative
23 history. We've briefed this in quite detail, I won't go
24 through it, your Honor, and much of it is attached to our
25 brief. But this not a case that has--that's--that's sparse on

1 legislative history that just has a few lines, a purpose, or
2 whatnot. This is a case where after the federal voting age
3 changed, the governor at that time, Governor Milliken,
4 commissioned an entire report to study the Age of Majority Act
5 and--and changing the age of majority. If you go up to the
6 archives, as we have, and pull the report and pull all of the
7 testimony and all the agencies that contributed to that
8 report, you'll note in all of that material, preemption is not
9 once mentioned. In particular, that commissioned was charged
10 with reporting to the governor and to the legislature all the
11 laws that would need to be changed and they put them all into
12 an appendix at the end of their report. Again, not a single
13 local law is mentioned. So to read the Age of Majority Act,
14 the sort of background law about who is an adult and who is
15 not an adult for state law purposes, to sort of take on legs
16 and have preempted effect, is really beyond the legislative
17 history, is really beyond the text, and it's also beyond
18 anything else that's happened elsewhere in the country.

19 I'm happy to answer any questions. I'm also h--I--I
20 can address every quickly the *Ter Beek* case, that was a case
21 where you had a direct conflict unlike here. That was a law
22 much like the gun law that I just mentioned, your Honor, where
23 the medical marijuana statute at the state level says that if
24 you register and meet certain requirements, you shall be able
25 to use medical marijuana and that statute, as you can read in

1 the case, even said and you shall be able to use it with no
2 penalty. You know, that there should be no penalties to it.
3 So, when the local law comes around and says well, you can't
4 use medical marijuana, you can't do any of this stuff, that
5 is--that you can do if you're licensed and registered by the
6 state, you have a direct conflict. We're not--we're not
7 disagreeing with that case, we just have a very, very
8 different statute at issue here.

9 THE COURT: Mr. Knaggs, anything else then?

10 MR. KNAGGS: Just a couple of things, your Honor.
11 The Age of Majority Act is clear. It is says,
12 "...notwithstanding any other provision of law to the
13 contrary," we can't treat someone between 18 and 20
14 differently." Then it goes on to say, "This Act supersedes
15 all provisions of law that--that does so," and it says,
16 "...including but not limited to," so it's not--it's not
17 limited to that list. If they would have listed everything it
18 probably would have been volumes.

19 Counsel is trying to suggest that an ordinance is
20 different, they're really just talking about public acts
21 enacted by the legislature. However, a legislative
22 determination by the local legislative body is of the same
23 effect as though made by the general legislature, that's cited
24 in *Johnson v Genesee County*, of all cases, 232 F. Supp. 567, a
25 1964 case from the Eastern District. In that case, the drain

1 commission had adopted an ordinance, it was enacted by the
2 county commission to install a new sewer system. They were
3 challenged and--and the court rule that--that they fine to
4 assess the--the fees to do that. So it's clear that county
5 ordinances, city ordinances, have the same effect as state law
6 because they're authority to enact them comes directly from
7 the legislate--legislature, it's a delegation of legislative
8 power to the local entity, that has not been done here. I
9 don't know how more clear you could be with a direct conflict
10 and we'd ask for judgment in favor of Plaintiff.

11 THE COURT: All right, the Court as indicated I
12 reread a lot of things over the weekend including the Age of
13 Majority Act, we've got the *Llewellyn* case and other matters
14 cited, briefs have been submitted again for the Court's
15 review. With respect to whether, really, this--there is a
16 conflict--an irreconcilable conflict, I would suggest between
17 the Age of Majority Act and the Genesee County Tobacco--
18 Tobacco 21, I'm sorry, Regulation. Now, as indicated I call
19 it the preamble perhaps to the Age of Majority Act. "It's an
20 Act to define the age of majority or legal age and to
21 prescribe and define the rights, liabilities,
22 responsibilities, rights of legal capacity of persons 18 or
23 more years of age." Okay, so here we are because the Tobacco
24 21 Regulation was going to make a distinction between persons
25 18 to--through 20 which would treat them differently than

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1 persons 21 and older diminishing their capacity to purchase
2 cigarettes. Now, I happen to be a--not much of a proponent of
3 cigarette smoking but anyway that's what they were trying to
4 do. It sounded like a great idea, however, as Mr. Knaggs has
5 pointed out, first of all, it's 722.52 in pertinent part,
6 "...notwithstanding any other provision of law to the
7 contrary, a person who is at least 18 years of age on or after
8 January 1 of '72 is an adult of legal age for all purposes
9 whatsoever and shall have the same duties, liabilities,
10 responsibilities, rights of legal capacity as persons
11 heretofore acquired at 21 years of age." Looking at that in
12 context, of course, in this situation and looking at the
13 definition in *Llewellyn*, it's actually 401 Michigan 314, it's
14 a footnote 4 on page 322, a direct conflict exists when the
15 ordinance permits what the state statute prohibits or by
16 (inaudible) of the ordinance prohibits what the state statute
17 permits. We have that situation here. I think there is a
18 direct conflict here and the County, in my view, cannot change
19 the capacity of adults 18 to 21 without violating the Age of
20 Majority Act. So, pursuant to 2.116(I)(2), motion for summary
21 granted to Plaintiff. Thank you.

22 MR. KNAGGS: Thank you, your Honor. I'll prepare an
23 order.

24 THE COURT: Submit an order. Thank you.

25 MR. KNAGGS: Your Honor?

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THE COURT: Yes, sir?

MR. KNAGGS: That brings up the question of next week. We were scheduled for trial.

THE COURT: There's not a trial now.

MR. KNAGGS: Thank you.

THE COURT: There wouldn't be a reason for one. Thank you. That I can see. So, here, actually, Craig would you give him this back?

(At 11:57 a.m., proceedings concluded)

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STATE OF MICHIGAN)
)
COUNTY OF GENESEE)

I certify that that this transcript, consisting of 17 pages, is a complete, true, and correct record of the videotape of the proceedings and testimony taken in this case as recorded on Monday, May 21, 2018.

Date: June 1, 2018

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

RPF OIL COMPANY,
a Michigan corporation,

Plaintiff,

v

**GENESEE COUNTY and GENESEE
COUNTY HEALTH DEPARTMENT,**
individually, jointly and severally,

Defendants.

Case No. 17-109107-CZ

Hon. Judith A. Fullerton

**ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY
DISPOSITION PURSUANT TO MCR
2.116(C)(10)**

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At a session of said Court, held in the Circuit Courtrooms, City of
Flint, County of Genesee, State of Michigan, on this ____ day of
May, 2018.

PRESENT: THE HONORABLE JUDITH A. FULLERTON
Genesee County Circuit Court Judge

This matter comes before this Court on Defendants' Motion for Summary Disposition
pursuant to MCR 2.116(C)(10); and

This Court having heard oral argument on this matter on May 21, 2018, and having
reviewed the pleadings in this matter and being otherwise fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED that Defendants' Motion for
Summary Disposition is hereby DENIED in its entirety for the reasons stated on the record by this
Court;

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TRUE COPY
Genesee County Clerk

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IT IS FURTHER ORDERED, for the reasons stated on the record, that pursuant to MCR 2.116(I)(2) Plaintiff is entitled to Summary Disposition in its favor on its claim for Declaratory Judgement.

The Order does not resolve all the issues in this case and remains open.

IT IS SO ORDERED.

JUDITH A. FULLERTON
P-20455

Hon. Judith A. Fullerton
Genesee County Circuit Court Judge

5/31/18

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

RPF OIL COMPANY,
a Michigan corporation,

Plaintiff,

v

**GENESEE COUNTY and GENESEE
COUNTY HEALTH DEPARTMENT,**
individually, jointly and severally,

Defendants.

Case No. 17-109107-CZ

Hon. Judith A. Fullerton

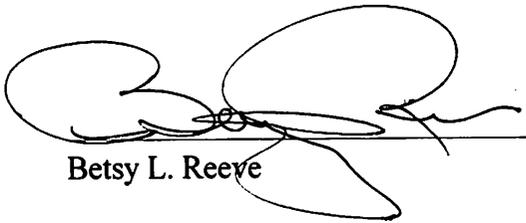
PROOF OF SERVICE

Clifford A. Knaggs (P42232)
Knaggs Brake, P.C.
Counsel for Plaintiff
7521 Westshire Drive, Suite 100
Lansing, Michigan 48917
517-622-0590 / Fax 517-622-8463

Rhonda R. Stowers (P64083)
Plunkett Cooney
Counsel for Defendants
111 East Court Street, Suite 1B
Flint, Michigan 48502
810-232-5100 / Fax 810-232-3159

I certify that on the date indicated next to my signature below, I sent a true copy of the May 31, 2018, Order Denying Defendants' Motion for Summary Disposition Pursuant to MCR 2.116(C)(10) by first class mail to *Rhonda R. Stowers, Counsel for Defendants, at 111 East Court Street, Suite 1B, Flint, Michigan 48502.*

DATED: June 7, 2018


Betsy L. Reeve

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

RPF OIL COMPANY,
a Michigan corporation,

Plaintiff,

v

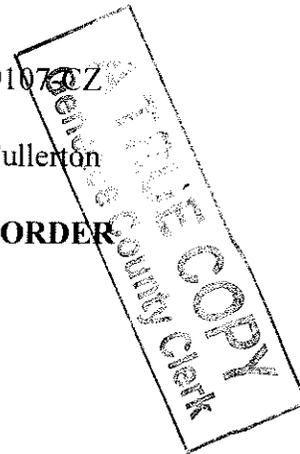
GENESEE COUNTY and GENESEE
COUNTY HEALTH DEPARTMENT,
individually, jointly and severally,

Defendants.

Case No. 17-109107CZ

Hon. Judith A. Fullerton

STIPULATED ORDER



Clifford A. Knaggs (P42232)
Knaggs Brake, P.C.
Counsel for Plaintiff
7521 Westshire Drive, Suite 100
Lansing, Michigan 48917
517-622-0590 / Fax 517-622-8463

Rhonda R. Stowers (P64083)
Plunkett Cooney
Counsel for Defendants
111 East Court Street, Suite 1B
Flint, Michigan 48502
810-232-5100 / Fax 810-232-3159

At a session of said Court, held in the Circuit Courtrooms, City of
Flint, County of Genesee, State of Michigan, on this ____ day of
June, 2018.

PRESENT: THE HONORABLE JUDITH A. FULLERTON
Genesee County Circuit Court Judge

This matter comes before the Court on the stipulation of the parties that unless or until
the Court's May 21, 2018 ruling is overturned on appeal, Defendants will not enforce the Tobacco
21 ordinance which was the subject of this case;

The Court having review the file in this case and being otherwise advised on the
premises;

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NOW, THEREFORE, it is hereby Ordered that unless or until the Court's May 21, 2018 ruling as set forth on the record and in the Court's May 31, 2018 Order is overturned on appeal, Defendants shall not enforce the Tobacco 21 ordinance.

IT IS SO ORDERED.

This order resolves the final issues in this matter and closes the case.

JUDITH A. FULLERTON
Hon. Judge ~~P120455~~ Fullerton
Circuit Court Judge

7-2-18

"I approve the form of the above order."

Clifford A. Knaggs
Clifford A. Knaggs (P42232)
Attorney for Plaintiff

Rhonda R. Stowers
Rhonda R. Stowers (P64083) by *Colin Appenauer*
Attorney for Defendants

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

RPF OIL COMPANY,
a Michigan corporation,

Plaintiff,

v

**GENESEE COUNTY and GENESEE
COUNTY HEALTH DEPARTMENT,**
individually, jointly and severally,

Defendants.

Case No. 17-109107-CZ

Hon. Judith A. Fullerton

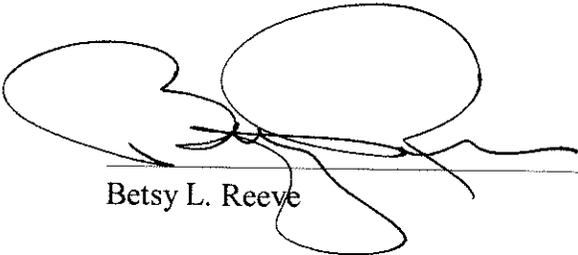
PROOF OF SERVICE

Clifford A. Knaggs (P42232)
Knaggs Brake, P.C.
Counsel for Plaintiff
7521 Westshire Drive, Suite 100
Lansing, Michigan 48917
517-622-0590 / Fax 517-622-8463

Rhonda R. Stowers (P64083)
Plunkett Cooney
Counsel for Defendants
111 East Court Street, Suite 1B
Flint, Michigan 48502
810-232-5100 / Fax 810-232-3159

I certify that on the date indicated next to my signature below, I sent a true copy of the July 2, 2018, Stipulated Order providing that Defendants shall not enforce the Tobacco 21 ordinance unless or until the Court's May 31, 2018 Order is overturned on appeal by first class mail to *Rhonda R. Stowers, Counsel for Defendants, at 111 East Court Street, Suite 1B, Flint, Michigan 48502.*

DATED: July 9, 2018


Betsy L. Reeve

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Register of Action

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Num	Date	Judge	Chg/Pty	Event Description/Comments
<p>CLOSED FOJ CASE REGISTER OF ACTIONS 11/08/18 PAGE 1 17-109107-C2 JUDGE FULLERTON FILE 05/12/17 ADJ DT 05/21/18 CLOSE 05/31/18 GENESEE COUNTY SCAO:SEC C LINE 06</p>				
<p>P 001 RPF OIL COMPANY,, VS D 001 GENESEE COUNTY,, 900 S SAGINAW ST FLINT MI 48502 ATY:KNAGGS,CLIFFORD ATY:STOWERS,RHONDA P-42232 517-622-0590 P-64083 810-232-5100 DISPOSITION 05/21/18 DIS MOH SERVICE/ANS 07/05/17 ANS</p>				
<p>D 002 GENESEE COUNTY HEALTH DEPT.,, 630 S SAGINAW STE STE 4 FLINT MI 48502 ATY:STOWERS,RHONDA P-64083 810-232-5100 DISPOSITION 05/21/18 DIS MOH SERVICE/ANS 07/05/17 ANS</p>				
<p>Actions, Judgments, Case Notes</p>				
1	05/12/17	FULLERTON		SUMMONS AND COMPLAINT FILED RECEIPT# 00448380 AMT \$175.00
2				COMPLAINT FILED MOTION & BRIEF IN SUPPORT OF TEMPORARY RESTRAINING ORDER & ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT BE ISSUES FILED
3			D 001	RETURN OF SERVICE OF SUMMONS BY ACKNOWLEDGMENT OF SERVICE FILED ON 5/12/17.
4			D 002	RETURN OF SERVICE OF SUMMONS BY ACKNOWLEDGMENT OF SERVICE FILED ON 5/12/17.
5				STIPULATING & ORDER FILED
6			D 001	APPEARANCE ATTORNEY: P-64083 STOWERS & PROOF OF SERVICE UPON ATTY'S OF RECORD BY MAIL ON 5/12/17 FILED
34			D 002	APPEARANCE

