

'Lawful/Legal' Basis of Ordinances

(Editor's Note: This essay was prepared for a party in Deming, New Mexico. This party is accused of violating simple city ordinances. The following researched document is his reply to the accusations. Although not all cities pertain to Colorado, they nevertheless help us understand the nature of cities, counties, the People, and the role of ordinances.)

The City of Deming, New Mexico is a municipality, an administrative body, an incorporated town with certain privileges but has no Sovereign powers. The City's privileges are quite limited by its master, the State, and like any artificial being, it must petition its master for any privileges it desires.

Since a municipality, city, or town has no sovereignty it cannot create laws pertaining to one who does not come within its purview. It can only enforce the laws of its master (LAWS OF THE STATE). However, the city can regulate those artificial beings it creates or natural persons it employs.

In this case of simple ordinance violation the city of Deming, New Mexico has no authority of law as the Accused is not an employee of the City nor a created being of the City; nor has he a license, permit, or any other agreement or contract with the City. Therefore, this proposed default is in direct violation of the laws of the state and cannot be enforced against this free and natural person.

It is axiomatic that no municipality can create any code that is in conflict with its creator's law.

For example, sister Idaho State Constitution states:

"Any county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws." Article 12, Section 2, Idaho State Const.

This has been upheld numerous times by the Sister State Idaho Supreme Court and a few of the cases are as follows:

"This provision of the Constitution authorizes the council of Boise City to make and enforce ordinances that are not in conflict with the general laws, and forbids the making and enforcing of any ordinance in conflict with the general laws." (emphasis added) In re Ridenbaugh, 5 Idaho 371, 375.

"This power, vested by direct grant, is as broad as that vested in the legislature itself, subject to two exceptions: It must be local to the county or municipality and must not conflict with general laws." (emphasis added) State v. Musser, 67 Idaho 214, 219.

The Boise City Code as in Deming, is administrative in nature, and only applies to those it regulates or employs. If this city code were construed to apply to persons other than those mentioned, it would violate the rights of other classes of persons and exceed its authority under Article 12, Section 2, of the Idaho State Constitution and IC 50-302 which states in part:

"Cities shall make all such ordinances, by laws, rules, regulation (regulations) and resolutions not inconsistent with the laws of the state of Idaho.... to maintain the peace, good government and welfare of the corporation and its trade, commerce and industry."

In this regard, it is only fitting and proper that the city of Deming can regulate those whom it controls. IC 50-302 talks about the "welfare of the corporation and its trade, commerce, and industry." There can be no doubt that the similar codes apply to those artificial entities as well as natural persons hired by the city. However, the City Code cannot be stretched to apply to other persons not within its control (State v. Musser) or there exists a conflict between the State Code and City Code.

Or perhaps the City of Deming believes their code supersedes the N.M. Statutes, and that the N.M. Statutes does not pertain within its geographical boundaries. Therefore, the City code abrogates the State Code. If so, the City's logic is ad absurdum.

Only the legislature can pass general laws or laws of the state as no where in the Indiana Constitution did the Sovereign People give any entity, other than the state legislature, the ability to pass laws of the state. Local municipalities.(counties, cities, and towns) were only authorized to make regulations.

Regulations only pertain to certain classes of persons. Regulations are defined as:

"Such are issued by various governmental departments to carry out the intent of the law." Black's law Dictionary, 5th edition, p. 1156

"Regulations are implementary to existing law." Gibson Wine Co. v. Snyder, 194 F. 2d 329, 331

Regulations then, are things issued to carry out the intent of law but of and by themselves are not law. In short, they can only be considered administrative procedures and edicts.

"Agencies issue regulations to guide the activity of those regulated by the agency and of their own employees and to ensure uniform application of the law." (emphasis added) Black's supra Regulations, within constitutional provisions that municipalities may enforce such local police, sanitary and other regulations as are not in conflict with general laws, refers to rules relating for instance, to operation of a police department,..." (emphasis added) State ex rel. Lynch v. City of Cleveland, 132 N.E. 2d 118, 121

Regulations then, are written to guide a specific agency in its operation, to guide those being regulated by the agency, and to guide the employees of the agency. In the case of the city of Deming, their code is to guide in the operation of the corporation, to guide those controlled by the corporation, and to guide the employees of the corporation----not the Citizenry at large.

"Regulations are not the work of the legislature and do not have the effect of law..."
Black's supra.

"The terms by-laws, ordinances, and municipal regulations have substantially the same meaning, and are the laws of the corporate district made by the authorized body, in distinction from the general laws of the state. They are local regulations for the government of the inhabitants of the particular place. They are not laws in the legal sense, though binding on the community affected. They are not prescribed by the supreme power of the state, from which alone a law can emanate, and therefore cannot be statutes, which are the written will of the Legislature, expressed in the form necessary to constitute parts of the law." (emphasis added) Rutherford v. Swink, 35 S.W. 554, 555.

"An ordinance of a municipal corporation is a local law, and binds persons within the

jurisdiction of the corporation." (emphasis added) Pittsburgh, C., C. & St L. Ry. Co. v. Lightheiser, 71 N.E. 218, 221; Pennsylvania Co. v. Stegemeier, 20 N.E. 843.

"An ordinance is a local law, a rule of conduct prospective in its operation, applying to persons and things subject to local jurisdiction." (emphasis added) C.I.R. v. Schnackenberg, C.C.A., 90 F. 2d 175, 176.

"ordinances...are laws passed by the governing body of a municipal corporation for the regulation of the corporation." (emphasis added) Bills v. City of Goshen, 20 N.E. 115, 117.

