

October 28, 1986

REPORT TO THE COMMITTEE ON PUBLIC SERVICES AND SAFETY
"YARDING" OF FOOD VENDING VEHICLES

Arising from the proposal to amend sections 42.0130 and 42.0130.1 of the San Diego Municipal Code dealing with food vending vehicles, your committee asked for our opinion on whether local regulation was preempted by the California Uniform Retail Food Facilities Law, California Health and Safety Code section 27500 et seq. This issue arose from a County of San Diego interdepartmental memorandum by R. B. Redmond quoting comments of Deputy County Counsel Arne Hansen.

We have reviewed the matter with Mr. Hansen who indicates no formal written advice was given on this issue but rather the preemption opinion was a preliminary response from "the top of my head." This being the case, we need not analyze the County correspondence but rather offer our own analysis.

While the California Uniform Retail Food Facilities Law cited above is indeed comprehensive with a legislative intent for uniform regulations (Section 27501), a charter city such as The City of San Diego may regulate in the matter of a municipal affair even in the face of state law. California Constitution, article XI, sections 5 and 7. There is unfortunately no litmus test definition of a municipal affair. *Bishop v. City of San Jose*, 1 Cal.3d 56, 63 (1969).

In this instance however, we need not balance the factors weighing toward municipal regulation for the statute itself invites local regulation.

Sec. 27503. Local regulations

Nothing in this chapter shall prohibit a local governing body from adopting an evaluation or grading system for food facilities, from adopting an employee health certification or employee training program, from prohibiting any type of food facility, or

from regulating food facilities, operations, construction, or the provision of patron toilet and handwashing facilities, not covered by this chapter.

California Health and Safety Code,
section 27503 (emphasis added)

As you asked us to focus on the "yarding" requirement, we

note that Health and Safety Code section 27672(f) does require cold trucks to report to the commissary (storage area) "at least once each operating day" but is absolutely silent on the duration or other "yarding" requirements. Since local regulations are invited per Section 27503 and since "yarding" is not inconsistent with Section 27672, nor addressed in other regulatory sections, we see no conflict between local and state regulations that gives rise to a preemption issue.

"Yarding" not being regulated by the state scheme and the state scheme inviting local regulations in the area of operations not covered by the state, we see no preemption impediment to the local ordinance.

Respectfully submitted,
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