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7	05/15/17	ATTORNEY: P-64083 STOWERS SET NEXT DATE FOR: 05/22/17 10:30 AM MOTION HEARING PLTF/TEMP RESTRAIN ORDER NOTICE OF HEARING FILED PROOF OF SERVICE OF SAME UPON ATTY'S BY MAIL ON 5/12/17 FILED
8	05/17/17	REMOVE NEXT EVENT: 05/22/17 10:30 AM MOTION HEARING MOTION REMOVED/TO BE RENOTICED FOR 6/19/17 PER PLTF
9	05/31/17	MOTION FEE PAID RECEIPT# 00449065 AMT \$20.00
10		LIMITED APPEARANCE & PROOF OF SERVICE UPON ATTY'S OF RECORD BY MAIL ON 5/31/17 FILED
11		SET NEXT DATE FOR: 06/12/17 10:30 AM MOTION HEARING 1. DEFT/LEAVE TO FILE AMICUS CURIA BRIEF 2. DEFT/ADMIT PRO HAC VICE NOTICE OF HEARING & MOTION & CERTIFICATE OF MAILING UPON PARTIES ON 5/31/17 FILED MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF FILED BRIEF IN SUPPORT OF MOTION FILED PROOF OF SERVICE OF SAME UPON ATTY'S OF RECORD BY MAIL ON 5/31/17 FILED
12	06/01/17	NOTIFICATION PURSUANT TO MCR 8/126(A) (1) (B) FILED
13		MOTION FEE PAID RECEIPT# 00449198 AMT \$20.00
14		NOTICE OF HEARING & PROOF OF SERVICE UPON ATTY'S OF RECORD BY MAIL ON 6/1/17 FILED DEFTS' MOTION TO ADMIT MATTHEW W.H. WESSLER PRO HAC VICE & BRIEF IN SUPPORT W/PROOF OF SERVICE UPON ATTY'S OF RECORD BY MAIL ON 6/1/17 FILED
15	06/02/17	MOTION FEE PAID RECEIPT# 00449239 AMT \$20.00
16		NOTICE OF HEARING & PROOF OF SERVICE UPON ATTY'S OF RECORD BY MAIL ON 6/2/17 FILED DEFTS' MOTION TO ADMIT RACHEL S BLOOMEKATZ PRO HAC VICE & PROOF OF SERVICE UPON ATTY'S OF RECORD BY MAIL ON 6/2/17 FILED
17	06/07/17	AFFIDAVIT OF RACHEL S BLOOMEKATZ FILED
18	06/09/17	MOTION FEE PAID RECEIPT# 00449508 AMT \$20.00
19		NOTIFICATION PURSUANT TO MCR 8.126(A) (1) (B) FILED

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20 SET NEXT DATE FOR: 06/19/17 10:30 AM
MOTION HEARING
PLTF RPF/WITHDRAW OF MOTION
FOR TEMP RESTRAIN ORD &
FOR PRELIMINARY INJUNCTION
NOTICE OF HEARING FILED
PLTF'S MOTION FOR
PRELIMINARY INJUNCTION &
WITHDRAW OF ITS MOTION FOR
TEMPORARY RESTRAINING ORDER
& ORDER TO SHOW CAUSE FILED
PROOF OF SERVICE OF SAME UPON
ATTY'S OF RECORD BY MAIL ON
6/7/17 FILED

21 PROOF OF SERVICE FILED
OF PLTF'S RESPONSE TO MOTION
FOR LEAVE TO FILE AMICUS
CURIAE BRIEF UPON ATTY'S
OF RECORD BY MAIL ON 6/7/17.

22 PLTF'S RESPONSE TO MOTION
FOR LEAVE TO FILE AMICUS
CURIAE BRIEF FILED

23 06/12/17 AFFIDAVIT OF MATTHEW W.H.
WESSLER FILED

24 MOTION HEARING
ATTY'S PRESENT BEFORE THE
COURT FOR DEFT'S MOTION
TO FILE AMICUS CURIA BRIEF &
DEFT'S MOTION TO ADMIT
PRO HAC VICE. MOTIONS HEARD.
ARGUMENTS HEARD. MOTIONS
GRANTED. ORDER SIGNED &
SUBMITTED.

25 ORDER ADMITTING RACHEL S.
BLOOMEKATZ PRO HAC VICE
(RACHEL S BLOOMEKATZ) FILED
ORDER ADMITTING MATTHEW
W.H. WESSLER PRO HAC VICE
FILED

26 NOTIFICATION PURSUANT TO MCR
8.126(A)(1)(B) FILED

27 ORDER GRNATING CAMPAIGN FOR
TOBACCO FREE-KIDS MOTION FOR
LEAVE TO FILE AMICUS CURIAE
BRIEF FILED

28 06/13/17 BRIEF OF AMICI CURIAE IN
OPPOSITION TO PLTF'S MOTION
FOR PRELIMINARY INJUNCTION
FILED
PROOF OF SERVICE OF SAME UPON
ATTY'S OF RECORD BY MAIL ON
6/13/17 FILED

29 RESPONSE TO PLTF'S MOTION
FOR A PRELIMINARY INJUNCTION
& WITHDRAWL OF ITS MOTION
FOR TEMPORARY RESTRAINING
ORDER & ORDER TO SHOW CAUSE
FILED

30 06/15/17 PROOF OF SERVICE FILED
OF PLTF'S SUPPLEMENTAL BRIEF
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION UPON
ATTY'S OF RECORD BY MAIL ON

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31			6/15/17 FILED PLTF'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION FILED
32	06/19/17		MOTION HEARING ATTY'S PRESENT BEFORE THE COURT FOR PLTF'S MOTION FOR TEMP RESTRAINING ORDER & PRELIMINARY INJUNCTION. MOTION HEARD. ARGUMENTS HEARD. MOTION GRANTED AS STATED. ORDER TO BE SUBMITTED UNDER 7DAY RULE.
33	06/22/17		VIDEO RECORDING FEE PAID/REQUEST FILED RECEIPT# 00450025 AMT \$20.00 REQUEST FOR COPY OF RECORDING
35	06/29/17		MOTION FEE PAID RECEIPT# 00450306 AMT \$20.00
36			NOTICE OF SUBMISSION OF ORDER FILED PROOF OF SERVICE OF SAME UPON ATTY'S OF RECORD BY MAIL ON 6/26/17 FILED
37			SET NEXT DATE FOR: 07/24/17 10:30 AM MOTION HEARING DEFT/OBJECT TO 7-DAY NOTICE OF HEARING & PROOF OF SERVICE UPON ATTY'S OF RECORD BY MAIL ON 6/28/17 FILED
38			DEFT'S OBJECTION TO PLTF'S PROPOSED ORDER SUBMITTED PURSUANT TO MCR 2.602 & PROOF OF SERVICE UPON ATTY'S OF RECORD BY MAIL ON 6/28/17 FILED
39	07/05/17	D 001	ANSWER FILED DEFT. GENESEE COUNTY AND GENESEE COUNTY HEALTH DEPARTMENT'S ANSWER TO PLTF'S COMPLAINT AND AFFIRMATIVE DEFENSES AND PROOF OF SERVICE OF SAME UPON ALL PARTIES ON 07/05/17 FILED
40		D 002	ANSWER FILED
41	07/07/17		MOTION FEE PAID RECEIPT# 00450554 AMT \$20.00
42		P 001	SET NEXT DATE FOR: 07/24/17 10:31 AM SUMMARY DISPOSITION MOTION NOTICE OF HEARING FILED
43			PLTF'S MOTION FOR SUMMARY DISP. PURSUANT TO MCR 2.116(C) (10) FILED
44			BRIEF IN SUPPORT FILED
45			PROOF OF SERVICE FILED OF SAME UPON ALL PARTIES ON 06/30/17 FILED
46	07/17/17		DEFTS' RESPONSE TO PLTF'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C) (10) & A PERMANENT INJUNCTION FILED

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47 BRIEF IN SUPPORT OF DEFTS' RESPONSE TO PTLF'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C) (10) & A PERMANENT INJUNCTION & PROOF OF SERVICE UPON ATTY'S OF RECORD BY MAIL ON 7/17/17 FILED

48 07/20/17 TRANSCRIPT OF PROCEEDINGS FILED MOTION - MONDAY, 6/19/17.

49 07/24/17 MOTION HEARING ATTY KNAGGS & STOWERS PRESENT BEFORE THE COURT FOR DEFT'S MOTION TO OBJECTION TO 7-DAY & PTLF'S MOTION FOR SUMMARY DISPOSITION. MOTIONS HEARD. DEFT'S MOTION IS GRANTED. ORDER SIGNED, ATTY TO SUBMIT ORDER. COURT DENIED PTLF'S MOTION WITHOUT PREJUDICE AS STATED.

50 ORDER GRANTING PTLF'S MOTION FOR PRELIMINARY INJUNCTION FILED ORDER DENYING PTLF'S MOTION FOR SUMMARY DISPOSITION & A PERMANENT INJUNCTION FILED

51 07/27/17 NOTICE SENT FOR: 08/15/17 11:30 AM PRE-TRIAL HEARING *TELEPHONE CONFERENCE*..... SEE ATTACHED INSTRUCTIONS

52 08/16/17 NOTICE SENT FOR: 01/17/18 8:15 AM NON-JURY TRIAL *SEE ATTACHED PRETRIAL ORDER* W/E: 9/29/17 DISC: 11/22/17 MOTION:12/11/17 CEV: NOT APPROPRIATE

53 PRETRIAL SUMMARY & ORDER FILED

54 08/18/17 APPEAL FROM CIRCUIT COURT RECEIPT# 00452298 AMT \$25.00

55 APPLICATION FOR LEAVE TO APPEAL TRANSCRIPT ON APPLICATION LOWER COURT DOCKET ENTRIES INDEX OF EXHIBITS/ EXHIBITS A-K PROOF OF SERVICE FILED

56 08/23/17 ORDER REMOVING VALDEMAR L. WASHINGTON FROM CASE NO 17-109107-CZ FILED

57 09/29/17 MOTION FEE PAID RECEIPT# 00453881 AMT \$20.00

58 SET NEXT DATE FOR: 10/09/17 10:30 AM MOTION HEARING DEFT/AMEND PRETRIAL SCHED ORD NOTICE OF HEARING & PROOF OF SERVICE UPON ATTY'S OF RECORD BY MAIL ON 9/29/17 FILED MOTION TO AMEND PRETRIAL SUMMARY & ORDER & PROOF OF SERVICE UPON ATTY'S OF RECORD BY MAIL ON 9/29/17 FILED

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59	DEFTS' WITNESS LIST & PROOF OF SERVICE UPON ATTY'S OF RECORD BY MAIL ON 9/29/17 FILED
60	DEFTS' EXHIBIT LIST & PROOF OF SERVICE UPON ATTY'S OF RECORD BY MAIL ON 9/29/17 FILED
61 10/02/17	PTLF'S EXHIBIT LIST FILED PROOF OF SERVICE OF SAME UPON ATTY'S OF RECORD BY MAIL ON 9/29/17 FILED
62	PTLF'S WITNESS LIST FILED PROOF OF SERVICE UPON ATTYS' OF RECORD BY MAIL ON 9/29/17 FILED
63 10/03/17	REMOVE NEXT EVENT: 10/09/17 10:30 AM MOTION HEARING PARTIES CONCUR
64	SET NEXT DATE FOR: 05/30/18 8:15 AM NON-JURY TRIAL *FIRST AMENDED PRETRIAL ORDER* W/E: 1/12/18 DISC: 3/8/18 MOTION: 4/16/18 CEV: N/A
65	FIRST AMENDED PRETRIAL SUMMARY & ORDER FILED
66 10/11/17	ORDER FROM COURT OF APPEALS - DENIED - FILED
67 01/09/18	REMOVE NEXT EVENT: 01/17/18 8:15 AM NON-JURY TRIAL
68 01/19/18	MOTION FEE PAID RECEIPT# 00457923 AMT \$20.00
69 01/22/18	SET NEXT DATE FOR: 02/05/18 10:30 AM SUMMARY DISPOSITION MOTION PLTF/SUMMARY DISP NOTICE OF HEARING FILED PTLF'S MOTION FOR SUMMARY DISPOSITION FILED PROOF OF SERVICE OF SAME UPON ATTY'S OF RECORD BY MAIL ON 1/15/18 FILED
70 01/25/18	SET NEXT DATE FOR: 02/26/18 10:30 AM SUMMARY DISPOSITION MOTION PLTF/SUMMARY DISPO ADJOURNED FROM 2/5/18
71	REMOVE NEXT EVENT: 02/05/18 10:30 AM SUMMARY DISPOSITION MOTION
72 01/29/18	RENOTICE OF HEARING FILED PROOF OF SERVICE OF SAME UPON ATTY'S OF RECORD BY MAIL ON 1/26/18 FILED
73 02/16/18	DEFT'S RESPONSE TO PTLF'S SECOND MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10) W/PROOF OF SERVICE UPON ATTY'S OF RECORD BY EMAIL ON 2/16/18 FILED
74 02/26/18	MOTION HEARING ATTY'S KNAGGS, STOWERS & FORBUSH PRESENT BEFORE THE COURT FOR PTLF'S MOTION FOR SUMMARY DISPOSITION. MOTION HEARD. ARGUMENTS HEARD.

