

Single Use Plastic/Paper Bags: Texas Supreme Court Addresses Constitutionality of Local Prohibition



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

06/26/2018

The Texas Supreme Court (“Court”) addressed in a June 22nd decision the validity of a Laredo, Texas ordinance that rendered it:

... unlawful for any “commercial establishment” to provide or sell certain plastic or paper “checkout bags” to customers.

See *City of Laredo, Texas v. Laredo Merchants Association*, No. 16-0748.

The ordinance is described as applicable to commercial enterprises that sell retail goods to the general public and includes the businesses’ employees and associated independent contractors. Violations of the ordinance are punishable as a Class C misdemeanor with a fine up to \$2,000 per day in violation.

The Court describes Laredo’s stated objectives in adopting the ordinance as:

1. promote the beautification of the city through prevention of litter generated from discarded checkout bags
2. reduce costs associated with floatable trash and the maintenance of the municipal separate stormwater sewer system
3. protect life and property from flooding that is a consequence of improper stormwater drainage attributed in part to obstruction by litter from checkout bags

Upon passage of the ordinance, the Laredo Merchants Association (“LMA”) sought declaratory and injunctive relief asserting that it was preempted by Section 361.0961 of the Texas Solid Waste Disposal Act (“Act”). The Act was argued to expressly preclude local governments from prohibiting or restricting “the sale or use of a container or package” if the restraint is for “solid waste management purposes” and the “manner” of regulation is “not authorized by state law.”

Both the City and the LMA moved for summary judgment.

The City’s motion was predicated on the argument that the Act does not clearly and unmistakably preempt a municipality from banning single-use bags. Its argument references the terms “container” and “package” which refer to a closed vessel or wrapping as opposed to bags and that they do not address solid waste management. Instead, the provision was argued to regulate activities occurring before single-use bags become trash. Further, the City argued that the ordinance was authorized by a provision of the Texas Local Government Code which provides the authority to enact regulations to protect streams and watersheds.

The LMA responded that a bag is a container within the meaning of the Act and that the City's related argument is a circumscribed construction of the phrase "solid waste management purposes." Further, the ordinance's purpose was characterized as a systematic control of the generation of a particular form of solid waste and Laredo's exercise of police powers is irrelevant to the preemption inquiry.

The trial court granted Laredo's motion for summary judgment. It held that the ordinance is not void because reasonable constructions exist under which both the Act and the ordinance could be effective. Subsequently, the Court of Appeals reversed, deciding that the Act preempts the ordinance. It determined that a plastic or paper bag is a container or package within the Act's meaning. Further, the ordinance was held to have a solid waste management purpose and effect.

The Court determined that the Court of Appeals correctly decided that the Act preempts the City's ordinance. In supporting its decision, the Court notes that while Laredo possesses the full power of local self-government, Article XI, Section 5(a) of the Texas Constitution provides that home-rule City ordinances must not "contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State."

The Legislative intent in the Act is held to clearly preempt local law. In reaching this decision, it undertook an analysis of the Act and provisions discussing source reduction and the generation of municipal solid waste. Preemption issue is addressed by the Court through an analysis of the Act's relevant phrases, which include:

- for solid waste management purposes
- the sale or use of a container or package
- in a manner not authorized by state law

The Court concludes that each of these phrases are encompassed by the ordinance.

As a result, the Court upholds the Court of Appeals decision that the Act preempts Laredo's ordinance.

A [copy of the opinion](#) can be downloaded here.