

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

November 16, 2018

Scott Parker, Chairman
Mississippi State Board of Massage Therapy
Post Office Box 20
Morton, Mississippi 39117

Re: Regulation of the Practice of Massage Therapy

Dear Mr. Parker:

Attorney General Hood is in receipt of your request for an official opinion, and it has been assigned to me for research and reply.

Background and Question Presented

Your request states, in part:

Senate Bill 2360 (2001) created the Mississippi State Board of Massage Therapy and established a statewide scheme for regulation of all aspects of the practice of massage therapy. . . .

When the statute was first passed, the following language was found in Section 10 of the bill: "this act does not supersede any regulation adopted by a political subdivision of this state relating to the licensing or regulation of any massage therapist and/or massage establishment." Your office issued an opinion to the City of Olive Branch, Mississippi dated August 17, 2001 which stated that the "local ordinances are not preempted by this state law, and can continue in full force and effect." In that August, 2001 opinion your office also expressed that the determination they made "could lead to circumstances in which those desiring to enter into the practice of massage therapy could possibly be required to comply with dual regulations and/or requirements, some of which may be conflicting." MS AG Op., *Clark* (August 17, 2001).

Since the legislature has removed Section 10, would your office clarify if it maintains the same position that practitioners would be required to comply with dual regulations and/or requirements when the Board is charged under the law with the regulations of the practice of massage in the State of Mississippi.

Applicable Law and Analysis

The preemption language noted above in S.B. 2360, Section 10, subsection 2 was removed from the Mississippi Professional Massage Therapy Act by S.B. 2721 (2004). The general rule regarding preemption is that the power of local authorities to enact ordinances in a given area must be exercised in conformity to and consistent with state law. If a conflict exists, state law prevails. MS AG Op., *Cardin* (January 24, 1997) citing MS AG Op., *Rafferty* (September 24, 1991). To assist in analyzing the preemption issue, we have suggested in prior opinions that the appropriate consideration is whether the local ordinance prohibits what state law allows, or allows what state law prohibits. MS AG Ops., *Cardin* (January 24, 1997); *O'Reilly-Evans* (March 4, 1992).

Conclusion

If a local authority enacts an ordinance which conflicts with the authority of the Board to regulate the practice of massage therapy pursuant to Miss. Code Ann. Section 73-67-1 *et seq.*, state law prevails. The removal of the language in Section 10, subsection 2 of S.B. 2360 (2001) eliminates the exception which permitted a conflicting local ordinance to supersede state law.

Please let us know if this office can be of further assistance.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Elizabeth S. Bolin
Special Assistant Attorney General