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		MOTION DENIED AS STATED ON THE RECORD. ORDER SIGNED & SUBMITTED.
75		ORDER DENYING PLTF'S MOTION FOR SUMMARY DISPOSITION FILED
76	03/26/18	MOTION FEE PAID
		RECEIPT# 00460364 AMT \$20.00
77		SET NEXT DATE FOR: 05/21/18 10:30 AM
		SUMMARY DISPOSITION MOTION DEFT/SUMMARY DISP. NOTICE OF HEARING W/PROOF OF SERVICE UPON ATTY'S OF RECORD BY MAIL ON 3/26/18 FILED DEFT'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10) W/PROOF OF SERVICE UPON ATTY'S OF RECORD BY MAIL ON 3/26/18 FILED BRIEF IN SUPPORT W/PROOF OF SERVICE BY MAIL 3/26/18 FILED
78	04/09/18	PROOF OF SERVICE FILED OF PLTF, RPF OIL CO'S RESPONSE TO DEFTS' FIRST SET OF INTERROGATORIES & REQUESTS FOR PRODUCTION OF DOCUMENTS UPON ATTY'S OF RECORD BY MAIL ON 4/5/18 FILED
79	05/14/18	PROOF OF SERVICE FILED OF DEFTS' MOTION FOR SUMMARY DISPOSITION UPON ATTY'S OF RECORD BY MAIL ON 5/14/18.
80		PLTF'S RESPONSE TO DEFTS' MOTION FOR SUMMARY DISPOSITION FILED
81	05/17/18	DEFTS' REPLY IN SUPPORT OF SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10) W/PROOF OF SERVICE UPON ATTY'S OF RECORD BY MAIL ON 5/17/18 FILED
82	05/21/18	999 MOTION HEARING DISMISSED ATTY'S PRESENT BEFORE THE COURT FOR DEFT'S MOTION FOR SUMMARY DISPOSITION. MOTION HEARD. ARGUMENTS HEARD. MOTION GRANTED AS STATED. ORDER TO BE SUBMITTED.
83		REMOVE NEXT EVENT: 05/30/18 8:15 AM NON-JURY TRIAL
84	05/24/18	PROOF OF SERVICE FILED OF PTLF'S NOTICE OF SUBMISSION OF ORDER & PROPOSED ORDER UPON ATTY'S OF RECORD BY MAIL ON 5/22/18.
85		NOTICE OF SUBMISSION OF ORDER FILED
86	05/31/18	FINAL ORDER OR JUDGMENT FILED ORDER DENYING DEFTS' MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10) FILED
87	06/01/18	TRANSCRIPT OF PROCEEDINGS FILED

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88	06/11/18	DEFT'S MOTION FOR SUMMARY DISPOSITION, BEFORE JUDGE FULLERTON ON MONDAY, 5/21/18. PROOF OF SERVICE FILED OF ORDER DENYING DEFTS' MOTION FOR SUMMARY DISPOSITION UPON ATTY'S OF RECORD BY MAIL ON 5/31/18.
89	07/02/18	STIPULATED ORDER FILED
90	07/11/18	PROOF OF SERVICE FILED (STIPULATED ORDER) UPON ALL THE PARTIES ON 7/2/18 FILED
91	07/20/18	RECORDER CERTIFICATE OF ORDERING OF TRANSCRIPT ON APPEAL FILED
93	07/24/18	COPY OF CLAIM OF APPEAL TO MI COURT OF APPEALS RECEIVED AND FILED
94		COPY OF PROOF OF SERVICE TO MI COURT OF APPEALS RECEIVED AND FILED
92	07/25/18	APPEAL FROM CIRCUIT COURT RECEIPT# 00464627 AMT \$25.00
95	08/16/18	TRANSCRIPT OF PROCEEDINGS FILED DEFT'S MOTIONS FOR AMICUS CURIAE BRIEF & ADMIT PRO HAC VICE, BEFORE JUDGE FULLERTON ON MONDAY, 6/12/17.
96		TRANSCRIPT OF PROCEEDINGS FILED PTLF'S MOTION FOR SUMMARY DISPOSITION & DEFT'S MOTION FOR OBJECTION TO 7-DAY ORDER.
97		TRANSCRIPT OF PROCEEDINGS FILED PLTF'S MOTION FOR SUMMARY DISPOSITION, BEFORE JUDGE FULLERTON ON MONDAY, 2/26/18.
98	08/17/18	NOTICE OF FILING OF TRANSCRIPT ON APPEAL FILED
..... END OF SUMMARY		

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

RPF OIL COMPANY,
a Michigan corporation,

Plaintiff,

v

**GENESEE COUNTY and GENESEE
COUNTY HEALTH DEPARTMENT,**
individually, jointly and severally,

Defendants.

Case No. 17-

-CZ

Hon.

COMPLAINT

Clifford A. Knaggs (P42232)
Knaggs Brake, P.C.
Counsel for Plaintiff
7521 Westshire Drive, Suite 100
Lansing, Michigan 48917
517-622-0590/Fax 517-622-8463

NOW COMES the Plaintiff, RPF Oil Company, by and through its attorneys, Knaggs Brake, P.C., and for its Complaint against Defendants Genesee County and Genesee County Health Department, says as follows:

GENERAL ALLEGATIONS

1. Plaintiff, RPF Oil Company (“RPF”) is a corporation organized and in good standing under the laws of Michigan.
2. RPF’s principal office is located at 9400 South Saginaw Street, Grand Blanc, Genesee County, Michigan.
3. RPF is in the business, among other things, of owning and operating convenience stores and motor fuel stations throughout Michigan, including Genesee County, Michigan.

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4. RPF sells tobacco products at its convenience stores in Genesee County, Michigan.

5. Defendant Genesee County, Michigan (the “County”) is a body corporate political subdivision of the State of Michigan created and organized under Const 1963, art 7, §1 and MCL 45.3.

6. Defendant Genesee County Health Department (the “Health Department”) is a department of Genesee County and is charged with enforcing specific laws, regulations and ordinances of the State of Michigan and Genesee County.

7. The County seat and the principal offices of the County and the Health Department are located in the City of Flint, Genesee County, Michigan.

8. This Court has jurisdiction over the County and the Health Department pursuant to MCL 600.2031 and MCR 2.605.

9. Venue is proper in Genesee County pursuant to MCL 600.1605.

REQUEST FOR DECLARATORY JUDGMENT

10. On February 14, 2017 the County Board of Commissioners approved and adopted the Regulation to Prohibit the Sale of Tobacco Products to Individuals Under 21 Years of Age, known as the Tobacco 21 Regulation (the “Regulation”).

11. Section 1005.1 of the Regulation states: *No person shall sell, give, or furnish any tobacco product or tobacco paraphernalia to an individual under 21 years of age.* (See **Exhibit A**).

12. Sections 1006.1 - 3 of the Regulations requires specific language be included on signs to be posted in a conspicuous place at every retail location where tobacco products are sold.

13. The effect of the Regulation is to treat individuals between the age of 18 and 21 differently than individuals who are 21 years or older.

14. The Regulation is in direct conflict with the Age of Majority Act, MCL 722.51 which states in part: *a person who is at least 18 years of age on or after January 1, 1972, is an adult of legal age for all purposes whatsoever, and shall have the same duties, liabilities, responsibilities, rights, and legal capacity as persons heretofore acquired at 21 years of age.* MCL 722.51 (1).

15. The Regulation is also in direct conflict with the sign requirements of the Youth Tobacco Act, MCL 722.641 (2).

16. The Regulation goes into effect on May 15, 2017.

17. The Regulation provides for specific fines and penalties to any person that violates any section of Regulation.

18. The Regulation also authorizes the County Health Officer to seek an injunction or other process against any person to restrain or prevent a violation of the Regulation.

19. The Health Department is charged with enforcing the Regulation.

20. A case of actual controversy exists between RPF and the County and Health Department because RPF is regulated under the Regulation and is subject to imposition of fines and penalties and injunctive process for conduct which is permitted under state law.

21. A declaration of the rights and other legal relations of the parties is necessary to guide future conduct of the parties.

WHEREFORE, RPF requests the Court to:

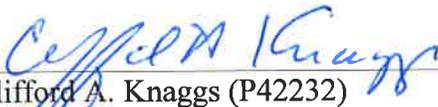
- a. Issue a temporary restraining order, preliminary and permanent injunction which prohibits the Defendants and anyone acting in concert with them from enforcing the Regulation to Prohibit the Sale of Tobacco Products to Individuals Under 21 Years of Age;

- b. Enter Judgment that declares that this Regulation is in direct conflict and thus preempted by State law; and
- c. Award RPF attorney fees and costs and such other relief the Court deems just and proper.

Respectfully submitted,

RPF OIL COMPANY

By Its Attorneys
Knaggs Brake, P.C.



Clifford A. Knaggs (P42232)
7521 Westshire Drive, Suite 100
Lansing, Michigan 48917
517-622-0590/Fax 517-622-8463

DATED: May 12, 2017

Exhibit A

Complaint

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Regulation to Prohibit the Sale of Tobacco Products to Individuals Under 21 Years of Age

Effective: May 15, 2017



GENESEE COUNTY

REGULATION TO PROHIBIT THE SALE OF TOBACCO PRODUCTS TO INDIVIDUALS UNDER 21 YEARS OF AGE

SECTION 1000 – TITLE

This Regulation shall be known as the Regulation to Prohibit the Sale of Tobacco Products to Individuals Under 21 Years of Age.

SECTION 1001 – AUTHORITY

This Regulation is adopted pursuant to authority conferred upon local health departments by Section 2441 of the Michigan Public Health Code, Act 368, P.A. of 1978 as amended, Mich. Comp. Laws § 333.2441.

SECTION 1002 – JURISDICTION AND ADMINISTRATION

- 1002.1 This Regulation shall have effect throughout Genesee County in all areas incorporated and unincorporated, which includes cities, villages and townships.
- 1002.2 The Health Officer shall have responsibility for administering and enforcing this Regulation, including all amendments hereafter adopted unless otherwise specifically stated.
- 1002.3 Nothing in this Regulation shall be construed to restrict or abrogate the authority of any municipality in Genesee County to adopt more restrictive regulations or ordinances.

SECTION 1003 – PURPOSE AND FINDINGS

Genesee County does hereby find:

That tobacco use is the number one cause of preventable death¹ in Michigan² and continues to be an urgent public health challenge, as evidenced by the following:

- 16,200 Michigan adults die from smoking-related diseases every year;³
- Nearly one in ten Michigan youth who are alive today will die from early from smoking-related

¹ U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress, A Report of the Surgeon General Executive Summary. Rockville, MD; 2014. <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>.

² CDC. Prevention Status Reports 2013: Tobacco Use—Michigan. Atlanta, GA; 2014. <http://www.cdc.gov/psr/2013/tobacco/2013/mi-tobacco.pdf>.

³ The Toll of Tobacco in Michigan. Campaign for Tobacco-Free Kids website. http://www.tobaccofreekids.org/facts_issues/toll_us/michigan. Accessed October 26, 2016.

diseases;^{4, 5, 6}

- Tobacco use can cause disease in nearly all organ systems and is responsible for 87% of lung cancer deaths, 79% of all chronic obstructive pulmonary disease deaths, and 32% of coronary heart disease deaths;⁷ and

That every year, smoking costs Michigan nearly \$9.4 billion dollars in direct healthcare expenses and lost productivity;⁸ and

That a Community Health Needs Assessment for Genesee County identified Tobacco Free Living (Anti-Smoking) as one of the 6 major health needs for residents of Genesee County;⁹ and

That in a survey conducted between 2013 and 2014, 29.4% of residents in Genesee County reported that they smoked every day;¹⁰ and

That in 2014, 22% of mothers in Genesee County smoked during pregnancy compared to 18% of mothers generally in Michigan;¹¹ and

That nearly 95% of people who smoke start by age 21;¹² and

That individuals who begin smoking at an early age are more likely to develop a severe addiction to nicotine than those who start at a later age;^{13, 14} and

⁴ According to the Campaign for Tobacco Free Kids, 213,000 kids now under 18 and alive in Michigan will die prematurely from smoking. The U.S. Census estimates that in 2014 there were approximately 2,344,068 Michigan youth under age 18. More than one in ten was calculated by dividing the number of youth who will die prematurely (213,000) by the number of youth under age 18 in Michigan (2,344,068).

⁵ U.S. Census Bureau, Population Division. Annual Estimates of the Resident Population for Selected Age Groups by Sex for the United States, States, Counties, and Puerto Rico Commonwealth and Municipios: April 1, 2010 to July 1, 2014. U.S. Census Bureau website. <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>. Accessed October 26, 2016.

⁶ The Toll of Tobacco in Michigan. Campaign for Tobacco-Free Kids website. http://www.tobaccofreekids.org/facts_issues/toll_us/michigan. Accessed October 26, 2016.

⁷ The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. U.S. Department of Health & Human Services website. <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/fact-sheet.html>. Accessed October 26, 2016.

⁸ **Error! Hyperlink reference not valid.** The Toll of Tobacco in Michigan. Campaign for Tobacco-Free Kids website. http://www.tobaccofreekids.org/facts_issues/toll_us/michigan. Accessed September 28, 2016.

⁹ 2012 Community Health Needs Assessment for the Genesee County/City of Flint Community. Flint, Michigan: Greater Flint Health Coalition; 2012. http://gfhc.org/wp-content/uploads/2015/07/GR-81815-UPDATED.FINAL_chna_narrative.061813tc.pdf.

¹⁰ Speak To Your Health! Community Survey. Genesee County, MI: Prevention Research Center of Michigan; 2013. <http://speak.gchd.us/wp-content/uploads/2016/10/2013-Community-Survey-Results-Tables.pdf>.

¹¹ Community Health Information—Natality: Characteristics of the Mother or Infant, as a Percentage of Live Births Genesee County and Michigan Residents, 2014. Michigan Department of Health & Human Services Website. Lansing, Michigan: MDHHS; 2016. <http://www.mdch.state.mi.us/pha/osr/Chi/births14/frameBxChar.html>.

¹² Increasing the Minimum Legal Sale Age for Tobacco Products. Campaign for Tobacco-Free Kids website. <http://www.tobaccofreekids.org/research/factsheets/pdf/0376.pdf>.

¹³ U.S. Department of Health and Human Services. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General.; 2012. <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf>.

¹⁴ **Error! Hyperlink reference not valid.** Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. (Bonnie RJ, Stratton K, Kwan LY, eds.). Washington D.C.; 2015.

<https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.

That the younger people start smoking, the greater their risk of many adverse health outcomes, such as hospitalizations and lifetime risk of respiratory disease, chronic obstructive pulmonary disease, and lung cancer;¹⁵ and

That Genesee County has the 5th highest number of public schools in Michigan, with 147 public schools altogether serving 68,768 youth;¹⁶ and

That tobacco use continues to be a significant public health concern for high school students as evidenced by:

- 35.8% of Michigan high school students who report they have tried cigarettes;¹⁷ and

That the majority of youth under age 18 obtain tobacco through social sources¹⁸ as evidenced by:

- 48.0% of Genesee County high school students, including 58.9% of 11th graders, who report easy access to cigarettes;¹⁹
- 15.6% of Genesee County high school students who smoke usually give someone money to purchase their cigarettes;²⁰
- 26.2% of Genesee County high school students who smoke usually receive their cigarettes by asking someone they know for them;²¹
- 8.4% of Genesee County high school students who smoke usually get their cigarettes from someone 18 years or older;²² and

That youth obtain cigarettes in two ways: commercially (from a store or vending machine) and socially (borrowing, buying, or stealing them from other youth or adults);²³ and

¹⁵ Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. (Bonnie RJ, Stratton K, Kwan LY, eds.). Washington D.C.; 2015. <https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.

¹⁶ Michigan Public Schools. Public School Review website. <http://www.publicschoolreview.com/michigan>. Accessed October 26, 2016.

¹⁷ 2013 Youth Risk Behavior Survey Results. Michigan.gov website. http://www.michigan.gov/documents/mde/mi_comp_US_2013_459014_7.pdf. Accessed October 26, 2016.

¹⁸ Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. (Bonnie RJ, Stratton K, Kwan LY, eds.). Washington D.C.; 2015. <https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.

¹⁹ *Michigan School Health Survey System, Michigan Profile for Healthy Youth: 2015-2016 Genesee, MiPHY Regional Demographics Summary High School*. Lansing, MI: Michigan Department of Education <https://mdoe.state.mi.us/schoolhealthsurveys/ExternalReports/CountyReportGeneration.aspx>.

²⁰ *Michigan School Health Survey System, Michigan Profile for Healthy Youth: 2015-2016 Genesee, MiPHY Regional Demographics Summary High School*. Lansing, MI: Michigan Department of Education <https://mdoe.state.mi.us/schoolhealthsurveys/ExternalReports/CountyReportGeneration.aspx>.

²¹ *Michigan School Health Survey System, Michigan Profile for Healthy Youth: 2015-2016 Genesee, MiPHY Regional Demographics Summary High School*. Lansing, MI: Michigan Department of Education <https://mdoe.state.mi.us/schoolhealthsurveys/ExternalReports/CountyReportGeneration.aspx>.

²² *Michigan School Health Survey System, Michigan Profile for Healthy Youth: 2015-2016 Genesee, MiPHY Regional Demographics Summary High School*. Lansing, MI: Michigan Department of Education <https://mdoe.state.mi.us/schoolhealthsurveys/ExternalReports/CountyReportGeneration.aspx>.

