

# State vs. Local Regulatory Authority for Confined Feeding Operations

Planning and zoning are local land use functions in Indiana. However, state and federal laws and regulations can preempt, or overrule, local laws and ordinances in two ways. **Express preemption** occurs when a state or federal law explicitly states that a county cannot regulate a particular subject matter. **Implied preemption** occurs when the law does not explicitly state whether it was meant to preempt local laws; however, the regulatory system is so comprehensive that intent of the legislature is implied to preclude local regulation in that area.

With regard to livestock production, limitations on local zoning authority apply to state environmental programs administered by the Indiana Department of Environmental Management (IDEM) and the Office of the Indiana State Chemist (OISC). These agencies comprehensively regulate Indiana livestock producers with programs based upon stringent environmental quality standards to protect human health. Limitations on local zoning regulation of livestock production are governed by the Home Rule statute<sup>1</sup> and the Commercial Fertilizer Law.<sup>2</sup>

## Home Rule Statute

Indiana's Home Rule statute grants local government units "all the powers that they need for the effective operation of government as to local affairs."<sup>3</sup> The Home Rule statute gives local government broad authority, stating that "any doubt as to the existence of a power of a [county, municipality, or township]<sup>4</sup> shall be resolved in favor of its existence."<sup>5</sup>

Despite the broad authority given to local governments, there are several exceptions in the Home Rule statute that set forth limitations. One of these exceptions involves local regulations that affect existing state regulations. The Home Rule statute specifies that local governments do not have "the power to regulate conduct that is regulated by a state agency, except as expressly granted by statute."<sup>6</sup> Under this provision, state regulatory authority preempts local zoning authority in Indiana unless a statute expressly delegates the regulatory authority to the local government unit.

## Commercial Fertilizer Law

The Indiana Commercial Fertilizer Law expressly preempts local regulation of fertilizer, which by statutory definition includes animal manure.<sup>7</sup> Under the Commercial Fertilizer Law, a local unit of government "does not have authority to regulate by ordinance the storage and utilization of fertilizer material" unless it submits proposed manure application regulations to the OISC and receives approval.<sup>8</sup>

## Court Decisions

Indiana courts have drawn a distinction between county ordinances that merely restrict the use of land versus those that attempt to regulate the conduct of an operation. Ordinances that control the specific uses of land have been found a valid exercise of local

zoning authority.<sup>9</sup> However, ordinances that attempt to regulate the environmental impacts of an operation have been preempted by the limitation on Home Rule.<sup>10</sup> Indiana courts have also addressed county authority to implement environmental protection regulations that are stricter than state requirements.<sup>11</sup> These court decisions have consistently held that to the extent a county ordinance attempts to regulate conduct that a state agency already regulates, the ordinance is preempted and unenforceable.<sup>12</sup>

The comprehensiveness of the state regulatory programs in these cases is similar to IDEM's program for confined feeding operations. IDEM regulates the design, construction, and maintenance requirements for manure storage structures and sets forth operational requirements for livestock facilities through detailed nutrient management and manure application requirements. Therefore, it is likely that a court would find that local government is preempted by state regulation from imposing more stringent design and operational standards on confined feeding operations.

## Conclusion

It is helpful to remember that local governments play a critical role in determining **where** a livestock barn may locate while the State has the authority to regulate **how** livestock farms must operate to protect public health and safety. For example, implementing setback requirements and minimum lot sizes are traditional land use tools utilized by counties to regulate the location of livestock farms. Contrarily, an ordinance that mandates the use of a biofilter, an anaerobic digester, or manure injections, without any tie to the location of the facility or a reduction in setback or lot size, could be considered a regulation over how the farm operates or how a facility is constructed, and such regulation would likely be determined as preempted by the state's authority over the design and construction of confined feeding operations and manure storage facilities.

Additionally, local governments should be aware that the Indiana State Board of Animal Health has comprehensive regulations applicable to livestock production in the areas of disease control, food safety, and animal disposal. While these issues do not often relate directly to zoning regulations, it is important to know that these programs exist when facing questions on local regulation of animal care.

## References

1. Ind. Code. § 36-1-3 (2014);
2. Ind. Code § 15-16-2 (2014);
3. Ind. Code § 36-1-3-2 (2014);
4. Ind. Code § 36-1-2-23 (2014);
5. Ind. Code § 36-1-3-3 (2014);
6. Ind. Code § 36-1-3-8(7) (2014);
7. Ind. Code § 15-16-2-11 (2014);
8. Ind. Code § 15-16-2-50 (2014);
9. *O'Banion v. Shively*, 253 N.E.2d 739, 745 (Ind. App. 1970);
10. *Triple G Landfills*, 774 F. Supp. at 532. *Hopkins*, 769 N.E.2d at 608;
11. *Triple G Landfills v. Bd. of Comm'rs of Fountain Cty*, 774 F. Supp. 528 (S.D. Ind. 1991). *Hopkins v. Tipton Cty Health Dept.*, 769 N.E.2d 604 (Ind. Ct. App. 2002). *Bd. of Comm'rs of LaPorte Cty v. Town & Country Utilities*, 791 N.E.2d 249 (Ind. Ct. App. 2003);
12. *Triple G Landfills*, 774 F. Supp. at 532. *Hopkins*, 769 N.E.2d at 604. *Bd. of Comm'rs of LaPorte County*, 791 N.E.2d at 255.