Application of Municipal Ordinances
to State Property and Private
Enterprises on State Property

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Issue
Are there situations in which municipal ordinances (e.g., those adopted pursuant to the municipal general powers statute, CGS § 7-148) apply to (1) the state or (2) private enterprises that lease space on state property (e.g., a convenience store in a state office building)?

The Office of Legislative Research is not authorized to issue legal opinions and this report should not be considered one.

Summary
According to informal guidance provided by the Office of the Attorney General (OAG), under the principle of sovereign immunity, municipal ordinances do not apply to the state unless the statute authorizing the ordinance explicitly subjects the state to such ordinance.

Several OAG opinions have relied on this principle when analyzing the application of zoning ordinances to state property lessees. They argue that since the state is not subject to municipal zoning regulations unless a statute explicitly requires the state to comply with such regulations, businesses leasing space from the state and providing a service in furtherance of a governmental function are similarly not subject to municipal zoning regulations. In its informal guidance to our office, OAG suggested that the application of municipal ordinances to private enterprises that lease space on state property would be analyzed in the same manner as OAG has analyzed the application of zoning regulations.
Below we summarize two Connecticut court decisions that found that a generally applicable municipal ordinance concerning wintertime sidewalk maintenance did not apply to state property. (In one case, the court notes that some of the subject state property was leased to private enterprises.) We also summarize related OAG opinions concerning the application of zoning regulations to the state and state property lessees.

Case Law

It is a longstanding principle that the state is subject to statutes only if the statute’s express terms provide for it. This principle was laid out in 1879 in State v. Shelton, in which Connecticut’s Supreme Court said:

“It may be stated we think as a universal rule in the construction of statutes limiting rights, that they are not to be construed to embrace the government or sovereignty unless by express terms or necessary implication such appears to have been the clear intention of the legislature, and the rights of the government are not to be impaired by a statute unless its terms are clear and explicit, and admit of no other construction” (47 Conn. 400, 404–05).

In 1995, Connecticut’s Superior Court held that this rule of construction also applies to municipal ordinances (Gould v. Hartford, 44 Conn. Supp. 389, 399). In Gould, the court had to determine whether a municipal ordinance shifting responsibility for public sidewalk snow and ice removal from the municipality to abutting landowners or the person in possession and control of abutting land applied to state-owned property. Both the statute authorizing the ordinance and the ordinance facially applied to all abutters. However, the court, citing Shelton, held that a municipality could not impose a “substantial” physical and financial burden on the state without the state’s explicit authorization, which the authorizing statute did not contain (Id. at 399-400). (The court also reviewed the statute’s legislative history, which supported the court’s conclusion that the sidewalk maintenance requirement applied only to private property owners.)

The Connecticut Supreme Court considered the same type of snow and ice removal ordinance in 2008. In Rivers v. New Britain, the court determined that the city’s wintertime sidewalk maintenance ordinance could not shift liability for inadequate snow and ice removal to the state in cases where the sidewalk abutted state property (288 Conn. 1, 4). (The decision also notes that some of the state property at issue was leased to private businesses, but it is silent on how the sidewalk maintenance requirement affected them.) It reached this conclusion after examining the authorizing statute and determining that it did not waive the state’s sovereign immunity from liability or suit (Id. at 9). Unlike the Gould decision, the Rivers decision did not address how onerous the ordinance’s burden was.
OAG Opinions

In its informal guidance to our office, OAG suggested that one should analyze the applicability of ordinances to the state and state property lessees under the same principles used to determine whether zoning regulations apply to the state and state property lessees.

A number of OAG opinions address the applicability of zoning regulations to the state. OAG opinions on the subject rely heavily on the 1879 decision in Shelton (see above) and similarly state that the state is not subject to municipal regulation unless the state has specifically subjected itself to such regulation. Similarly, at least four OAG opinions addressing private enterprises on state property reach the same conclusion: businesses leasing space from the state and providing a service in furtherance of a governmental function are not subject to municipal zoning regulations.

None of the opinions weigh the burden the municipal regulation places on the state or its lessee (as in Gould, above). Instead, they maintain that the state and lessees performing a service in support of a governmental function are categorically exempt from zoning regulations.

Examples

In 1949, responding to a question from UConn about the application of zoning regulations to property it intended to use for the School of Social Work, OAG opined that:

“zoning laws cannot be construed to embrace the sovereignty of the State. There does not appear, by express terms or necessary implication in the zoning act [i.e., CGS § 8-2], a clear legislative intent to include the State or impair the rights of the State by zoning regulations” (OAG opinion dated August 22, 1949).

Subsequent OAG opinions cite this one, making clear that the rule laid out in Shelton (see above) must be considered whenever a municipality seeks to exercise zoning authority over the state.

Regarding private enterprises on state property, we found several OAG opinions determining that municipal zoning regulations generally do not apply to them. These opinions extend the state’s immunity from zoning to private enterprises leasing state property when the private enterprise supports a state function. Examples of private enterprises exempt from zoning under this principle include:

1. a hotel located on state-owned airport property and leased to a private operator (“Where a governmental body is entitled to an exemption from zoning laws for a particular function, and it leases part of the premises involved therein to a private individual or corporation, the private lessee is likewise entitled to an exemption...The exemption extends to facilities for the enjoyment of the dedicated use.”) (OAG opinion dated December 10, 1959);
2. the lessee of state park land that operated ski resort facilities ("The improvement of the parking, eating and toilet facilities would be in furtherance of the full enjoyment of the State Park recreational uses providing the public with added conveniences for the full enjoyment of the dedicated use.") (OAG opinion dated July 10, 1963);

3. a shopping center located on UConn property that was convenient for dormitory residents ("It is clear, then, that a University-owned shopping center is similar in nature to the hotel that dispenses alcohol at a state-owned airport.") (OAG opinion dated August 18, 1986 (No. 86-63)); and

4. a transit-oriented development (TOD) project that the Department of Transportation was participating in, and as part of which the state would lease land to a private developer for a combination of public and private development ("Since [prior OAG]... opinions addressed both the governmental function involved and whether the private use contributed to that function, it is important to review here exactly how the planned garage in Stamford will serve a public function... We credit your conclusion that the private and commercial development aspects of the Stamford project are intended to advance the important public purpose served by the TOD legislation.") (OAG opinion dated October 23, 2014 (No. 2014-006)).

JSB:cmg