²³ Lenk KM, Toomey TL, Shi Q, Erickson DJ, Forster JL. Do sources of cigarettes among adolescents vary by age over time? *J Child Adolesc Subst Abuse*. 2014;23(2):137-143. doi:10.1080/1067828X.2012.750972.

That Genesee County's black and Latino high school students are more likely than white students to buy their cigarettes from stores (27.3% of black students and 35.3% of Latino students versus 18.4% of white students);²⁴ and

That the closer youth are to age 18, the easier it is for them to buy tobacco products from retailers²⁵ as evidenced by:

- The percentage of Genesee County high school students who usually buy their cigarettes from stores more than triples between 9th and 11th grade (8.9% of 9th graders usually buy their cigarettes from stores versus 28.8% of 11th graders);²⁶ and

That studies have shown that young adults between ages 18 and 20 are more likely than adults over the age of 21 to purchase tobacco for minors;^{27, 28} and

That raising the minimum legal age of access reduces the ability for youth under age 18 to appear legally old enough to buy tobacco products and decreases the probability that nonsmoking youth will have social contact and networks that contain smokers;²⁹ and

That the Institute of Medicine found that raising the minimum legal age of access to 21 will likely delay initiation and reduce tobacco prevalence across all ages with the largest proportionate reduction in initiation likely occurring among adolescents of ages 15-17;³⁰ and

That most individuals transition from experimental to regular smoking before age 21;^{31, 32} and

²⁴ Michigan School Health Survey System, Michigan Profile for Healthy Youth: 2015-2016 Genesee, MiPHY Regional Demographics Summary High School. Lansing, MI: Michigan Department of Education <https://mdoe.state.mi.us/schoolhealthsurveys/ExternalReports/CountyReportGeneration.aspx>.

²⁵ Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. (Bonnie RJ, Stratton K, Kwan LY, eds.). Washington D.C.; 2015. <https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.

²⁶ Michigan School Health Survey System, Michigan Profile for Healthy Youth: 2015-2016 Genesee, MiPHY Regional Demographics Summary High School. Lansing, MI: Michigan Department of Education <https://mdoe.state.mi.us/schoolhealthsurveys/ExternalReports/CountyReportGeneration.aspx>.

²⁷ White MM, Gilpin; EA, Emery SL, Pierce JP. Facilitating adolescent smoking: Who provides the cigarettes? *Am J Heal Promot*. 2005;19(5):355-360. <https://www.scopus.com/record/display.uri?eid=2-s2.0-18244392189&origin=inward&txGid=8ED4198F4CA2196C39F2C1AD8E0437F5.wsnAw8kcdt7IPYLO0V48gA%3a2>.

²⁸ DiFranza JR, Coleman M. Sources of tobacco for youths in communities with strong enforcement of youth access laws. *Tob Control*. 2001;10(4):323-328. doi:10.1136/tc.10.4.323. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1747607/pdf/v010p00323.pdf>

²⁹ Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. (Bonnie RJ, Stratton K, Kwan LY, eds.). Washington D.C.; 2015. <https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.

³⁰ Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. (Bonnie RJ, Stratton K, Kwan LY, eds.). Washington D.C.; 2015. <https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.

³¹ **Error! Hyperlink reference not valid.** Increasing the Minimum Legal Sale Age for Tobacco Products. Campaign for Tobacco-Free Kids website. <http://www.tobaccofreekids.org/research/factsheets/pdf/0376.pdf>. Accessed October 26, 2016.

³² **Error! Hyperlink reference not valid.** U.S. Department of Health and Human Services. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General.; 2012. <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf>.

That tobacco companies target young adults between the ages of 18 to 24 to increase the frequency with which they use tobacco products to encourage them to transition into habitual users;³³ and

That studies by tobacco companies have recognized that if “a man has never smoked by the age of 18, the odds are three-to-one he never will. By age 24, the odds are twenty-to-one;”³⁴ and

That studies by tobacco companies have acknowledged that if they do not capture new users by their early 20s, it is unlikely that they ever will;³⁵ and

That the tobacco industry knows that raising the minimum age to 21 will hurt sales and has historically worked to lower tobacco minimum legal age laws from 21 to 18;³⁶ and

That a Philip Morris report has concluded that “[r]aising the legal minimum age for cigarette purchaser to 21 could gut our key young adult market;”³⁷ and

That research has repeatedly found that raising the minimum age of access is an effective strategy for reducing tobacco use among youth and young adults as evidenced by:

- Research that overwhelmingly demonstrated minimum legal drinking age laws decreased alcohol consumption rates in the United States, especially among youth and young adults;³⁸
- An evaluation of Needham, MA’s law raising the minimum tobacco sales age to 21 found that within five years the prevalence of youth smoking reduced by nearly half (12.9% in 2006 versus 6.7% in 2010);³⁹
- The Institute of Medicine found that a nationwide law raising the minimum age of legal access to 21 would save almost a quarter of a million lives of people born between 2000 and 2019;⁴⁰ and

³³ Ling PM, Glantz S a. Why and how the tobacco industry sells cigarettes to young adults: evidence from industry documents. *Am J Public Health*. 2002;92(6):908-916.

<http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=1447481&tool=pmcentrez&rendertype=abstract>.

³⁴**Error! Hyperlink reference not valid.** D.S. Burrows. RJ Reynolds; Minnesota Lawsuit. September 20, 1982. Estimated Change in Industry Trend Following Federal Excise Tax Increase. UCSF Library Truth Tobacco Industry Documents website. <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/nnnw0084>. Accessed October 26, 2016.

³⁵ Philip Morris. January 21, 1986. Discussion Draft Sociopolitical Strategy. UCSF Library Truth Tobacco Industry Documents website. <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=zsw0127>. Accessed October 26, 2016. See also D.S. Burrows. RJ Reynolds; Minnesota Lawsuit. September 20, 1982. Estimated Change in Industry Trend Following Federal Excise Tax Increase. UCSF Library Truth Tobacco Industry Documents website.

³⁶ Apollonio; DE, Stanton A. Glantz. Minimum Ages of Legal Access for Tobacco in the United States From 1863 to 2015. *Am J Public Health*. 2016;106(7):1200-1207. doi:10.2105/AJPH.2016.303172.

³⁷ Philip Morris. January 21, 1986. Discussion Draft Sociopolitical Strategy. UCSF Library Truth Tobacco Industry Documents website. <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=zsw0127>. Accessed October 26, 2016.

³⁸ Wagenaar AC, Toomey TL. Effects of minimum drinking age laws: Review and analyses of the literature from 1960 to 2000. *J Stud Alcohol*. 2002;S14:206-225. doi:10.15288/jsas.2002.s14.206.

³⁹**Error! Hyperlink reference not valid.** Schneider SK, Buka SL, Dash K, Winickoff JP. Community reductions in youth smoking after raising the minimum tobacco sales age to 21. *Tob Control*. 2015. doi:10.1136/tobaccocontrol-2014-052207.

⁴⁰**Error! Hyperlink reference not valid.** Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. (Bonnie RJ, Stratton K, Kwan LY, eds.). Washington D.C.; 2015.

<https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.

That raising the minimum age of purchase may also address racial and ethnic inequities as communities of color are more likely to begin smoking after age 18;^{41, 42, 43} and

That fines are one way to increase retailers' awareness of tobacco control policies, which may make it more likely they will comply with the law and increase the number of retailers who refuse to sell tobacco to youth;⁴⁴ and

That as of September 27, 2016, at least 200 jurisdictions in 14 states have laws raising the minimum legal sale age for tobacco products to 21;⁴⁵ and

That nationally, 70.5% of people, including 57.8% of people who currently smoke, support raising the minimum age of legal access to 21;⁴⁶ and

That the minimum sale age for alcohol in Michigan is 21 years of age, and persons under 21 years of age have visibly different drivers' licenses.⁴⁷ Raising the minimum sale age for tobacco would streamline identification checks and would establish a uniform age for the purchase of both products; and
That tobacco use is a particularly important public health problem facing Genesee County, especially tobacco use among youth, as evidenced by local data; and

That a prohibition on the sale of tobacco products to individuals under 21 is a local solution to the public health problems facing Genesee County; and

That solutions to public health problems can effectively be addressed at the local level, and in many cases local control advances the protection of public health in the local community; and

That the Michigan Supreme Court has ruled that "the [Michigan] Legislature has expressly placed the affirmative duty on local health departments to take measures to safeguard human health;"⁴⁸ and

That the Michigan Supreme Court has held that local health departments may adopt regulations to properly safeguard public health;⁴⁹ and

⁴¹ Freedman KS, Nelson NM, Feldman LL. Smoking initiation among young adults in the United States and Canada, 1998-2010: A systematic review. *Prev Chronic Dis.* 2012;9(5):E05. doi:10.5888/pcd9.110037.

⁴² Bauer UE. Understanding the African American "Smoker" *Nicotine Tob Res.* 2016;18(Suppl. 1):S7-S10. doi:10.1093/ntr/ntv192.

⁴³ Trinidad DR, Gilpin EA, Lee L, Pierce JP. Has there been a delay in the age of regular smoking onset among African Americans?. *Ann Behav Med.* 2004;28(3):152-157. <http://escholarship.org/uc/item/3v37f9n8#>.

⁴⁴ Lantz PM, Jacobson PD, Warner KE, et al. Investing in youth tobacco control: A review of smoking prevention and control strategies. *Tob Control.* 2000;9:47-63. doi:10.1136/tc.9.1.47.

⁴⁵ States and Localities That Have Raised the Minimum Legal Sale Age for Tobacco Products to 21. Campaign for Tobacco-Free Kids website. https://www.tobaccofreekids.org/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf. Accessed October 26, 2016.

⁴⁶ Winickoff J, McMillen R, Tanski S. Public support for raising the age of sale for tobacco to 21 in the United States. *Tob Control.* 2015;1-6. doi:10.1136/tobaccocontrol-2014-052126.

⁴⁷ Mich. Comp. Laws § 28.292(4) (2016).

⁴⁸ *McNeil v. Charlevoix Cty.*, 772 N.W.2d 18, 27 (2009) (interpreting Mich. Comp. Laws § 333.2433(1) (2016)) (emphasis omitted).

⁴⁹ *McNeil v. Charlevoix Cty.*, 772 N.W.2d 18, 23 (2009) (citing Mich. Comp. Laws §§ 333.2433(2)(a) (2016), 333.2435(d) (2016) 333.2441(1) (2010)).

That the Michigan Supreme Court has emphasized that the Public Health Code is to be “liberally construed for the protection of the health, safety, and welfare of the people of this state.”⁵⁰

Therefore, this Regulation is adopted to safeguard the public health by prohibiting the sale of tobacco products to individuals under 21 years of age.

SECTION 1004 – DEFINITIONS

- 1004.1 “Person” means an individual, partnership, corporation, governmental entity, receiver, trustee, assignee, or any other legal entity.
- 1004.2 “Public Health Code” means the Public Health Code of Michigan, Act 368, P.A. 1978, as amended (Mich. Comp. Laws § 333.1101 et seq; Mich. Comp. Laws Ann. § 14.15(1101) et seq.).
- 1004.3 “Tobacco License and Sales to Minors Regulation” means that certain Regulation to Require License for Retail Sale of Tobacco and to Prohibit the Sale of Tobacco to Minors, adopted by Genesee County on November 16, 1993 and made effective on February 14, 1994.
- 1004.4 “Tobacco Paraphernalia” means any item designed for the consumption, use, or preparation of tobacco products.
- 1004.5 “Tobacco Product” means
- (a) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and
 - (b) any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
 - (c) Notwithstanding any provision of subsections (a) and (b) to the contrary, “tobacco product” includes any component, part, or accessory of a tobacco product, whether or not sold separately. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

SECTION 1005 – PROHIBITION OF THE SALE OF TOBACCO PRODUCTS AND TOBACCO PARAPHERNALIA TO INDIVIDUALS UNDER 21 YEARS OF AGE

- 1005.1 No person shall sell, give, or furnish any tobacco product or tobacco paraphernalia to an individual under 21 years of age.

⁵⁰ McNeil v. Charlevoix Cty., 484 Mich. 69, 78, 772 N.W.2d 18, 23 (2009) (citing Mich. Comp. Laws § 333.1111(2) (2016)).

- 1005.2 Subsection 1005.1 shall not apply to:
- (a) A transportation company as defined in Public Act 327 of 1993 as amended (Mich. Comp. Laws § 205.422), provided the transportation company holds a valid state license issued pursuant to Public Act 327 of 1993 as amended (Mich. Comp. Laws § 205.421 et seq.)
 - (b) A vending machine operator as defined in Public Act 327 of 1993 as amended (Mich. Comp. Laws § 205.422), provided the vending machine operator holds a valid state license issued pursuant to Public Act 327 of 1993 as amended (Mich. Comp. Laws § 205.421 et seq.)

1005.3 Any person who is not subject to the restrictions in Subsection 1005.1 (pursuant to Subsection 1005.2) shall not sell, give, or furnish any tobacco product or tobacco paraphernalia to an individual under 18 years of age.

SECTION 1006 – SIGN REQUIREMENT

1006.1 Any person who sells tobacco products or tobacco paraphernalia at retail, and who is subject to the sign requirement set forth in Public Act 31 of 1915 as amended (Mich. Comp. Laws § 722.641 et seq.), shall post the sign required by that Act.

1006.2 In addition to any applicable sign requirement in Subsection 1006.1, a person who sells tobacco products or tobacco paraphernalia at retail shall post a sign which includes the following statement:

“Genesee County prohibits the sale of tobacco products to any person under 21 years of age.”

This sign shall be posted in a conspicuous place:

- (1) Adjacent to any sign required by Subsection 1006.1 if applicable; or
- (2) At or near every point of sale and every display of tobacco products or tobacco paraphernalia if the sign requirement in Subsection 1006.1 does not apply.

1006.3 The sign required under Subsection 1006.2 shall be at least 5- ½ inches by 8- ½ inches. The statement required under Subsection 1006.2 shall be clear and conspicuous and shall be printed in boldfaced type no smaller than 36-point.

SECTION 1007 – IDENTIFICATION REQUIREMENT

A person shall not sell, give, or furnish a tobacco product or tobacco paraphernalia to an individual who appears to be under 27 years of age without first examining the identification of the individual to confirm that the individual is at least 21 years of age. The identification must be a document issued by a federal, state, or municipal government, or subdivision or agency thereof, that includes a photo and the date of birth of the individual.

SECTION 1008 – ENFORCEMENT GENERALLY

A person shall not be assessed a penalty under both this Regulation and the Tobacco License and Sales to Minors Regulation for a single, specific violation of this Regulation based on the same facts or specific incident.

SECTION 1009 – PENALTY FOR VIOLATION

A person who violates any provision of this Regulation is guilty of a misdemeanor, as provided in Section 2443 of the Public Health Code, Mich. Comp. Laws § 333.2443. In the case of continuing violations, each day's violation shall constitute a separate offense.

SECTION 1010 – SCHEDULE OF MONETARY CIVIL PENALTIES

1010.1 Under authority of Section 2461 of the Public Health Code, the following schedule of monetary civil penalties is adopted:

- (1) Any person who violates any provision of this Regulation shall be assessed a monetary civil penalty of Fifty Dollars (\$50.00) for the first violation within the tobacco retailer license period.
- (2) Any person who violates any provision of this Regulation shall be assessed a monetary civil penalty of One Hundred Dollars (\$100.00) for the second violation within the tobacco retailer license period.
- (3) Any person who violates any provision of this Regulation shall be assessed a monetary civil penalty of Two Hundred Dollars (\$200.00) for the third violation within the tobacco retailer license period.
- (4) Each day that a violation exists shall be deemed as a separate violation.

