STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 16-40

Authority of Municipality to Decriminalize Marijuana Possession

Question

May a municipality or metropolitan government enact and enforce an ordinance that allows a police officer in lieu of a criminal warrant to issue a municipal citation that carries only a civil penalty of fifty dollars or community service for the offense of possession of one-half ounce or less of marijuana?

Opinion

No.

ANALYSIS

The General Assembly has granted municipalities the authority to exercise police power through several statutory provisions. *See* Tenn. Code Ann. § 6-2-201(22) (mayor-aldermanic charter); Tenn. Code Ann. § 6-19-101(22) (city manager-commission charter); Tenn. Code Ann. § 6-33-101(a) (modified city manager-council charter); Tenn. Code Ann. § 7-3-101 (metropolitan government). Municipalities operating under a private act or charter generally possess similar power. The police power of a municipality "extends to the making of such laws and ordinances as are necessary to secure the safety, health, good order, peace, comfort, protection, and convenience of the state or municipality." *Porter v. City of Paris*, 184 Tenn. 555, 557, 201 S.W.2d 688, 689 (1947).

This broad power notwithstanding, a municipality's authority to regulate conduct pursuant to its police powers is subject to significant limitations. One well-established limitation is that a municipality is not authorized to enact ordinances that conflict with either the federal or state constitution, the statutes of this state, or established principles of common law. *See City of Bartlett v. Hoover*, 571 S.W.2d 291, 292 (Tenn. 1978); *McKelley v. City of Murfreesboro*, 162 Tenn. 304, 309, 36 S.W.2d 99, 100 (1931). Thus, municipal legislation, such as an ordinance like the one contemplated by the question, is preempted if it runs counter to a state statutory scheme. *See Southern Ry. Co. v. City of Knoxville*, 223 Tenn. 90, 98, 442 S.W.2d 619, 622 (1968) (ordinance conflicts with state law when it "infringe[s] the spirit of a state law or [is] repugnant to the general policy of the state"). *See also City of Bartlett*, 571 S.W.2d at 292 (ordinances must be consistent with public legislative policy).

For the reasons explained below, these conflict-preemption principles prevent a municipality from enacting and enforcing an ordinance that allows a police officer to issue a

municipal citation that carries a civil penalty of fifty dollars or community service for the offense of possession of one-half ounce or less of marijuana.

Tennessee Drug Control Act of 1989

The General Assembly has meticulously provided for the regulation of drug offenses in this State. The Tennessee Drug Control Act of 1989 (codified in Title 39, Chapter 17, Part 4 and Title 53, Chapter 11, Parts 3 and 4 of the Tennessee Code) (the "Act") provides for the regulation of drug offenses in this State. As amended, this statutory scheme is patterned after the Uniform Controlled Substances Act,[1] which, in turn, is based in large measure on the Federal Controlled Substances Act, 21 U.S.C. §§ 801 *et. seq*. *See State v. Edwards*, 572 S.W.2d 917, 920 n. 2 (Tenn. 1978). Originally enacted in 1971, the Act "provide[s] for a comprehensive system of drug and drug abuse control for Tennessee . . . ." *See* 1971 Pub. Acts ch. 163 (caption). To this end, the Act regulates the manufacture, distribution, sale, and possession of certain materials defined by the Act to be "controlled substances" – materials commonly referred to as drugs. *See Edwards*, 572 S.W.2d at 918.

Under the Act, controlled substances are classified into several "schedules" that are "based upon the relative potential of each substance for abuse, the degree of physical or psychological dependence its use may engender and its acceptability for medical use in treatment." *State v. Campbell*, 549 S.W.2d 952, 955 (Tenn. 1977). *See* Tenn. Code Ann. §§ 39-17-405 to -416. The Commissioner of Mental Health and Substance Abuse Services, acting with the Commissioner of Health, schedules the controlled substances in conformance with statutory criteria. *See* Tenn. Code Ann. § 39-17-403. Controlled substances within a single schedule are considered to be approximately equal in dangerousness; thus, penalties reflecting the distinctive degrees of danger vary from schedule to schedule within the Act. *State v. Collier*, 567 S.W.2d 165, 167 (Tenn. 1978).

