

Attorney General Opines Local Regulation of Ephedrine and Pseudoephedrine Unlawful

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Amid a surge of interest in recently-passed local government legislation to require a prescription for the purchase of ephedrine and pseudoephedrine products, the Tennessee Attorney General has opined that such local regulation is in violation of Tennessee law. The opinion, No. 13-99, declares that the General Assembly, via T.C.A. § 39-17-431, has preempted the entire field of ephedrine and pseudoephedrine regulation.

The doctrine of preemption states that the law of a superior body can supersede, supplant or negate the law of an inferior body where the latter is inconsistent with or an obstacle to the former. Even without direct conflict, preemption can apply, as it does here, where the state regulatory scheme is so pervasive as to occupy the entire field in a particular area. In determining whether the General Assembly occupied the entire field of ephedrine and pseudoephedrine regulation the Attorney General looked to the Meth-Free Tennessee Act of 2005 and the 2011 I Hate Meth Act, both of which suggest comprehensive state regulation and contain explicit statements of preemption.

With the publication of this opinion Tennessee cities are on notice that, absent legislative action by the General Assembly, any local ordinance attempting to regulate the sale of ephedrine or pseudoephedrine is vulnerable to challenge. While the opinion is not binding, a court considering a challenge to a local ordinance would give it great deference. Any city that has passed or is considering such an ordinance should consult their city attorney.