1010.2 A civil penalty may be appealed to the Health Department within 20 days of receipt of the citation, in accordance with Section 2462 of the Public Health Code. A civil penalty is payable to the Genesee County Health Department and shall be deposited with the Genesee County Treasurer.

1010.3 If applicable, an unpaid civil penalty shall be assessed against a tobacco retailer in addition to the regular license fee for the next licensing period.

SECTION 1011 – APPEARANCE TICKETS

The Health Officer and his/her designees are hereby designated as public servants authorized to issue and serve appearance tickets, in accordance with Section 2463 of the Public Health Code, for violations of this Regulation.

SECTION 1012 – INJUNCTIVE PROCEEDINGS

Notwithstanding the existence and pursuit of any other remedy, the Health Officer or his/her designee, without posting bond, may maintain an action in a court of competent jurisdiction for an injunction or other process against any person to restrain or prevent a violation of this Regulation.

SECTION 1013 – OTHER LAWS; CONFLICT

To the extent that any provision in Sections 1006 or 1007 of this Regulation is more restrictive than or in conflict with Sections 1006 or 1007 of the Tobacco License and Sales to Minors Regulation, the provision in this Regulation shall apply.

SECTION 1014 – SEVERABILITY

If any provision, clause, sentence, or paragraph of this Regulation or the application thereof to any person or circumstance shall be held to be invalid, such invalidity shall not affect the provisions of this Regulation which can be given effect without the invalid provision or application, and to this end the provisions are declared to be severable.

SECTION 1015 – EFFECTIVE DATE

This Regulation shall take effect ninety (90) days from and after the date of its approval by the Genesee County Board of Commissioners.

January 10, 2017: Public Notice Published

Notice of Public Hearing on Regulation to Prohibit the Sale of Tobacco Products to Individuals Under 21 Years of Age

The Genesee County Health Department will hold a public hearing as part of the Board of Health Meeting on January 24, 2017, at 1:30p.m., at the Genesee County Health Department, 630 S. Saginaw St., Flint, MI 48502.

The purpose of the public hearing is to receive public comment on the regulation to prohibit the sale of tobacco products to individuals under 21 years of age. A copy of the proposed regulation is available from the Genesee County Health Department at 810-257-3612.

January 24, 2017: Public Hearing Held

After a public hearing, Genesee County Board of Health unanimously endorsed the attached regulation and transmitted it to the Commissioner Clack, Chair HHS Committee, for consideration by the Genesee County Board of Commissioners.

February 14, 2017: Regulation Adopted By Board of Commissioners

May 15, 2017: Regulation Effective Date

GENESEE COUNTY REGULATION

This store is prohibited from selling or providing tobacco products, including e-cigarettes, to any person under 21 years of age.



TO REPORT VIOLATIONS EMAIL TOBACCO21@GCHD.US

YOU CAN QUIT! WE CAN HELP!

1-800-QUIT-NOW (1-800-784-8669)



Genesee County
Health Department
Your Health. Our Work.

The purchase of tobacco products by a minor under 18 years of age and the provision of tobacco products to a minor are prohibited by law.

A minor unlawfully purchasing or using tobacco products is subject to criminal penalties.

Michigan Department of Health and Human Services • Authority: P.A. 314 of 1988

Must be displayed by law.

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

RPF OIL COMPANY,
a Michigan corporation,

Plaintiff,

v

**GENESEE COUNTY and GENESEE
COUNTY HEALTH DEPARTMENT,**
individually, jointly and severally,

Defendants.
/

Case No. 17-

-CZ

Hon.

**MOTION AND BRIEF IN SUPPORT OF
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION SHOULD
NOT BE ISSUED**

Clifford A. Knaggs (P42232)
Knaggs Brake, P.C.
Counsel for Plaintiff
7521 Westshire Drive, Suite 100
Lansing, Michigan 48917
517-622-0590/Fax 517-622-8463
/

NOW COMES Plaintiff, RPF Oil Company, by and through its attorneys, Knaggs Brake, P.C., and pursuant to MCR 3.310 hereby moves the Court for issuance of a Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Be Issued. In support thereof, Plaintiff says as follows:

1. Plaintiff filed a Complaint in Genesee County Circuit Court setting forth allegations in support of the issuance of a Temporary Restraining Order and a Preliminary and Permanent Injunction which would prohibit Defendants from enforcing the Regulation to Prohibit the Sale of Tobacco Products to Individuals Under 21 Years of Age.

LAW AND ARGUMENT

In evaluating whether to issue a Temporary Restraining Order (“TRO”), or grant a Motion for Preliminary Injunction, a court should consider the following factors: (1) harm to the

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public interest if an injunction or TRO issues; (2) whether harm to the applicant in the absence of stay outweighs the harm to the opposing party if a stay is granted; (3) whether the applicant is likely to succeed on the merits of its claim; and (4) whether the applicant will suffer irreparable harm in the absence of the relief. *Michigan State Police Employees Association v Department of Mental Health*, 421 Mich 152, 157-158 (1984).

In our case, not only will the public interest not be harmed if the TRO issues, in fact, it will be protected. The public has a right to rely upon and enjoy the benefits of legislation duly passed and signed into law by the State Legislature and Governor. The State Attorney General has opined on this issue when reviewing an identical ordinance adopted by the City of Ann Arbor on July 16, 2016. See Opinion No. 7294, February 2, 1017, attached as **Exhibit A**. The Attorney General concluded that the Ann Arbor ordinance that prohibited the sale of tobacco products to individuals between the age of 18 and 21 was preempted by the Age of Majority Act, MCL 722.51 *et seq.* and was therefore unenforceable. Plaintiff adopts the analysis and conclusion of the Attorney General in support of this Motion. In short, there will be no harm to the public interest if the TRO is issued in this case.

With regard to the second factor, there will be no harm to Defendants in this case if the TRO is issued because it will be merely maintaining the status quo. Plaintiff, on the other hand will be harmed by the imposition of fines and penalties and damage to its reputation in the event citations for violation of the Regulation are issued.

Given the allegations in the Complaint and the opinion of the Attorney General provided to the Court, it is almost certain that Plaintiff will succeed on the merits of its claims.

Finally, there can be little doubt that Plaintiff will suffer irreparable harm in the absence of the issuance of a TRO as described above.

Notice to Defendants of this Motion was provided to Corporate Counsel at _____ a.m. on May 12, 2017 via _____.

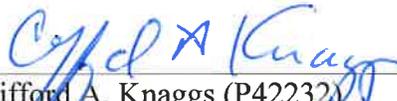
WHEREFORE, for the foregoing reasons, Plaintiff respectfully request the Court to:

- a. Enter an order temporarily, preliminarily and permanently enjoining Defendants, their officers, agents, servants, employees and anyone acting in concert with them from using the property for the sale, marketing, storage or advertising of petroleum fuels and lubricants except the products supplied by Plaintiff;
- b. Grant Plaintiff such further relief that the Court finds to be just and reasonable.

Respectfully submitted,

RPF OIL COMPANY

By Its Attorneys
Knaggs Brake, P.C.



Clifford A. Knaggs (P42232)
7524 Westshire Drive, Suite 100
Lansing, Michigan 48917
517-622-0590/Fax 517-622-8463

DATED: May 12, 2017

The following opinion is presented on-line for informational use only and does not replace the official version. (Mich. Dept. of Attorney General Web Site - <http://www.ag.state.mi.us>)

STATE OF MICHIGAN

BILL SCHUETTE, ATTORNEY GENERAL

YOUTH TOBACCO ACT:

Validity of local ordinance raising the age of persons able to purchase tobacco products to the age of 21.

AGE OF MAJORITY ACT:

PREEMPTION:

The Age of Majority Act, 1971 PA 79, MCL 722.51 et seq., preempts a city ordinance that provides “a person shall not sell, give or furnish a tobacco product in any form to a person under 21 years of age.” The ordinance directly conflicts with state law by barring the sale or furnishing of tobacco products to 18- to 20-year-olds because the Age of Majority Act prohibits treating these young adults differently from persons 21 years and older with respect to their legal capacity to purchase tobacco products.

Opinion No. 7294

February 2, 2017

The Honorable Rick Jones
State Senator
The Capitol
Lansing, MI 48909

You have asked whether Michigan law preempts a city ordinance that provides that “a person shall not sell, give or furnish a tobacco product in any form to a person under 21 years of age.”^[1]

The Michigan Constitution gives each city and village the “power to adopt resolutions and ordinances relating to its municipal concerns.” Const 1963, art 7, § 22. And the Constitution further provides that the powers it confers on cities and villages, along with townships and counties, are to be “liberally construed in their favor.” Const 1963, art 7, § 34. The fact that something is of “state concern” does not foreclose that the issue may also be a local concern. *Associated Builders & Contractors v City of Lansing*, 499 Mich 177, 190 (2016).

But the power of a city or village to adopt an ordinance is “subject to the constitution and law.” Const 1963, art 7, § 22. The Michigan Supreme Court has determined that the phrase “subject to the . . . law” means that a city’s power to adopt an ordinance is “subject to the laws of this state, i.e., statutes.” *Ter Beek v City of Wyoming*, 495 Mich 1, 19 (2014) (internal quotation omitted). While a local government has the power to adopt ordinances relating to its municipal concerns, those ordinances may be preempted by state law. State law preempts regulation by an inferior level of government where (1) the local ordinance directly conflicts with a state statutory scheme, or (2) the statutory scheme completely occupies the field that the local ordinance attempts to regulate. *Ter Beek*, 495 Mich at 19–20, quoting *People v Llewellyn*, 401 Mich 314, 322 (1977). See also *Rental Prop Owners Ass’n of Kent Co v Grand*

Rapids, 455 Mich 246, 257 (1997). A preemption analysis is conducted by looking at how a specific ordinance interacts with existing state law.

Background of Michigan law

In Michigan, the sale of cigarettes and other tobacco products to minors is governed by state law. The Youth Tobacco Act prohibits the sale of tobacco products to a minor: “[a] person shall not sell, give, or furnish a tobacco product to a minor.” MCL 722.641(1). It also prohibits a minor from purchasing, possessing, or using tobacco products, making it a misdemeanor to violate the law. MCL 722.642(1)(a), (b), (c). The Act defines a minor as an “individual under 18 years of age.” MCL 722.644(a).

At the same time, the Act requires a retailer to post in a conspicuous location a sign informing customers and employees of the prohibition on the sale and purchase of tobacco by minors, and provides the exact language for the sign:

“The purchase of tobacco products by a minor under 18 years of age and the provision of tobacco products to a minor are prohibited by law. A minor unlawfully purchasing or using tobacco products is subject to criminal penalties.” [MCL 722.641(2).]

The purposes of this statutory scheme are outlined in the title to the Act:

AN ACT to prohibit the selling, giving, or furnishing of tobacco products to minors; to prohibit the purchase, possession, or use of tobacco products by minors; to regulate the retail sale of tobacco products; to prescribe penalties; and to prescribe the powers and duties of certain state agencies and departments.

The Department of Community Health oversees the Act, and has the obligation to distribute the signs with the language of the prohibition free of charge to wholesalers and others who sell tobacco products. MCL 722.641(4).

The Youth Tobacco Act was originally passed in 1915, and only governed the sale of cigarettes. 1915 PA 31.[2] The original act prohibited the sale, as well as the use, of cigarettes to those under the age of 21. *Id.* This legal standard remained in place for more than 50 years until 1972. The Youth Tobacco Act was amended in that year, substituting “21 years” with “18 years.” 1972 PA 29. This amendment corresponded to the enactment of the Age of Majority Act.

On January 1, 1972, the Age of Majority Act took effect as enacted by Public Act 79 of 1971. The Act declared that “a person who is at least 18 years of age on or after January 1, 1972, is an adult of legal age for all purposes whatsoever, and shall have the same duties, liabilities, responsibilities, rights, and legal capacity as persons heretofore acquired at 21 years of age.” MCL 722.52(1). This policy change followed ratification of the 26th Amendment to the United States Constitution, which extended the right to vote to citizens 18 years or older. US Const Am XXVI. The “clear purpose” of the Age of Majority Act was to establish 18 as the age at which “a minor loses the disabilities and protections of his minority and gains the legal status of an adult.” *Michigan Dep’t of Civil Rights ex rel Smilnak v City of Warren*, 136 Mich App 103, 112 (1984).

The Age of Majority Act identified 20 specific acts and provided that it “superseded 000054 provisions of law prescribing duties, liabilities, responsibilities, rights and legal capacity of

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persons 18 years of age through 20 years of age *different* from persons 21 years of age.” MCL 722.53 (emphasis added). The list was not exhaustive, as it “includ[ed] but [was] not limited to” the listed public acts. Among the 20 acts, the list expressly included “Sections 1 to 3 of [1915 PA 31, i.e.,] sections 722.641 to 722.643,” which is the Youth Tobacco Act. Significantly, section 1 of the Youth Tobacco Act governs the limits on sales of tobacco products to minors, MCL 722.641, while section 2 governs the purchase, possession, and use of tobacco by minors, MCL 722.642. Section 3, which related to the “harbor[ing]” of minors using tobacco, has since been repealed, MCL 722.643, 1988 PA 314.

In this way, the Age of Majority Act displaced the limitations of the Youth Tobacco Act placed on retailers, eliminating the prohibition on selling cigarettes to those between the ages of 18 and 21. The Youth Tobacco Act was later amended to conform to the Age of Majority Act.

The City’s Ordinance

On July 16, 2016, the City Council for the City of Ann Arbor (City) passed an ordinance amending sections of its city code governing tobacco regulation to provide that “[a] person shall not sell, give or furnish a tobacco product in any form to a person under 21 years of age.” Section 9:328b, Title IX of the Ann Arbor City Code. The City also provided in the following section governing signage that “[a] person who sells tobacco products and or electronic smoking devices at retail and who is subject to the requirements of subsection 9:328(a) shall post a sign adjacent to the sign required by Public Act 31 of 1915 as amended (MCL 722.641 *et seq.*), which includes the following statement”:

“Under City of Ann Arbor ordinance, this store is prohibited from selling or providing a tobacco product to any person under 21 years of age.” [Section 9:329, Title IX.]

In passing this ordinance, the City Council made specific findings in support of this change that “raise[s] the minimum age of purchase,” including:

That raising the minimum legal age for tobacco sales is important to protect the particularly large population of individuals under the age of 21 in the City of Ann Arbor.

* * *

That research has repeatedly found that raising the minimum age of access is an effective strategy for reducing tobacco use among youth and young adults[.] [Section 9:328a, Title IX.]

The City also observed that over 100 jurisdictions in 13 states have raised the minimum legal age for tobacco sales to 21.[3] The ordinance went into effect on January 1, 2017.[4]

Direct Conflict Preemption

The first consideration in preemption is whether a local ordinance directly conflicts with state law. A direct conflict exists between a local regulation and a state statute when the local regulation permits what the statute prohibits or prohibits what the statute permits.