Under Tennessee Code Annotated § 39-17-417, it is an offense to knowingly manufacture, deliver, or sell a controlled substance or to possess a controlled substance with intent to manufacture, deliver, or sell the substance. The penalties for a violation of this provision depend upon the schedule in which the controlled substance is contained. Punishment ranges from a Class B felony and a possible fine up to $100,000 for an offense relating to a Schedule I substance to a Class E felony and a possible fine up to $1000 for an offense relating to a Schedule VII substance. *See* Tenn. Code Ann. §§ 39-17-417(b), -(h). Punishment is greater if specified amounts of certain controlled substances are involved. *See* Tenn. Code Ann. § 39-17-417(i), -(j). Similarly, punishment is enhanced if a violation occurs in an area designated as a drug-free zone. *See* Tenn. Code Ann. § 39-17-432.

The Drug Control Act also makes "simple possession or casual exchange" of a controlled substance unlawful. Under Tennessee Code Annotated § 39-17-418(a), it is an offense to knowingly possess or casually exchange a controlled substance, unless the substance was obtained

[1] Uniform acts are model laws prepared and sponsored by the National Conference of Commissioners on Uniform State Laws (also known as the Uniform Law Commission). Uniform acts are intended to provide states with non-partisan, carefully drafted prototype legislation that brings clarity, consistency, and stability to critical areas of state statutory law. These uniform acts may be adopted in whole or in substantial part by individual states. The Uniform Controlled Substances Act is one such model law and it governs the use, sale, and distribution of drugs in most states.

by a valid order or prescription from a practitioner acting in the course of professional practice. Under Tennessee Code Annotated § 39-17-418(b), it is also an offense to distribute a small amount of marijuana not in excess of one-half ounce. With two exceptions, violation of either of these provisions is a Class A misdemeanor.[2] *See* Tenn. Code Ann. § 39-17-418(c)(1). In addition to these penalties, a person found to have violated this provision of the Act may be required to attend drug offender school or perform community service work at a drug or alcohol rehabilitation or treatment center. *See* Tenn. Code Ann. § 39-17-418(f)(1).

The Act provides for many other specific controlled substance offenses, along with the requisite punishment for each depending on statutory factors.[3] The Act also targets certain individuals when providing for yet other offenses.[4] Additionally, the Act establishes offenses regarding the use and advertisement of "drug paraphernalia" and acts designed to falsify the results of drug tests. *See* Tenn. Code Ann. §§ 39-17-425, -437.

Finally, the Act creates a schedule of mandatory minimum fines for any person who is found to commit any offense created by Title 39, Chapter 17, Part 4. *See* Tenn. Code Ann. § 39-17-428. The fine depends on whether the violation is a misdemeanor or felony offense. *Id*.

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[2] Subsection (d) of Tennessee Code Annotated § 39-17-418 provides that "[a] violation of subsections (a) or (b), where there is casual exchange to a minor from an adult who is at least two (2) years the minor's senior, and who knows that the person is a minor, is punished as a felony as provided in § 39-17-417." Subsection (e) provides that "[a] violation under this section is a Class E felony where the person has two (2) or more prior convictions under this section and the current violation involves a Schedule I controlled substance classified as heroin."

[3] *See* Tenn. Code Ann. § 39-17-422 (prohibits the intentional smelling or inhaling of fumes from any glue, paint, gasoline, aerosol, chlorofluorocarbon gas and other similar substances for unlawful purposes, which include "causing a condition of intoxication, inebriation, elation, dizziness . . . ."); Tenn. Code Ann. § 39-17-423 (offense to sell, manufacture for sale, exchange or distribute counterfeit controlled substances); Tenn. Code Ann. § 39-17-426 (offense to deliver, sell, or possess jimsonweed on school grounds); Tenn. Code Ann. § 39-17-430(b) (unlawful to manufacture or deliver an anabolic steroid or to possess, with intent to manufacture or deliver, an anabolic steroid); Tenn. Code Ann. § 39-17-433 (offense to promote methamphetamine manufacture); Tenn. Code Ann. § 39-17-434 (offense to manufacture, deliver, sell or possess methamphetamine); Tenn. Code Ann. § 39-17-435 (offense to initiate a process intended to result in the manufacture of methamphetamine); Tenn. Code Ann. § 39-17-438 (offense to produce manufacture, distribute, or possess salvia divinorum or certain synthetic cannabinoids); Tenn. Code Ann. § 39-17-452 (offense to produce, manufacture, distribute, sell or possess certain synthetic derivatives or analogues of methcathinone); Tenn. Code Ann. § 39-17-453 (offense to manufacture, deliver, sell, or possess with intent to sell, deliver or manufacture an imitation controlled substance); Tenn. Code Ann. § 39-17-454 (offense to produce, manufacture, distribute or sell controlled substance analogues described in Tenn. Code Ann. § 39-17-454(a) or to possess these analogues with the intent to produce, manufacture, distribute, or sell these substances or to possess or casually exchange these substances in certain amounts); Tenn. Code Ann. § 39-17-455 (offense to manufacture marijuana concentrate by a process that includes use of an inherently hazardous substance); Tenn. Code Ann. § 53-11-401(a)(5) (unlawful for any person to knowingly maintain premises for the purpose of using, keeping, or selling controlled substances).

