
CITY OF ALBUQUERQUE

CITY COUNCIL

INTEROFFICE MEMORANDUM

TO: LUPZ Committee
FROM: Bruce Thompson, Policy Analyst
SUBJECT: Opinion on State Preemption of City Regulation of Bail Bond Companies
DATE: September 14, 2011

ISSUE: At the August 10, 2011 meeting of the LUPZ Committee a hearing was held on the adoption of the Downtown Neighborhood Area Sector Development Plan. The Plan proposes to regulate both the location and hours of operation of bail bond businesses. It was asserted by one commentator that the city was preempted by the state law from regulating the location or hours of operation of bail bond businesses. This memorandum looks at the issue of preemption.

ANSWER: The city is not preempted from regulating the location and hours of operation of bail bond businesses.

The Bail Bondsmen Licensing Act 59A-51-1 to 59A-51-19 NMSA 1978 governs the licensing of bail bondsmen and their employees and the performance of the duties of a bail bondsman. The Act has no specific authorization or prohibition on a municipality's ability to regulate bail bond businesses. The Act provides no regulation of the location of bail bond business and no regulation with respect to the hours of operation of a bail bond business.

The New Mexico Constitution provides home rule municipalities with the right to adopt a charter and thereby "exercise all legislative powers . . . not expressly denied by general law or charter." N.M. Const. art. X, § 6(D). Albuquerque is a home rule municipality. Without going through an exhaustive review of cases on preemption, in this case there is no indication of an express or implied intent by the legislature to preempt the city from regulating bail bond businesses with respect to location or hours of operation. There is also no inconsistency between the city's proposed regulation and anything in the state statute.

State regulations regarding bail bondsmen are at 13.20.2 NMAC. There is a provision in the regulations that states:

Every bail bondsman shall have and maintain in this state a place of business accessible to the public where the bail bondsman principally conducts bail bond transactions. The permanent street address of such place shall appear upon the bail bondsman's license, and the bail bondsman shall notify the

superintendent in writing within fifteen (15) days of any change of address. Nothing in this paragraph shall prohibit the bail bondsman from maintaining his place of business in his residence in this state.

There is no indication from this provision of an intent to limit the City's ability to regulate the location of a bail bond business and the proposed regulation is not inconsistent with this provision.