Llewellyn, 401 Mich at 322. An ordinance that regulates in greater detail in an area where a

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state statute also regulates does not by that fact render the ordinance invalid due to a conflict. *USA Cash #1 v City of Saginaw*, 285 Mich App 262, 267 (2009). As a general rule, “additional regulation” does not create a conflict. *Walsh v River Rouge*, 385 Mich 623, 636 (1971). The issue is whether both the state statute and the ordinance – even when “covering the same subject” – may be given effect: “a municipality cannot lawfully forbid what the legislature has expressly licensed, authorized, permitted, or required, or authorize what the legislature has expressly forbidden.” *Rental Prop Owners Ass’n of Kent Co*, 455 Mich at 262.

In examining just the Youth Tobacco Act, the fact that the City imposes a greater restriction on the sale or furnishing of tobacco does not appear to be a direct conflict. A number of Michigan Supreme Court cases have recognized the power of municipalities to enact requirements that go beyond that required by state law. *Rental Prop Owners Ass’n*, 455 Mich at 261–262 (upholding municipal nuisance abatement ordinance); *Detroit v Qualls*, 434 Mich 340, 362 (1990) (upholding ordinance restricting storage quantity of fireworks); *Miller v Fabius Twp Bd*, 366 Mich 250, 256–257 (1962) (upholding ordinance limiting the hours of waterskiing). These cases have each cited approvingly the following treatise passage, holding that municipalities may enact ordinances that are more restrictive than state law:

The mere fact that the state, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements. So long as there is no conflict between the two, and the requirements of the municipal ordinance are not in themselves pernicious, as being unreasonable or discriminatory, both will stand. *The fact that an ordinance enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict therewith unless the statute limits the requirement for all cases to its own prescription.* Thus, where both an ordinance and a statute are prohibitory, and the only difference between them is that the ordinance goes further in its prohibition but not counter to the prohibition under the statute, and the municipality does not attempt to authorize by the ordinance what the legislature has forbidden or forbid what the legislature has expressly licensed, authorized, or required, there is nothing contradictory between the provisions of the statute and the ordinance because of which they cannot coexist and be effective. Unless legislative provisions are contradictory in the sense that they cannot coexist, they are not deemed inconsistent because of mere lack of uniformity in detail. [56 Am Jur 2d, Municipal Corporations, § 374, p 408–409 (emphasis added).]

Yet the question here is not just whether the City’s ordinance “enlarges” on the Legislature’s limitations in the Youth Tobacco Act on sales to those under 18 years of age. Rather, the issue is whether it conflicts with the Legislature’s prohibition in the Age of Majority Act of different treatment in specified areas for those between the ages of 18 and 20, and those 21 and older.

No cases in Michigan or elsewhere have addressed the question. Nor has this office addressed this specific issue. Previously, in a question related to tobacco products, Attorney General Frank Kelley concluded local ordinances that regulated the sale of tobacco to minors and the placement of vending machines for cigarettes were not preempted by Michigan law. See OAG No. 6665, p 401 (November 15, 1990). But this opinion did not address any effort to establish an age restriction at 21 years as against 18.

In examining the Youth Tobacco Act and a statutory act for taxing cigarettes that ~~000056~~ once been repealed, the opinion concluded that “as a general proposition, state law does not

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preempt local ordinances designed to prevent tobacco sales to minors nor does it preempt local ordinances that regulate or prohibit the placement of cigarette vending machines.” OAG No. 6665, p 403. The opinion further explained that “[o]f course, any preemption analysis would depend, in part, on the specific content of the local ordinance in question.” *Id.* Here, the ordinance elevates the age of purchase to 21, even though state law prohibits treating those between 18 and 20 differently from those 21 and over. MCL 722.53 (superseding laws that “prescrib[e] duties, liabilities, responsibilities, rights and legal capacity of persons 18 years of age through 20 years of age different from persons 21 years of age.”) On this issue, there is no precedent in Michigan.

The City’s ordinance directly conflicts with one of the central components of the Age of Majority Act. The Act expressly bars laws that prescribe duties, liabilities, responsibilities, rights and legal capacity of persons who are 18 to 20 years old that are “different” from those who are 21 years old. MCL 722.53. And the Act specifically applied to the three sections of the Youth Tobacco Act, indicating the Legislature’s intent to foreclose different treatment under that particular act. *Id.*

The Age of Majority Act’s rejection of a difference of laws for those between the ages of 18 to 20 years as a class from those 21 years and older was predicated on the existence of a duty, liability, responsibility, right, or legal capacity related to the sale or furnishing of tobacco products. The first section of the Youth Tobacco Act had limited the sale of tobacco products to those under 21 years of age before its revision, MCL 722.641, and thus the reduction of this age to 18 years as a threshold eliminated a liability for the person selling or furnishing. This elimination of the liability occurred without regard to the age of the seller or person furnishing the product.

As a consequence of the changes to the Youth Tobacco Act corresponding to the Age of Majority Act, a person 18 to 20 years of age has the legal capacity to purchase tobacco products. While the Age of Majority Act does not define “legal capacity,” the edition of Black’s Law Dictionary published after the passage of the Act defines “capacity” as “legal qualification (i.e., *legal age*), competency, power or fitness.” *Black’s Law Dictionary*, (5th ed) (1979), p 188 (parenthetical in original; emphasis added). It is clear that the change in law in 1971 changed the legal age so that those over 18 years of age had the same capacity to obtain tobacco products as any other adult.

The City’s ordinance overturns the Age of Majority Act’s elimination of “different” treatment of the legal capacity of those between 18 and 20 years of age and those 21 years and older to obtain tobacco products. See *Smilnak*, 136 Mich App at 112 (“the clear purpose of [the Act] was to establish 18 as the age at which a minor loses the disabilities and protections of his minority and gains the legal status of an adult”). The ordinance withdraws the legal ability of those between 18 and 21 from purchasing tobacco in Ann Arbor by prohibiting retailers from selling to them. The ordinance raises the age, creating a disability for those 18 to 20 years of age after the Legislature had eliminated it. The Legislature has enacted the policy that 18- to 20-year-olds should be treated like adults 21 years or older for tobacco sales because they cannot be treated “different[ly].” Whether this a wise policy choice is a matter for the Legislature to determine; the City cannot change it. See, e.g., *Devillers v Auto Club Ins Ass’n*, 473 Mich 562, 589 (2005) (“[P]olicy decisions are properly left for the people’s elected representatives in the Legislature . . .”).

The language of the city council’s finding only confirms the point. In addition to attempting to prevent young adults aged 18 to 20 from providing cigarettes to minors, the ordinance ~~000057~~ designed to protect the young adults themselves by “protect[ing]” them from being able to

obtain cigarettes. Section 9:328a, Title IX (“That raising the minimum legal age for tobacco sales is important to *protect* the particularly large population of individuals under the age of 21 in the City of Ann Arbor.”) (emphasis added). While this may be a laudable goal, this finding categorizes 18- to 20-year-olds with minors, removing them from the same treatment of other adults 21 years and older.

This effort is plainly contrary to the Age of Majority Act, which is written in the broadest possible terms by stating that a person who is 18 years of age “is an adult of legal age *for all purposes whatsoever*,” MCL 722.52 (emphasis added), and includes the age for purchasing tobacco as one of the ways in which these young adults should no longer be treated as minors.

Any revision in this law must come from the Legislature, as occurred for the purchase and sale of alcohol. In *Findling v TP Operating Co*, 139 Mich App 30 (1984), the Court of Appeals concluded that the general provisions of the Age of Majority Act in MCL 722.52 did not alter the Liquor Control Act, which limited the ability to purchase alcohol to those who are 21 years of age. *Id.* at 37–39, citing MCL 436.33b (providing before its repeal that “[a] person less than 21 years of age shall not purchase alcoholic liquor, consume alcoholic liquor in a licensed premises, or possess alcoholic liquor, except as provided in section 33a(1) of this act.”) Originally, the Legislature revised the Liquor Control Act in 1972, like the Youth Tobacco Act, to replace “21 years” with “18 years” to correspond with the Age of Majority Act, but then restored the age of majority to 21 for purchasing alcohol in 1978. *Findling*, 139 Mich App at 38 n 1. The Court explained that the Age of Majority Act “was not intended to preclude *the Legislature* from making distinctions based on the age of 21.” *Id.* (emphasis added), citing *Smilnak*, 136 Mich App at 114. The same is true here. The Michigan Legislature may revisit its decision to ensure that those young adults have the same legal capacity as other adults for the purchase of tobacco products. The City cannot.

It is my opinion, therefore, that the Age of Majority Act, 1971 PA 79, MCL 722.51 *et seq.*, preempts a city ordinance that provides “a person shall not sell, give or furnish a tobacco product in any form to a person under 21 years of age.” The ordinance directly conflicts with state law by barring the sale or furnishing of tobacco products to 18- to 20-year-olds because the Age of Majority Act prohibits treating these young adults differently from persons 21 years and older with respect to their legal capacity to purchase tobacco products.

BILL SCHUETTE
Attorney General

[1] Because you inquire only as to the ordinance’s regulation of tobacco products, this opinion does not address the ordinance’s similar prohibition with respect to electronic smoking devices.

[2] The name of the Act was established effective March 30, 1989, when the Legislature added a fifth section to the Act, naming it the Youth Tobacco Act. MCL 722.645.

[3] Notably, the federal Centers for Disease Control and Prevention (CDC) has previously identified Michigan as one of 22 states that preempt local limitations regarding youth access to tobacco. See CDC Morbidity and Mortality Weekly Report, (August 26, 2011), available <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6033a2.htm> (accessed January 25, 2017).

[4] Another state law, the Tobacco Products Tax Act, 1993 PA 327, includes a provision that prohibits local governments from imposing new requirements on tobacco products for distribution purposes. See MCL 205.434.

But this provision is not relevant here, as the ordinance governs the sale of tobacco by retailers to consumers.

<http://opinion/datafiles/2010s/op10373.htm>

State of Michigan, Department of Attorney General

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

RPF OIL COMPANY,
a Michigan corporation,

Plaintiff,

v

**GENESEE COUNTY and GENESEE
COUNTY HEALTH DEPARTMENT,**
individually, jointly and severally,

Defendants.

Case No. 17-

-CZ

Hon.

**TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE**

Clifford A. Knaggs (P42232)
Knaggs Brake, P.C.
Counsel for Plaintiff
7521 Westshire Drive, Suite 100
Lansing, Michigan 48917
517-622-0590/Fax 517-622-8463

At a session of said Court, held in the Circuit Courtrooms, City of Flint, County of Genesee, State of Michigan, on this ____ day of May, 2017.

PRESENT: THE HONORABLE

This matter comes before the Court on Plaintiff's Complaint and its Motion for Temporary Restraining Order and Order to Show Cause why a Preliminary Injunction Should Not Issue;

The Court has reviewed the Complaint, and the Motion and makes the following determinations:

1. Plaintiff will suffer immediate irreparable harm to its rights and to its business reputation and goodwill if this Temporary Restraining Order is not issued.

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2. The Public's interests will not be harmed by issuing this Temporary Restraining Order.

3. The harm to the Plaintiff in the absence of this Temporary Restraining Order is outweighed by the imposition on the Defendants by issuing the Order.

4. And that it appears that Plaintiff has a sufficient likelihood of prevailing on the merits of the claims presented in the Complaint.

NOW, THEREFORE, IT IS HEREBY ORDERED that pending the hearing and determination on the Order to Show Cause Why a Preliminary Injunction Should Not Issue, or the expiration of 14-days from the date of this Order, whichever shall occur first, Defendants, their officers, agents, servants and employees, and anyone in active concert with them are hereby enjoined from enforcing the Regulation to Prohibit the Sale of Tobacco Products to Individuals Under 21 Years of Age adopted by the Genesee County Board of Commissioners on February 14, 2017 which is effective May 15, 2017.

IT IS FURTHER ORDERED that security is not required in this matter as it appears that Defendants and the general public will not be harmed in any manner by the granting of this Temporary Restraining Order.

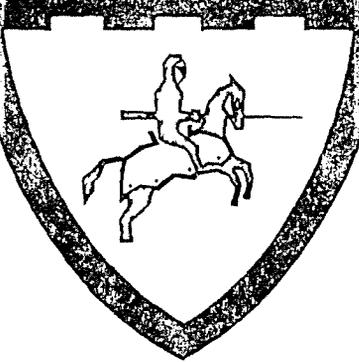
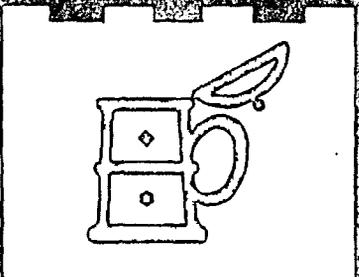
IT IS FURTHER ORDERED that Defendants shall show cause before this Court at ____ a.m./p.m. on May ____, 2017, why a preliminary injunction should not be issued which continues the Temporary Restraining Order in effect.

This Temporary Restraining Order is issued May ____, 2017, at ____ a.m./p.m.

IT IS SO ORDERED.

Hon.
Genesee County Circuit Court Judge

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GOVERNOR'S
SPECIAL
COMMISSION
on

The AGE OF MAJORITY

february, 1971

Governor
William G. Milliken

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STATE OF MICHIGAN
EXECUTIVE OFFICE
LANSING

WILLIAM G. MILLIKEN
GOVERNOR

Special Commission On The
Age of Majority

February 22, 1971

Judge Frank Miltner, Chairman
S. Martin Taylor, V. Chairman

Honorable William G. Milliken
Governor of the State of Michigan
State Capital Building
Lansing, Michigan

Dear Governor Milliken:

By Executive Order 1970-14 the Governor's Special Commission on the Age of Majority was created and requested to conduct a detailed study and report on the Age of Majority. More specifically, the Executive Order called for an inquiry into the legal rights and responsibilities of minors under Michigan law and recommendations as to the advisability of reform in this area. (See Appendix I). The Commission has completed its study and submits herewith its report.

The Commission held a series of hearings with the Departments of State, Social Services, Labor, Commerce, Mental Health, Public Health, Police, Attorney General, Licensing and Regulations, and Corrections to obtain their views in their respective areas. We also held hearings at Michigan State University and Wayne State University to secure the opinion of students and college administrators. In addition, hearings were held with the Michigan Automobile Dealers Association, State Bar of Michigan, Michigan Licensed Beverage Association, Michigan Retailers Association, Michigan Bankers Association, and Michigan Real Estate Association. The written opinions of various other business and labor organizations were requested. (See Appendix III).

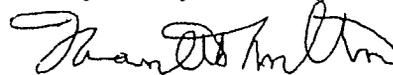
As a commission and individually, we also received comments and opinions from various individuals and groups. Individually, we have reviewed and studied many published resource materials bearing on this subject. These have been too numerous to list, but have assisted greatly in the development of this report.

Finally, we would like to assure you that we have tried our utmost to gather and analyze carefully the reasons for and against altering the age of majority in terms not only of young people, but of society at large.

Honorable William G. Milliken
February 22, 1971
Page 2

The lowering of the age of majority will have sweeping consequences and ramifications, some of which will not be warmly embraced by all, but we of the Commission are unanimous and sincere in the belief that it is a progressive and responsible step forward.

Respectfully submitted,



Frank Miltner
Chairman

VOTING

In June 1970, the Congress of the United States passed, and the President signed into law, the Voting Rights Act Amendments of 1970.¹ This statute purported to lower the minimum voting age for all elections, state and federal, from 21 to 18.