[4] *See* Tenn. Code Ann. § 39-17-421 (unlawful for persons in the pharmacy industry to dispense drugs that are different than those in an order or a prescription without the approval of the provider, except as provided by the Tennessee Affordable Drug Act of 2005); Tenn. Code Ann. § 39-17-430(a) (unlawful for practitioners to provide anabolic steroids for enumerated prohibited activities); Tenn. Code Ann. § 39-17-431 (regulates persons in the pharmacy industry as to how they dispense any product that contains a methamphetamine precursor); Tenn. Code Ann. § 39-17-440 (unlawful for "[a]ny commercial entity, or the entity's employee or representative acting on behalf of the entity" to sell dextromethorphan to a minor); Tenn. Code Ann. §§ 53-11-301 to -311, -401, -402 (regulation of persons authorized to manufacture, distribute, or dispense controlled substances).

Collected fines are allocated in an intricate manner to benefit several local concerns. *See* Tenn. Code Ann. §§ 39-17-420; 39-17-428(c). Fines are primarily used for various local drug programs. *See id*. Proceeds from the sale of property seized under the Act's forfeiture provisions are used for this purpose, as well. *See* Tenn. Code Ann. §§ 39-17-420; 53-11-451.

In sum, the Tennessee Drug Control Act of 1989 is a comprehensive statutory scheme that defines offenses concerning controlled substances and provides for their punishment through incarceration and an intricate fine and forfeiture system.

A municipal ordinance that attempts to regulate a field that is regulated by state statute cannot stand if it is contradictory to state law. It is well established that an ordinance may be preempted by state law in three manners: (1) express field preemption; (2) implied field preemption, or (3) conflict preemption. A municipality is preempted from regulating a field if the state legislature expressly prohibits municipal regulation, if the state legislature intends state law to exclusively occupy the field, or if the municipal regulation conflicts with state law even if state law is not intended to occupy the field. 56 Am.Jur.2d Municipal Corporations § 316 (2016). 62 C.J.S. Municipal Corporations § 193 (2016). *See City of Bartlett*, 571 S.W.2d at 292; *Southern Ry.*, 223 Tenn. at 98, 442 S.W.2d at 622; *State ex rel. Beasley v. Town of Fayetteville*, 196 Tenn. 407, 415, 268 S.W.2d 330, 333 (1954).

The General Assembly has not expressly preempted the field of controlled substances regulation from all local government regulation as it has with some other "offenses against public health, safety and welfare" in Chapter 17 of Title 39. *See, e.g.*, Tenn. Code Ann. § 39-17-509 (gambling); Tenn. Code Ann. § 39-17-659 (lottery sales). Nevertheless, because the Drug Control Act provides a comprehensive and unified system of drug offense regulation, which includes an integrated penalty and punishment scheme, one could conclude that the General Assembly has impliedly preempted the field with respect to the penalties that may be imposed for drug offenses in this State.[5] But, because the ordinance here conflicts with the Drug Control Act, it is not necessary to find either express or implied field preemption to conclude that the ordinance in question may be neither enacted nor enforced.

Under a conflict-preemption analysis, the Tennessee Supreme Court has explained that municipalities, by ordinance, are not prohibited from exacting additional requirements on a subject covered by state law as long as there is no conflict between the two.

