

MEMORANDUM

TO: Michael Sparks
FROM: Ryan Treffers
DATE: September 24, 2013
RE: Maryland Social Host Laws & State Preemption

SUMMARY: Local governments in Maryland seeking to deter underage drinking parties on private property are not restricted by state underage drinking laws from passing local Social Host ordinances. One city in the state already imposes local penalties for allowing underage drinking on private property. By following best practices, including establishing a civil law, local governments can avoid concerns about state preemption while strengthening policies that will help to reduce underage drinking in their communities.

Question

Does state law addressing underage drinking preempt local governments in Maryland from passing their own Social Host ordinances (SHOs)?

Answer

No. Existing state law addressing underage drinking *does not* preempt local governments in Maryland from passing SHOs. While there are state prohibitions on furnishing to, and possession and consumption of alcohol by, underage persons within the context of private property, these laws are specific in both scope and application. As such, there is no indication – beyond parent/child and religious exceptions – that the legislature sought to preclude local governments from establishing their own policies that further address underage drinking on private property.

Discussion

Because local governments in Maryland are in the best position to determine what authority they have to pass local laws, this document *does not* address whether a specific locality can pass a SHO.¹ Instead, the focus is on whether state laws addressing underage drinking preclude local governmental action.

In Maryland, the method for analyzing whether a state law preempts local law is well settled. “[S]tate law may preempt local law in one of three ways: 1. preemption by conflict, 2. express preemption, or 3. implied preemption.”² A local law is preempted by conflict when it prohibits an activity that is permitted by the state (or vice versa). A local law is expressly preempted when

¹ Generally speaking, local governments are granted authority under their police powers to enact laws that promote the public health, safety and general welfare of their residents, including the protection of their quiet enjoyment of residential property. And while the authority granted to the different types of local government in Maryland (Home Rule, Charter and Home Rule) varies, local authority is likely available for the aforementioned reasons. Therefore, local efforts to pass SHOs should not be initially deterred by the lack of analysis on this specific issue.

² *Altadis U.S.A., Inc v. Prince George’s County*, 431 Md. 307 (2013).

state law explicitly states its intent to occupy a specific field of law. Finally, when a local law seeks to regulate in an area of law already so extensively and comprehensively regulated in by the state it is impliedly preempted.

As for SHOs, they are local laws that seek to deter underage drinking parties. Social host laws impose liability against individuals (social hosts) that allow a group of underage persons from drinking on property they own, rent or otherwise control. This liability may be criminal (jail) or civil (fines). And although SHOs are often closely linked to underage drinking laws prohibiting furnishing, possession, and consumption, a model SHO is distinctly different in that it seeks to impose liability based on the supplying of the venue, not the supplying or consumption of the alcohol. Furthermore best practices dictate that SHOs impose liability against a social host regardless of whether the host knew of the underage drinking on his or her property, that the penalties be civil (and small for a first offense) and imposed administratively for greatest deterrent effect (a faster and more certain process not requiring a trial before imposing a penalty).³

With the exception of situations involving parent/child and religious ceremonies, criminal law in Maryland prohibits on private property the possession and consumption of alcohol by underage persons and the furnishing of alcohol to underage persons.⁴ These two laws, while establishing underage drinking offenses on private property, both primarily focus on an individual's action (the possession or consumption, or the furnishing) and secondarily on the location of the activity. Unlike the SHOs described above that impose penalties merely for hosting an underage drinking party, both of these criminal laws require that the primary offenses of furnishing, consumption or possession be proved in court beyond a reasonable doubt before liability may be imposed against the individual that owns the private property where underage drinking occurred.⁵ These two statutes are the extent of state level laws: there is no state civil law addressing the issue of underage alcohol consumption on private property. Finally, neither statute nor state law more generally includes a policy statement seeking to make the state the sole regulator on the topic.

As a result, state law in Maryland cannot be found to preempt local governments from passing SHOs. Because a local SHO establishes liability in addition to state criminal law, meaning both laws could be concurrently enforced in Maryland, there is no conflict preemption. Because no statement by the Maryland legislature was identified seeking to preempt, there is no express preemption. Finally, because the extent of state law addressing underage drinking on private property in Maryland is limited to only two criminal laws that are primarily focused on individual action rather than location, there does not appear to be implied preemption given the lack of extensive and comprehensive regulation on the subject. However, because the two state statutes are in the criminal code, local governments considering SHOs may best be served to consider laws that are civil, both to follow SHO best practices and more fully avoid any potential concerns regarding preemption. Furthermore, a local ordinance cannot establish penalties for any

³ Additional information about SHOs can be found in *Model Social Host Liability Ordinance*. Available at : http://www.venturacountylimits.org/resource_documents/VCL_Policy01_MSHLO_2010_web.pdf.

⁴ MD Code, Criminal Law, § 10-114 & MD Code, Criminal Law, § 10-117.

⁵ Although the laws are criminal, the penalties are not. Ultimately this is an evidentiary concern and makes prosecution more difficult given the higher burden of proof (beyond a reasonable doubt) for proving guilt.

furnishing, possession or consumption that is allowed under state law, specifically the parent/child and religious exceptions noted above.

On the Ground

Presently, there is one city in Maryland with an ordinance that supports the supposition that local government can pass ordinances seeking to impose penalties for allowing underage drinking to occur on private property. The City of Westminster imposes penalties against land owners that allow “disorderly house nuisances.”⁶ A violation under the ordinance may be found if two or more violations of the state underage drinking laws described above occur on the property. As an example of SHO best practices, this ordinance leaves room for improvement given the need for police to issue citations for furnishing, possession or consumption and number of violations. However, as an example of local government being able to take action in the area of underage alcohol consumption on private property, it is important.

⁶ Westminster, Md. Municipal Code ch. 68.