On December 21, 1970, the United States Supreme Court held in U.S. v. Arizona,² that the Constitution empowers the Congress to change voting age requirements for federal elections but not for state and local elections.

As a result, since Jan. 1, 1971, the effective date of the Act, 18-year-olds in Michigan can vote for their congressman but not their state representative, can vote for their senators in Washington, but not their senator in Lansing, can vote for their President but not their governor.

If this situation prevails at the time of the next general election, the cost to the state of holding that election will be greatly increased, because separate ballots or voting machines will be necessary.

The 1970 Voting Rights Act Amendments and the decision in U.S. v. Arizona are the latest manifestations of a national policy of expanding the franchise to various groups that in the past have been arbitrarily excluded from the polling booth.

Acts designed to assist registration of minority group citizens and illiterate citizens have been passed by the Congress and upheld in the courts.³ The poll tax has been abolished so that the poor are not disenfranchised because they cannot pay to exercise their right to vote.⁴ Unreasonable residency requirements have been struck down by Congress and the courts.⁵ Finally, that the right to vote is a fundamental one that cannot be diluted by weighted geographic apportionment was established in the one-man-one-vote decision of Reynolds v. Sims.⁶

Legislation to lower the voting age from 21 was introduced and defeated by the Michigan Legislature, or never reported out of committee, in 1943, 1953, 1954, 1955, 1957, 1959, and 1969. Proposed Constitutional Amendments to the

¹Public Law 91-285.

²39 U.S. Law Week 4027

³The Voting Rights Act of 1965 included measures to increase Black voter registration in the South. New York's English literacy test, which in practice could have disenfranchised many Puerto Rican residents of the state who were literate in Spanish, was declared unconstitutional in Katzenbach v. Morgan, 384 U.S. 641 (1966). The Voting Rights Act of 1970 outlaws all literacy tests as prerequisites to voting in all elections, federal or state. Its constitutionality was established in U.S. v. Arizona, supra.

⁴U.S. Constitution, Amendment 24. The amendment became effective in 1967.

⁵See the Voting Rights Act Amendments of 1970 and U.S. v. Arizona, supra.

⁶377 U.S. 533 (1964).

same effect were passed in Lansing and submitted to the people in 1966 and again in 1970. In 1966, the proposal was defeated 703,076 (36%) to 1,267,872 (64%);⁷ in 1970 a similar proposal went down 924,958 (39%) to 1,446,840 (61%).

At present, five states set an age under 21 as the minimum voting age: Georgia (18, lowered in 1943); Kentucky (18, lowered in 1955); Hawaii (20, the minimum age since before it achieved statehood in 1959); Alaska (now 18, lowered from 19 in the 1970 election); and Nebraska (20, lowered in the 1970 election).

As a result of U.S. v. Arizona, legislation to lower the voting age to 18 has been or soon will be introduced in almost all other states.

Approximately fifty percent of Michigan's population of 18 to 21-year-olds are enrolled in an educational institution of some kind. National figures suggest that at least thirty-nine percent of these students work part time to support or help support themselves. Of those not enrolled in school -- 90% of the males and 63% of the females age 18 to 21 are working full time.

If the franchise is extended to the 18 through 20 age group, the size of Michigan's electorate will be increased by an estimated 419,000 or 8.4 percent.⁸

We the members of the Governor's Special Commission on the Age of Majority have been convinced by the information presented to us and by our observation of, and conversations with, many young people themselves that the great majority of 18 through 20-year-olds are physiologically, educationally, and emotionally capable of assuming the full benefits and burdens of citizenship. Contrary to the conventional wisdom of those who are, if you will, "constitutionally" opposed to extending to 18, 19, and 20-year-olds this most important idiccia of citizenship, the average person in this age group is not an irresponsible or at least unrealistic student who hasn't the life experience to vote intelligently or to vote independently, free from the undue influence of parents or peers.

Almost one half of Michigan's 18 through 20-year-olds are not in school, but are working. Many of these young people are also married. The potential for parental or peer influence would seem to be minimal so far as these newly emancipated young people are concerned. As for the second group, the students, as part of their citizenship training, they are taught in the high school and through extracurricular elections to think and vote for themselves. They have been learning to question the political decisions of the past and to make their own judgments on political matters for years.

⁷Source: 1966 election, Michigan Manual, Table at p. 474. 1970 election, Final Report, Board of State Canvassers of the State of Michigan, December 1, 1970.

⁸Source, Congressional Digest 49:4 134 (May 1970), using figures compiled by the U.S. Census Bureau.

Lowering the voting age in Michigan will, in the Commission's view, bring a much needed consistency to the law as it affects the 18 through 20 age group. We now hold the 18-year-old responsible as an adult for his criminal actions, we allow him to drive private and commercial vehicles with no age-related disabilities, we do not give him the special protections of our child labor laws, we do not require him to be enrolled in school, we allow him to marry without his parents' consent, we hold him liable for his torts, and yet we do not let him vote. Admittedly, 18 is just as arbitrary a lower limit on voter qualification as 21, but at least it is an arbitrary cutoff more closely reflecting the realities of the abilities, education, and living patterns of today's young people.

The Commission is aware of the argument frequently made by advocates of 18-year-old suffrage that if you are old enough to fight for your country, you are old enough to vote. In fact, lower-the-voting-age movements in this country have in the past gathered momentum only during wartime. Michigan Senator Arthur H. Vandenburg was, for example, cosponsor of one of the earliest Congressional resolutions urging a constitutional amendment to broaden the franchise to include 18-year-olds in 1942, at the height of World War II and shortly after the draft age had been lowered to 18 by the 1942 Selective Service and Training Act. The Congress has now eliminated this discrepancy between the minimum ages for compulsory military service and exercising the franchise at the federal level, and the Commission urges the Michigan Legislature and voters to do away with it on the state level as well. If taxation without representation was bad, conscription without representation is certainly worse.

Opponents of the 18-year-old vote generally make three different points. First, they say, 18-year-olds are not mature enough, not experienced or knowledgeable enough to exercise the franchise responsibly. This cliché might have been true once, but it is not true now. Our schools are better preparing students to be informed citizens today. More, many more, of our teenagers are completing high school than did 50 years ago. And, for whatever reasons, whether better nutrition and health care or earlier exposure through the mass media to adult issues and preoccupations, today's young people are maturing earlier physically and emotionally, and are earlier able to appreciate and evaluate political issues than were the teenagers of 1920.

Secondly, opposition to franchise age reduction typically includes expression of some rather vague mistrust of America's young people of today. This is not only unjustified, it is tragic. The activist is present in every age group, every generation, as are the disaffected, the criminals, and the expatriates. That they exist is no reason to disenfranchise them or their peers, whether 18 or 50 years old. That they exist is no reason to shut out from our system the very future of that system. A nation distrustful of its youth is a nation that does not have the vision to endure, or the faith in its educational, religious, and family institutions that they deserve.

Thirdly, opposition to the 18-year-old vote is a manifestation of man's endemic preference for the status quo. We know 21 years as a lower limit works reasonably well as a device to ensure a responsible electorate; we don't know that 18 will work as well, for we've no experience with it; therefore, we should leave things the way they are. To refute this uneasy

feeling about the consequence of a change, the Commission cites the experience of such countries as Brazil, Turkey, Japan, Great Britain and many others where under 21-year-olds vote and political patterns have not thereby been disturbed. Closer to home, we refer you to the experiences of Georgia, Kentucky, Alaska, and Hawaii. Senator Marlow W. Cook of Kentucky, introducing the bill in the Senate in March 1970, to lower the voting age, put it this way: Kentucky has allowed 18-year-olds to vote since 1955, and

"the Kentucky experience has been a complete success I would venture a wager that one could not find 1 percent of Kentuckians, whether liberal or conservative, mountainier or farmer, city dweller or tobacco grower, who would advocate raising the age."⁹

The Commission calls attention to the fact that voter participation among our 21 to 30-year-old citizens is the lowest of any age group. This situation is lamentable and perhaps attributable, at least in part, to the fact that these people were disenfranchised the first three years of their adult life and did not establish the habit of voting as they established their habits of budget, time, and family management. Throughout the high school years, students are prepared and urged to participate in our political system by studies of our country's history, its constitution, the feudal system, state and local government, and current events. But they cannot put into practice what they have learned for another three years. As a result, society loses them as interested participants in government for a number of years. America can ill afford to so dissipate the energy, ideas, and ideals of her young adults.

"If young people 18 and 19 are old enough to ... fight their country's battles ... then they are old enough to take part in the political life of their country and to be full citizens with voting powers."

-- Dwight David Eisenhower

Recommendations

The Commission recommends that a referendum to amend Article 2, Section 1 of the Michigan Constitution to lower the voting age to 18 be resubmitted to the voters.

The Commission also recommends that the referendum vote be preceded by an educational program to acquaint the voters with the reasons for expanding the franchise.

⁹Address given on the floor of the U.S. Senate on March 9, 1970, reprinted in Congressional Digest 49:5 p. 150 (May 1970).

CONCLUSIONS

Michigan statutes related to or based on the Age of Majority are legion. Appendix V lists such statutes. With limited time and resources it was beyond our capacity to deal with each of said areas of the law in our report. We do not believe, however, that such a definitive study is necessary to recommend an overall lowering of the age of majority. The sections of our report dealing with maturity and development, voting, and alcohol primarily deal with our general opinion of persons 18 to 21 and are applicable to all aspects of their rights and responsibilities. If one is mature enough to purchase alcohol, vote, serve in the armed forces, be subject to criminal laws as we propose, surely he is mature enough to purchase a BB gun or cigarettes, receive a gift, or go to the race track, all of which are currently prohibited.

It is the unqualified, unanimous recommendation of the members of this Commission that the age of majority be lowered to 18, granting our young citizens full rights and responsibilities and the opportunity to participate fully in our society.

To implement the Commission's recommendation, we suggest the legislative procedures set forth in Appendix VI.

Frank Miltner
S. Martin Taylor
John Hagen
Joseph Cox
William Rustem
Bettye Elkins

APPENDICES

- I. Executive Order 1970-14
- II. List of persons and organizations requested to submit written statements and give oral evidence.
- III. List of persons, organizations, states and territories requested to submit written statements.
- IV. Excerpts from the Report Of the Committee On The Age of Majority, Her Majesty's Office, London, England, 1967.
- V. Compilation of Michigan Laws having age restrictions or requirements.
- VI. Suggested Legislation.

APPENDIX I

STATE OF MICHIGAN

Executive Office ★ Lansing



EXECUTIVE ORDER

1970-14

GOVERNOR'S SPECIAL COMMISSION ON THE AGE OF MAJORITY

WHEREAS, the laws of the State of Michigan create legal rights and establish limitations upon persons who have not attained the age of majority; and

WHEREAS, in many respects those laws do not afford logical or consistent practices relative to young people; and

WHEREAS, imposition of significant responsibilities on young people requires the establishment of a legal framework for those responsibilities; and

WHEREAS, many young people are desirous of and are capable of exercising the rights and meeting the responsibilities of adult citizens; and

WHEREAS, there is an urgent need for a critical review and reevaluation of existing laws affecting young persons and the development of appropriate recommendations consistent with those findings.

THEREFORE, I, WILLIAM G. MILLIKEN, Governor of the State of Michigan, pursuant to the authority vested in me by the Constitution of the State of Michigan and Act 195 of the Public Acts of 1931, do hereby order the establishment of the Governor's Special Commission on The Age of Majority to be located in the Executive Office of the Governor.

The Commission shall be charged with the following functions and responsibilities:

1. To review and analyze Michigan laws and administrative regulations establishing rights or limitations on persons who have not attained the age of majority.
2. To identify inconsistencies or inadequacies in the present laws affecting young persons.
3. To recommend a comprehensive state policy that would recognize appropriate legal rights for young people, require legal accountability of young persons coextensively with new responsibilities, provide effective legal protection of young people where that protection is required; and to recommend an appropriate age of majority for Michigan citizens.
4. To solicit information and opinions from citizens, public and private agencies, associations and interested groups regarding the rights and responsibilities of young people.
5. To cooperate and coordinate its activities with legislative committees created to study the rights and responsibilities of youth.

STATE OF MICHIGAN

Executive Office * Lansing



The Governor's Special Commission on The Age of Majority shall be composed of such members and officers as are appointed by the Governor and shall report their findings and recommendations to the Governor.

Given under my hand and the Great Seal of the State of Michigan, this nineteenth day of August in the year of Our Lord, One Thousand Nine Hundred Seventy and of the Commonwealth One Hundred Thirty-Four.

WILLIAM G. MILLIKEN
GOVERNOR

BY THE GOVERNOR:

SECRETARY OF STATE

APPENDIX V

Secs. 2 & 6 of Public Act 372 of 1927, as amended, being Secs. 28.422 and 28.426 of the Compiled Laws of 1948. License to purchase or carry concealed weapon...must be 21 years of age or more.

Sec. 1 of Public Act 53 of 1921, being Sec. 41.501 of the Compiled Laws of 1948. Permit to operate billiard room, dance hall, bowling alley, or soft-drink emporium...must be 21 years of age or older.

Sec. 107 of Chapter 14 of the Revised Statutes of 1846, as amended by Public Act 14 of 1963, being Sec. 55.107 of the Compiled Laws of 1948. Appointment as notary public...must be 21 years of age or older.

Secs. 492 & 495 of Chapter 23 of Public Act 116 of 1954, as amended, being Secs. 168.492 and 168.495 of the Compiled Laws of 1948. Qualifications for elector in a township, ward or precinct...must be 21 years of age or older.

Sec. 69 of Public Act 206 of 1893, being Sec. 211.69 of the Compiled Laws of 1948. Sale of land for delinquent taxes...if owned by minor sale may be stayed until appointment of guardian.

Secs. 305 & 310 of Chapter 3 of Public Act 300 of 1949, as amended by Public Act 176 of 1956, Public Act 89 of 1964, Public Act 268 of 1965, Public Act 4 of 1964, being Secs. 257.305 and 257.310a of the Compiled Laws of 1948. Drive school bus...must be 21 years of age or older. Driver's or chauffeur's license...shall be different color if less than 21 years of age.

Sec. 9a of Public Act 104 of 1937, as amended by Public Act 142 of 1939, Public Act 19 of 1944, Public Act 313 of 1949, and Public Act 175 of 1965, being Sec. 330.19a of the Compiled Laws of 1948. Mental disease institutions...voluntary commitment...must be 21 years of age or older, emancipated, or obtain parental consent.

Sec. 44 of Public Act 151 of 1923, as amended by Public Act 104 of 1937, Public Act 313 of 1949, Public Act 148 of 1952, Public Act 183 of 1953, Public Act 159 of 1956 and Public Act 313 of 1957, being Sec. 330.54 of the Compiled Laws of 1948. Mental disease institutions...petitions for involuntary commitment...if by next of kin such person must be 21 years of age or older.

Sec. 55 of Public Act 292 of 1957, as amended by Public Act 184 of 1961, being Sec. 400.55 of the Compiled Laws of 1948. Welfare...eligibility to receive general relief including medical care...must be emancipated.

Sec. 12 of Public Act 27 of 1959, as amended by Public Act 10 of 1963, being Sec. 431.42 of the Compiled Laws of 1948. Pari-mutuel wagering at horse races...minors prohibited.