> 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 by-law are not pernicious, as being unreasonable or discriminatory, both will stand, but municipal authorities, under a general grant of

[5] *See O'Connell v. City of Stockton*, 41 Cal.4th 1061, 63 Cal.Rptr.3d 67, 162 P.3d 583, 589 (2007) (court found that California's Uniform Controlled Substances Act "occupie[d] the field of penalizing crimes involving controlled substances" and preempted a municipal ordinance that required the forfeiture of vehicles used to acquire controlled substances regulated by the Act because "[t]he comprehensive nature of the USCA in defining drug crimes and specifying penalties (including forfeiture) is so thorough and detailed as to manifest the Legislature's intent to preclude local legislation regulation").

> power, cannot adopt ordinances which infringe the spirit of a state law or are repugnant to the general policy of the state.
>
> As a general rule, *additional regulation* to that of the state law does not constitute a conflict therewith. 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 prescriptions.

Southern Ry., 223 Tenn. at 98-99, 442 S.W.2d at 622 (internal quotation marks and citation omitted) (emphasis added).

An ordinance that makes possession of one-half ounce or less of marijuana a municipal offense and allows an officer to issue a municipal civil citation in lieu of a criminal warrant is not a permissible "additional regulation." The ordinance covers conduct that is squarely covered by the Drug Control Act. Marijuana is a Schedule VI controlled substance under the Act, *see* Tenn. Code Ann. § 39-17-415(a)(1), and possession of *any* amount of marijuana is an offense under Tennessee Code Annotated § 39-17-418(a). Furthermore, the Act provides that this offense is a Class A misdemeanor, which is punishable by a term of imprisonment up to eleven months and twenty-nine days or a fine up to $2500, or both. *See* Tenn. Code Ann. §§ 39-17-418(c)(1); 40-35-111(e). The mandatory minimum fine is $250 for the first conviction, $500 for the second conviction, and $1000 for the third or any subsequent conviction. *See* Tenn. Code Ann. § 39-17-428(b)(1)-(3). But under the ordinance, a violation, at most, results in a fifty dollar fine or community service. In short, the ordinance displaces the more stringent state law criminal penalties that the General Assembly has prescribed with substantially reduced civil fines by allowing an officer to issue a municipal civil citation, in lieu of a criminal warrant, to an offender.

Our courts have found that a municipality is permitted to impose penalties less than those which state law mandates only when the General Assembly has specifically provided the municipality with the power to adopt a state law offense by ordinance. For instance, municipalities are expressly authorized to adopt various state law traffic offenses. *See* Tenn. Code Ann. § 55-10-307. In *State v. Godsey*, 165 S.W.3d 667 (Tenn. Crim. App. 2004), the court considered a challenge to a Chattanooga ordinance that adopted the state statutory offense of reckless driving. Under state law, reckless driving is a Class B misdemeanor which carries a period of confinement not greater than six months and a fine not to exceed five hundred dollars. Chattanooga's ordinance imposed only a fifty dollar fine for this offense. *Id*. at 671. In finding the ordinance valid, the court observed that another state statute – Tennessee Code Annotated § 6-54-306(a) – limited any penalty the city could impose for violation of an ordinance to thirty days imprisonment and/or forfeitures up to five hundred dollars "to cover administrative expenses." *Id*. at 672. Moreover, the Court noted that article VI, section 14 of the Tennessee Constitution limited any municipal fine to fifty dollars because this provision applies to proceedings involving the violation of a municipal ordinance when the monetary sanction serves punitive goals. *Id*. Accordingly, the Court determined:

> Tennessee Code Annotated § 55-10-307 authorizes incorporated municipalities to adopt by reference "any of the appropriate provisions of § . . . [55-10-205]." The City of Chattanooga's adoption of the elements of the offense of reckless driving

> was a valid exercise of its authority under this section. The implementation of a penalty structure for violators of the municipal ordinance defining the offense of reckless driving was in keeping with the City of Chattanooga's authorized powers to punish offenders. To interpret Tennessee Code Annotated § 55-10-307 otherwise would lead to the futile requirement that a municipality adopt penalties it is without authority to enforce if it wished to adopt any of the enumerated statutory offenses listed in this section.

Id.

In sharp contrast, the General Assembly has not bestowed specific authority upon municipalities to adopt state law offenses created by the Drug Control Act. Thus, there is no implicit authority for a municipality to adopt a state-law controlled-substance offense that imposes lesser penalties than those contained in the Drug Control Act.

