



Clarification on Provision 5 in Governor Lee's Executive Order no. 29

Tennessee Municipal League | Email message to members 4/25/2020

We have received phone calls and emails from cities seeking clarification and an explanation of the effect of Executive Order No. 29, issued yesterday afternoon. The majority of questions relate to the meaning and effect of Provision 5 of the Order. This morning we spoke with Governor Lee's staff, and we wanted to share their comments with you.

To be certain, inclusion of Provision 5 in the Order has resulted in confusion and any language that involves superseding and preempting local authority always warrants scrutiny.

This provision states, "This Order shall supersede and preempt any emergency order, health order or other order issued by a local official or local governmental entity addressing or otherwise related to COVID-19 ..." Some have read this to mean that any existing local orders that were issued in response to COVID-19 are nullified and that local governmental entities are precluded from issuing such orders in the future.

We have been informed that the scope of the full Order is limited to restaurants. As such, the intent was to clear the field of any local orders inconsistent with the governor's orders (EO 29) relative only to the reopening and operation of restaurants. We are further informed that the language of Provision 5 relating to superseding and preempting local orders addressing COVID-19 was included for the sole purpose of avoiding unintentionally negating or nullifying any other local measure related to restaurants that might exist for reasons that are unrelated to COVID-19.

Therefore, the intent of the Order is to bring about uniformity and continuity in the 89 counties with respect only to the treatment of restaurants. The remaining six counties are free to deviate from the governor's orders relative to restaurants, provided such deviation is spelled out in a local order issued by its county health department -- a city or county government in these six counties may not act independent of its respective county health department.

Any local orders that have been/or may be issued in the future, which address any businesses or issues other than restaurants remain in effect, until or unless they are superseded or preempted by a future EO. We have been advised that another EO will be issued to effectuate the governor's announced plans relative to reopening of the retail industry and that it will include similar language superseding and preempting any local orders in the 89 counties that relate to retail businesses.

We hope that this information responds to your questions and helps to clarify the intent of Provision 5 and the effect of Executive Order No. 29. (Click link to view order.)