

Ohio Municipal League  
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To: Members of the State and Local Government  
and Veterans Affairs Committee

From: John E. Gotherman  
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Re: HB 158

I.

It is true that the federal statutes and rules may preempt municipal ordinances and rules, however with respect to Ohio statutes and administrative regulations affecting municipalities, the test is not preemption, rather it is conflict.

Section 3 of Article XVIII, Ohio Constitution provides that municipalities have authority to exercise all powers of local self government and to adopt and enforce within their limits such police, sanitary and other similar regulations, as are not in conflict with general laws.

To the extent that the provisions of HB 158 involve the use of police powers and are in conflict with municipal regulations, the statute or state regulations are valid. However the state by statute or regulation may not preempt municipal police powers (i.e. regulatory powers).

II.

The provisions of RC 5502.031(A) (3) © ,as proposed in HB 158 and the provisions of division(B) thereof pertaining to municipal authority, constitute an effort to preempt in violation of Article XVIII Sec.3, Ohio Constitution. The test is “ conflict” not preemption. Consequently, as applied to municipal corporations, much of Am. HB No. 158 would be invalid if enacted, as it would be applied to municipalities.

III.

As stated by Stephen J. Smith, Schottenstien, Zox and Dunn, who has previously testified on this bill:

“ While the federal government clearly has the authority to enact these types of rules and regulations, the ability of the State of Ohio to regulate their area is subject to, and limited by, the Home Rule Amendment of the Ohio Constitution.”

IV.

If you have questions I will be pleased to answer them.