Consequently, the ordinance at issue cannot stand because it impermissibly conflicts with the Drug Control Act. *See State v. Carter*, 2016 Tenn. Crim. App. LEXIS 574 at *12 (Tenn. Crim. App. Aug. 8, 2016) ("Municipal ordinances in conflict with and repugnant to a State law of a general character and state-wide application are universally held to be invalid."). The ordinance's significantly lesser penalty provisions are repugnant to the State's policy decision as to the requisite penalties for the offense of marijuana possession. Moreover, the ordinance frustrates the State's ability to enforce the Act's penalty provisions in a unified manner throughout Tennessee, which would result in disparate and impermissibly unequal treatment of offenders. One of the rudimentary objectives of our criminal code is to "[p]rescrib[e] penalties that are proportionate to the seriousness of the offense." *See* Tenn. Code Ann. § 39-11-101(4). The ordinance's lesser penalty provisions run afoul of this objective, as well as the policy objectives of the Drug Control Act.

District Attorney General

The ordinance also conflicts with state law because it interferes with the discretion of a district attorney general to prosecute violations of the Drug Control Act. *See Ramsey v. Town of Oliver Springs*, 998 S.W.2d 207, 210 (Tenn. 1999) (an ordinance conflicts with state law when it impedes the inherent discretion and responsibility of a district attorney general to prosecute violations of state criminal statutes).

A district attorney general is an elected constitutional officer whose function is to prosecute criminal offenses in his or her circuit or district. *Ramsey*, 998 S.W.2d 207, 209 (Tenn. 1999); Tenn. Const. art. VI, § 5. The General Assembly has codified many of the district attorney general's duties and responsibilities, foremost among them being that "[e]ach district attorney general . . . [s]hall prosecute in the courts of the district all violations of the state criminal statutes and perform all prosecutorial functions attendant thereto." Tenn. Code Ann. § 8-7-103(1).

The prosecutor's discretion to seek a warrant, presentment, information, or indictment is extremely broad and subject only to certain constitutional restraints. *Ramsey*, 998 S.W.2d at 209; *State v. Superior Oil, Inc*., 875 S.W.2d 658, 660 (Tenn. 1994). "The District Attorney General

and only the District Attorney General can make the decision whether to proceed with a prosecution for an offense committed within his or her district." *Ramsey*, 998 S.W.2d at 209. "[O]therwise, prosecutorial discretion would rest not with the District Attorney General, but with police officers . . . ." *Id*. at 210.

Consistent with this observation, the Tennessee Supreme Court has held that police officers do not possess the authority to bind prosecutors to nonprosecution agreements between police officers and defendants. *State v. Spradlin*, 12 S.W.3d 432, 436 (Tenn. 2000). The Court reasoned that enforcing an unauthorized promise made to a defendant would undermine the prosecutorial function because the district attorney general, unlike a police officer, is accountable to the county's electorate. Moreover, the Court found that enforcing unauthorized promises between police officers and defendants would "raise serious questions about the officers' power to manipulate the criminal justice system." *Id*. Allowing such agreements "would implicitly approve an ad-hoc system of criminal justice administered by non-elected, albeit sworn, public officials." *Id*. at 437.

Similarly, the Tennessee Supreme Court invalidated a provision in the environmental statutes that required the district attorney general to obtain written authorization from the Water Quality Control Board or the Tennessee Commissioner of Environment and Conservation before issuing a warrant or seeking an indictment for a criminal violation of the Tennessee Water Quality Control Act of 1977. *Superior Oil*, 875 S.W.2d at 660-61. In finding the statutory provision unconstitutional, the Court reasoned:

> The effect of . . . requiring that the district attorney general obtain written authorization from either the Board or the Commissioner before issuing a warrant or seeking an indictment for a criminal violation of the Water Quality Control Act of 1977, is to partially divest the district attorney general of the broad prosecutorial discretion and awesome responsibility inherent in the constitutional office. Although the General Assembly may enact laws prescribing or affecting the "procedures for the *preparation of indictments or presentments*," it cannot enact laws which impede the inherent discretion and responsibilities of the office of district attorney general without violating Article VI, § 5 of the Tennessee Constitution.