Sec. 33 & 33a of Public Act 8 of the Extra Session of 1933, as amended by Public Act 281 of 1937, Public Act 80 of 1955, Public Act 227 of 1952 and Public Act 187 of 1956; and Sec. 33b of Public Act 68 of 1969, being Secs. 436.33, 436.33a and 436.33b of the Compiled Laws of 1948. Alcoholic liquor...prohibits sale to and possession or transportation by persons under 21 years of age.

Sec. 823 of Public Act 317 of 1969, being section 418.823 of the Compiled Laws of 1948. Workmen's compensation...injured minor employee... guardian or next friend to make claim.

Sec. 1 of Public Act 160 of 1919, as amended by Public Act 215 of 1945, being Sec. 551.251 of the Compiled Laws of 1948. Legal status of married minors...marriage releases parental control.

Secs. 1, 2, 3, 4, 6, 7, and 9 of Public Act 172 of 1959, as amended, being Secs. 554.451, 554.452, 554.453, 554.454, 554.456, 554.457, and 554.459 of the Compiled Laws of 1948. Gifts to minors...defines adult as person who has attained the age of 21 years...places numerous restrictions on gifts to minors.

Public Act 236 of 1961, as amended, being Sec. 600.9928 of the Compiled Laws of 1948. Revised Judicature Act...Numerous provisions expressly or inferentially defining 21 years as the age of majority or legal age...numerous impediments, special requirements, defenses, etc. imposed or required of minors.

Sec. 113a of Public Act 167 of 1967, being section 702.113a of the Compiled Laws of 1948. Money payable to minor...in certain enumerated situations money due minor may be paid directly to parents without appointment of Guardian.

Public Act 288 of 1939, as amended, being Secs. 701.1 through 713.6 of the Compiled Laws of 1948. Probate Code...Numerous provisions expressly or inferentially defining 21 years as the age of majority or legal age...numerous impediments, special requirements, defenses, etc. imposed or required of minors.

Secs. 1, 2, and 3 of Public Act 31 of 1915, being Secs. 722.641, 722.642 and 722.643 of the Compiled Laws of 1948. Cigarettes...prohibits selling, giving or furnishing cigarettes in any form to persons under 21 years of age...prohibits use of cigarettes in any form by persons under 21 years of age in a public place.

Sec. 9 of Public Act 175 of 1927, being Sec. 766.10 of the Compiled Laws of 1948. Preliminary examinations...court may exclude from place of examination any and all minors.

Secs. 141a, 141c, 141d and 142 of Public Act 328 of 1931, as amended, being Secs. 750.141a, 750.141c, 750.141d and 750.142 of the Compiled Laws of 1948. Alcoholic Liquor...prohibits anyone from furnishing alcoholic beverage to minor except on authority of licensed physician...prohibits false representation of being 21 years of age for securing alcoholic liquor for one's self or another...prohibits selling or giving of books etc. containing obscene language or the like to minor.

Public Act 358 of 1968, being Secs. 750.243a through 750.243d of the Compiled Laws of 1948. Fireworks...permit to use and transportation of fireworks prohibited unless 21 years of age.

Public Act 186 of 1960, being Secs. 752.891 and 752.892 of the Compiled Laws of 1948. BB handgun...prohibits use or possession by persons under 21 years of age unless accompanied by a person over 21 years of age.

Public Act 283 of 1957, being Sec. 750.28 of the Compiled Laws of 1948. Cereal beverage...prohibits selling, giving or furnishing of cereal beverage of any alcoholic content under the name of "near beer" or the like or any name which implies the beverage has an alcoholic content to a minor.

Secs. 1 & 4 of Chapter II of Public Act 165 of 1954, being Secs. 702.1 and 702.4 of the Compiled Laws of 1948. Wills...must be of "legal age" or "full age" to make will.

APPENDIX VI

Suggested Legislation

A bill to define the Age of Majority or Legal Age and to prescribe and define the duties, liabilities, responsibilities, rights and legal capacity of persons 18 or more years of age.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Notwithstanding any other provision of law to the contrary, upon the effective date of this act, any person upon becoming 18 years of age, shall be deemed an adult of legal age for all purposes whatsoever and shall have the same duties, liabilities, responsibilities, rights and legal capacity as persons heretofore acquired at 21 years of age.

Section 2. All provisions of law currently prescribing duties, liabilities, responsibilities, rights and legal capacity of persons 18 years of age through 20 years of age different from persons 21 years of age are accordingly amended by Section 1 hereof, including but not limited to the following enumerated public acts:

Secs. 2 & 6 of Public Act 372 of 1927, as amended, being Secs. 28.422 & 28.426 of the Compiled Laws of 1948.

Sec. 1 of Public Act 53 of 1921, being Sec. 41.501 of the Compiled Laws of 1948.

Sec. 107 of Chapter 14 of the Revised Statutes of 1846, as amended by Public Act 14 of 1963, being Sec. 55.107 of the Compiled Laws of 1948.

Secs. 492 & 495 of Chapter 23 of Public Act 116 of 1954, as amended, being Secs. 168.492 and 168.495 of the Compiled Laws of 1948.

Sec. 69 of Public Act 206 of 1893, being Sec. 211.69 of the Compiled Laws of 1948.

Secs. 305 & 310 of Chapter 3 of Public Act 300 of 1949, as amended by Public Act 176 of 1956, Public Act 89 of 1964, Public Act 268 of 1965, Public Act 4 of 1964, being Secs. 257.305 and 257.310a of the Compiled Laws of 1948.

Sec. 9a of Public Act 104 of 1937, as amended by Public Act 142 of 1939, Public Act 19 of 1944, Public Act 313 of 1949, and Public Act 175 of 1965, being Sec. 330.19a of the Compiled Laws of 1948.

Sec. 44 of Public Act 151 of 1923, as amended by Public Act 104 of 1937, Public Act 313 of 1949, Public Act 148 of 1952, Public Act 183 of 1953, Public Act 159 of 1956 and Public Act 313 of 1957, being Sec. 330.54 of the Compiled Laws of 1948.

Sec. 55b of Public Act 292 of 1957, as amended by Public Act 184 of 1961, being Sec. 400.55b of the Compiled Laws of 1948.

Sec. 12 of Public Act 27 of 1959, as amended by Public Act 10 of 1963, being Sec. 431.42 of the Compiled Laws of 1948.

Secs. 33 & 33a of Public Act 8 of the Extra Session of 1933, as amended by Public Act 281 of 1937, Public Act 80 of 1955, Public Act 227 of 1952 and Public Act 187 of 1956; and Sec. 33b of Public Act 68 of 1969, being Secs. 436.33, 436.33a and 436.33b of the Compiled Laws of 1948.

Sec. 823 of Public Act 317 of 1969, being section 418.823 of the Compiled Laws of 1948.

Sec. 1 of Public Act 160 of 1919, as amended by Public Act 215 of 1945, being Sec. 551.251 of the Compiled Laws of 1948.

Secs. 15 & 29 of Chapter 66 of the Revised Statutes of 1846, being Secs. 558.15 and 558.29 of the Compiled Laws of 1948.

Secs. 1, 2, 3, 4, 6, 7, and 9 of Public Act 172 of 1959, as amended, being Secs. 554.451, 554.452, 554.453, 554.454, 554.456, 554.457, and 554.459 of the Compiled Laws of 1948.

Public Act 236 of 1961, as amended, being Sec. 600.9928 of the Compiled Laws of 1948.

Sec. 113a of Public Act 167 of 1967, being section 702.113a of the Compiled Laws of 1948.

Secs. 1 through 117 of Chapter II, Secs. 1 through 33 of Chapter III, Secs. 1 through 62 of Chapter IX, of Public Act 288 of 1939, as amended, being Secs. 702.115 through 703.33 and 709.1 through 709.2 of the Compiled Laws of 1948.

Secs. 1, 2, and 3 of Public Act 31 of 1915, being Secs. 722.641, 722.642 and 722.643 of the Compiled Laws of 1948.

Secs. 1, 2, 3, 4, and 5 of Public Act 293 of 1968, being Secs. 722.1, 722.2, 722.3, 722.4 and 722.5 of the Compiled Laws of 1948.

Sec. 9 of Public Act 175 of 1927, being Sec. 766.10 of the Compiled Laws of 1948.

Secs. 141, 141a, 141b, 141c, 141d and 142 of Public Act 328 of 1931, as amended, being Secs. 750.141, 750.141a, 750.141b, 750.141c, 750.141d, and 750.142 of the Compiled Laws of 1948.

Public Act 358 of 1968, being Secs. 750.243a through 750.243d of the Compiled Laws of 1948.

Public Act 186 of 1960, being Secs. 752.891 and 752.892 of the Compiled Laws of 1948.

Public Act 283 of 1957, being Sec. 750.28 of the Compiled Laws of 1948.

Secs. 1 & 4 of Chapter II of Public Act 165 of 1954, being Secs. 702.1 & 702.4 of the Compiled Laws of 1948.

Section 3. This act shall not impair or affect any act done, offense committed or right accruing, accrued or acquired, or a liability, penalty, forfeiture, or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted and enforced, as fully and to the same extent as if this act had not been passed. Such proceedings may be consummated under and according to the law in force at the time such proceedings are or were commenced. All proceedings pending at the effective date of this act and all proceedings instituted after the effective date of this act for any act done, offense committed, right accruing, accrued, or acquired, or liability, penalty, forfeiture, or punishment incurred prior to the effective date of this act may be continued or instituted under and in accordance with the provisions of the law in force at the time of the commission of said act done, offense committed, right accruing, accrued, or acquired, or liability, penalty, forfeiture or punishment incurred.

Rodriquez v. Township of Delta, Not Reported in N.W.2d (2016)

2016 WL 520011

2016 WL 520011

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

UNPUBLISHED

Court of Appeals of Michigan.

Rudolpho G. RODRIQUEZ, d/b/a
Nonstop Fireworks, Plaintiff–Appellant,

v.

TOWNSHIP OF DELTA, Defendant–Appellee.

Docket No. 324444.

|
Feb. 9, 2016.

Eaton Circuit Court; LC No. 13–000738–CZ.

Before: O'CONNELL, P.J., and OWENS and
BECKERING, JJ.

Opinion

PER CURIAM.

*1 Plaintiff, Rudolpho G. Rodriquez, appeals as of right the trial court's grant of summary disposition to defendant, Delta Township (the Township), under MCR 2.116(C)(10) (no genuine issue of material fact). The trial court determined that an ordinance regulating vendors' hours did not conflict with a state statute that prohibits localities from regulating firework sales. We affirm.

I. FACTUAL BACKGROUND

Rodriquez operates tents that sell fireworks out of leased spaces. On June 8, 2013, the Township issued Rodriquez a permit to sell fireworks. The Township informed Rodriquez that he could not sell fireworks between 9:00 p.m. and 9:00 a.m. pursuant to an ordinance regulating vendor hours:

Vending, soliciting or peddling, as defined herein, is prohibited at a

private residence prior to 9:00 a.m. and after 9:00 p.m., and shall not be conducted on property zoned commercial, office or industrial under township ordinance after 9:00 p.m. and prior to 9:00 a.m. [Delta Twp Ordinances, § 42–4(c).]

On June 19, 2013, Rodriquez filed his complaint in this action, alleging in part that the ordinance conflicted with a statute that prohibits localities from regulating firework sales:

Except as provided in this act, a local unit of government shall not enact or enforce an ordinance, code, or regulation pertaining to or in any manner regulating the sale, display, storage, transportation, or distribution of fireworks regulated under this act. [MCL 28.457(1).]

The trial court granted summary disposition to the Township, concluding that the statute did not preempt the ordinance. Rodriquez now appeals.

II. ANALYSIS

This Court reviews de novo the trial court's decision on a motion for summary disposition. *Johnson v. Recca*, 492 Mich. 169, 173; 821 NW2d 520 (2012). Whether a statute preempts an ordinance is a question of law, which this Court also reviews de novo. *Ter Beek v. Wyoming*, 297 Mich.App 446, 452; 823 NW2d 864 (2012). A state statute preempts an ordinance when the ordinance either (1) directly conflicts with the statute or (2) the statute completely occupies the field that the ordinance regulates. *McNeil v. Charlevoix Co*, 275 Mich.App 686, 697; 741 NW2d 27 (2007).

First, Rodriquez contends that Ordinance § 42–4(c) and MCL 28.457(1) directly conflict. We disagree. A statute and an ordinance directly conflict when the ordinance permits what the statute prohibits, or when the ordinance prohibits what the statute permits. *McNeil*, 275 Mich.App at 697. For direct preemption to exist, the conflicting

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provisions must address the same subject. See *Frens Orchards, Inc v. Dayton Twp Bd*, 253 Mich.App 129, 137; 654 NW2d 346 (2002). In this case, Ordinance § 42–4(c) does not address fireworks, and MCL 28.457(1) does not address hours of operation. Neither expressly prohibits what the other expressly permits. We conclude that the ordinance and statute do not directly conflict.

Second, Rodriquez contends that MCL 28.457(1) preempts the entire field of regulations involving fireworks. Specifically, Rodriquez contends that the words “any manner” in the statute means that no ordinance may even incidentally affect the sale of fireworks. The Township contends that Ordinance § 42–4(c) does not fall within the field of fireworks regulation. We agree with the Township.

*2 One way in which a statute preempts an entire field is when the statute expressly states that the state's authority in the area of law is exclusive. *People v. Llewellyn*, 401 Mich. 314, 322; 257 NW2d 902 (1977). However, a municipality is not prohibited from enacting ordinances outside the field of regulation, even if the ordinance incidentally affects the regulated field. See *Id.* at 330–331 (stating that a prohibition on adult entertainment would only be incidentally related to the prohibited state field of obscenity).

In focusing solely on the phrase “any manner,” Rodriquez ignores a pertinent rule of statutory construction. This

Court reads the provisions of statutes “reasonably and in context,” and reads subsections of cohesive statutory provisions together. *Robinson v. Lansing*, 486 Mich. 1, 15; 782 NW2d 171 (2010). MCL 28.457(1) prohibits the Township from enacting or enforcing “an ordinance ... pertaining to or in any manner regulating the sale, display, storage, transportation, or distribution of fireworks” When used in this manner, the word “of” indicates that the word that follows is a component or part of the previous word or phrases. *Merriam–Webster's Collegiate Dictionary* (11th ed). The use of the word “of” in this statute indicates that the ordinance in question must “pertain to” or be related in some manner to fireworks. Ordinance § 42–4(c) does not pertain to the sale of fireworks—it pertains to hours that vendors can operate. Unlike the firearm ordinance at issue in *Mich Coalition for Responsible Gun Owners v. Ferndale*, 256 Mich.App 401; 662 NW2d 864 (2003), the local ordinance does not concern the statute's subject matter at all. We conclude that the ordinance does not address a subject matter prohibited by the field of preemption specified in the statute.

We affirm.

All Citations

Not Reported in N.W.2d, 2016 WL 520011

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STATE OF MICHIGAN
MI Court of Appeals

Proof of Service

Case Title: RPF OIL COMPANY V GENESEE COUNTY	Case Number: 344735
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1. Title(s) of the document(s) served:

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Attachment	Table of Contents & Appendix

2. On 11-9-2018, I served the document(s) described above on:

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Mary Massaron Plunkett Cooney 43885	mmassaron@plunkettcooney.com	e-Service

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