Coates' Canons Blog: Can Cities Keep Ordinance Penalties After Shavitz?

By David Lawrence

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Article IX, section 7 of the State Constitution directs that the clear proceeds of all fines and penalties collected for "any breach of the penal laws of the State" be given to the public schools. Cities have been avoiding this direction by decriminalizing violations of their ordinances, but some city attorneys have been concerned that the Court of Appeals put an end to this practice in its decision in **Shavitz v. City of High Point**, 177 N.C.App. 465 (2006), the red light camera case. I think that's an overreading of the case.

The practice of decriminalizing ordinances arises from a close reading of the constitutional provision and of the Supreme Court's decision in Cauble v. City of Asheville, 301 N.C. 340 (1980). The constitutional provision is concerned with penalties collected for a breach of the penal laws "of the *State*." With the usual local government ordinance, violation is automatically a misdemeanor (or occasionally an infraction) pursuant to G.S. 14-4. Although the penalties at issue in Cauble had been collected for parking violations and were civil in nature, the court pointed out that a violation of Asheville's ordinance remained a misdemeanor under G.S. 14-4. For that reason, the court held, persons paying the penalties were still in breach of a penal law of the State. It is the statute, that is, that makes the ordinance a penal law "of the State." If G.S. 14-4 does not apply to an ordinance, then that ordinance is not a penal law of the State; although it remains clearly penal in nature, it is a penal law only of the city and not of the State. By denying itself the possibility of criminal prosecution for violation of the ordinance, a city is thereby able to keep any penalties collected. (The background to all of this is spelled out in the classic law review article, D. Lawrence, "Fines, Penalties, and Forfeitures: An Historical and Comparative Analysis," 65 N.C.L.R. 49, 77-80.)

In Shavitz the court was faced with a statute that permitted High Point to enforce a state statute against running red lights (**G.S. 20-158[b][2]**) through means of cameras mounted at selected intersections. The High Point statute specifically provided that a violation of the statute shown by such a camera "shall not be an infraction." The intent was to cause such a violation to not be a breach of a penal law "of the State." The court held that violations were subject to Article IX, section 7 anyway. But the reason was that the basic offense was defined by G.S. 20-158(b)(2), which was clearly a penal law, and therefore a violation of the ordinance was also a violation of a State-enacted penal law. As the court wrote, "if money is collected for the transgression of both a municipal ordinance and a coordinate state statute, then the penal laws of our state are implicated and Article IX, Section 7 controls the disposition of the funds."

So understood, Shavitz is really limited to red light camera ordinances. It is a rare ordinance that prohibits the same conduct as it prohibited by a state statute; indeed, normally such an ordinance would be preempted under **G.S. 160A-174(b)(6)**. For the normal sort of city ordinance, then, the Shavitz rationale is inapplicable and therefore, for that sort of ordinance, a city may continue to choose to decriminalize the ordinance and retain the proceeds of any penalties collected because of violation of the ordinance.

David Lawrence is retired from the faculty of the School of Government. For questions about the subject of this blog post, please refer to our **list of faculty expertise** to identify the appropriate faculty member to contact.

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- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_20/GS_20-158.html
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