"The terms ordinance, by-law, and municipal regulation...are local regulations for the government of the inhabitants of a particular place, and though given the force of law by the charter for the purposes of the municipal government, yet relate to that solely, and prosecutions for their violation have no reference, as a general rule to the administration of criminal justice of the state." (emphasis added) State v. Lee, 13 N.W. 913.

"ordinances are laws of municipality made by authorized municipal body in distinction from general laws of the state and constitute local regulations for government of inhabitants of particular place." (emphasis added) State v. Thomas, 156 N.W. 2d 745.

"...defining the term criminal offense as any offense for which any punishment by imprisonment or fine, or both, may by law be inflicted, a violation of a city ordinance is not a criminal offense...an ordinance being a regulation adopted by a municipal corporation and not a law in the legal sense." (emphasis added) Meredith v. Whillock, 158 S.W. 1061, 1062.

"A city ordinance is not a law of the same character as a statute. It is merely a regulation; a rule of conduct passed by the common council for the direction and supervision of its citizens." (emphasis added) People v. Gardner, 106 N.W. 541, 545.

"An ordinance prescribes a permanent rule for conduct of government." (emphasis added) 76 N.W. 2d 1, 5; 61 A.L.R. 2d 583.

"An ordinance is not, in the constitutional sense, a public law. It is a mere local rule or by-law, a police or domestic regulation, devoid in many respects of the characteristics of the public or general laws." (emphasis added) State v. Fourcade, 13 So. 187, 191; McInerney v. City of Denver, 29 P. 516.

Since regulations are the work of a corporation, they can only apply to members of that corporation. From Sister State Idaho IC 50-302 we know that, for example, the City of Boise can only make regulations:

"to maintain the peace, good government and welfare of the corporation and its trade, commerce and industry."

IC 50-302 does not even mention persons either natural or artificial but it does specifically mention the corporation and its trade, commerce, and industry. Trade commerce and industry are all artificial entities and either licensed by the state and city or are corporations both of which have an agreement with the state or city and through that agreement, those businesses must adhere to the City Code and/or ordinances. However, Natural Citizens who are not engaged in trade, commerce, or industry and do not have any agreements with their state or city, cannot be bound by the City Code as in this case.

Since I am a natural American and not a member of the municipal corporation nor licensed by, nor have any other legal connection with the city, I am therefore not under the provisions of the Ordinances of Deming, New Mexico.

Free and natural Citizens are only subject to the New, Mexico Statutes, the laws of the State under the provisions of thereof that are not in conflict with the Law of the Land (Constitution for the United States of America).

It only follows that if a municipality has the authority to create a code, that code can only apply to its subjects or members. As the code pertains to those persons, it may grant them privileges and regulate their actions but cannot compel a natural American to *waive a right in order to accept a privilege*.

However, as a free and natural person I am not a member, subject, or slave of the municipality and in no way depend upon the City for my welfare, nor am I a corporation, or involved with trade, commerce, or industry (see sister State Idaho IC 50-302) with or within the City of Deming, and I absolutely refuses to enter into any foreign jurisdiction asserted by the City for its subjects, employees, and members.

I would like to remind you that:

"A municipal corporation possesses only such powers as the state confers upon it,...

"Any ambiguity of doubt arising out of the terms used by the legislature must be resolved in favor of the granting power. Regard must also be had to constitutional provisions intended to secure the liberty and to protect the rights of citizens..." (emphasis added) State v. Frederick, 28 Idaho 709, 715.

In this regard, the state legislature must preserve and protect the rights of citizens at all times. The State must maintain legislative power over all citizens throughout the state and therefore the laws of the state are the only laws applicable to natural Citizens.

"It is settled law, that the legislature in granting it, does not divest itself of any power over the inhabitants of the district which it possessed before the charter was granted." Laramie County v. Albany County et al, 92 U.S. 307, 308.

The City is forbidden from making any regulations or from enforcing any ordinance in conflict with the general laws (re Ridenbaugh, Supra) and the general law (IC 50-302) of Idaho has not granted the city of Boise the power to make laws pertaining to free and natural citizens. It can only make regulations to affect its employees and the trade, commerce and industry it regulates.

I, John Q. Public, for all intents and purposes am a merchant and trader At-Law, on a Cash basis, and am a Free and Natural Person. As matters of fact concerning my status I state the following:

1. I operate at the common law on a cash basis, with NO RECOURSE to Standard Lawful Money of the United States.
2. My only means of converting my property (check) into a useable medium is by exchanging my check for other property in the form of Federal Reserve Notes. The requirement for this conversion is an endorsement in the form of my signature.

3. The right to labor, as well as the right to keep and enjoy the fruits of my labor, are inalienable rights guaranteed by the Constitution of the United States. This is my position as concerns my labor, founded upon much research and study of law.

4. I expressly deny and repudiate any enjoyment of a corporate privilege to conduct inter or intra-state commerce that may be presumed from the fact of the above-mentioned conversion.

As shown above, this form of exchange of property is a necessity and not in any wise a convenience, in my circumstance. I demand and assert all my rights at law at all times and waive none of them.

5. I reserve my Common Law right "Without Prejudice" under the Uniform Commercial Code Sections §§ 1-207 & 1-103, not to be compelled to perform under any contract that I did not enter into knowingly, voluntarily, and intentionally, and furthermore, I do not accept the liability associated with the compelled benefit of any un-revealed contract or commercial agreement.

Therefore, I respectfully, but firmly suggest that you withdraw your threats immediately, as I am not intimidated by your staff of attorneys nor your threats. I- will not tolerate being intimidated into subjection/subservience and/or compelled performance at the expense of my Constitutional and unalienable rights, particularly where there is no obligation of acceptance on my part.

Sincerely,

John Q. Public, Pro Per