Id. at 661 (emphasis original) (internal citations and footnotes omitted).

In a similar manner, the ordinance here usurps a district attorney general's prosecutorial discretion. If a police officer is allowed to issue a municipal civil citation, in lieu of a criminal warrant, for the offense of marijuana possession, a district attorney general is unable to exercise his or her discretion to prosecute the offense as a state law offense under the Drug Control Act.

Violations of ordinances are local civil actions, not state criminal prosecutions. *See City of Chattanooga v. Davis*, 54 S.W.3d 248, 259-260 (Tenn. 2001); *City of Chattanooga v. Myers*, 787 S.W.2d 921, 922 (Tenn. 1990). District attorneys general lack the authority to prosecute municipal ordinance violations. A district attorney general has the statutory duty to prosecute "all violations of the state criminal statutes." *See* Tenn. Code Ann. § 8-7-103(1). The full provision states:

Each district attorney general:

> (1) Shall prosecute in the courts of the district all violations of the state criminal statutes and perform all prosecutorial functions attendant thereto, including prosecuting cases in a municipal court where the municipality provides sufficient personnel to the district attorney general for that purpose.

Tenn. Code Ann. § 8-7-103(1).

The "municipal court" provision in this statute applies only to "state criminal offenses" that are prosecuted in a municipal court.[6] Tenn. Att'y Gen Op. 01-120 (July 31, 2001) ("municipal court" provision in Tennessee Code Annotated § 8-7-103(1) means district attorneys general have no obligation to prosecute violations of state criminal statutes in municipal courts, absent funding from the municipality).

Because district attorneys general lack the authority to prosecute municipal ordinance violations, the ordinance at issue impermissibly "divests" the district attorney general of his or her prosecutorial discretion by allowing the police officer to issue a municipal civil citation, in lieu of a criminal warrant, for the offense of marijuana possession. *See Superior Oil*, 875 S.W.2d at 661. This arrangement "implicitly approve[s] an ad-hoc system of criminal justice administered by non-elected, albeit sworn, public officials" and, therefore, impermissibly infringes upon the district attorney general's prosecutorial discretion. *See Spradlin*, 12 S.W.3d at 437.

Furthermore, a municipal ordinance proceeding could foreclose the district attorney general from bringing a subsequent state criminal action since an ordinance violation comes within the Drug Control Act's "simple possession" provision – Tennessee Code Annotated § 39-17-418(a)(1). The Tennessee Supreme Court has held that civil proceedings may impose sanctions that are "so punitive in form and effect" as to trigger constitutional protections. *See Stuart v. State Dep't of Safety*, 963 S.W.2d 23, 33 (Tenn. 1998). Indeed, in the specific context of a civil proceeding for a municipal ordinance violation, the Court has held that the imposition of a pecuniary sanction triggers the protections of the double jeopardy clause to prevent a second "punishment" in the state courts for the same offense. *See Davis*, 54 S.W.3d at 261. Thus, when a fine is imposed that is intended to be punitive and a deterrent, constitutional protections are triggered. *City of Knoxville v. Brown*, 284 S.W.3d 330, 338 (Tenn. Ct. App. 2008). Because the clear intent of the ordinance here is to punish a person for the possession of marijuana by the imposition of a fine,[7] a district attorney general could be barred from prosecuting the offender in a subsequent state criminal action for a violation of the Drug Control Act.

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[6] Certain municipal courts have original jurisdiction of state criminal actions. *See* Tenn. Code Ann. § 40-1-107.

[7] *See City of Knoxville*, 284 S.W.3d at 338 (finding a fifty dollar fine for running a red light was punitive because it had no remedial purpose and was intended to punish the owner of the vehicle and to deter similar conduct in the future).

For all of these reasons, the ordinance cannot stand because it impedes the inherent discretion and responsibility of district attorneys general to prosecute violations of the Drug Control Act.

In sum, the conflict-preemption principles that are well established in Tennessee's jurisprudence prevent a municipality from enacting and enforcing an ordinance that allows a police officer to issue a municipal citation that carries a civil penalty of fifty dollars or community service for the offense of possession of one-half ounce or less of marijuana. Such an ordinance conflicts with the provisions of the Drug Control Act and with the prosecutorial discretion and responsibilities of the district attorneys general in enforcing the Act.

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