OPINION NO. 71-018

Syllabus:

The Ohio Department of Agriculture has exclusive jurisdiction to make sanitary inspections of meat slaughtering and processing establishments in the State of Ohio pursuant to Chapter 918, Revised Code, to the exclusion of municipal regulation of the same functions.

To: Gene R. Abercrombie, Director, Dept. of Agriculture, Columbus, Ohio
By: William J. Brown, Attorney General, May 21, 1971

I have before me the request of your predecessor for my opinion, which reads, in pertinent part, as follows:

> "We would appreciate an opinion from your office whether the Ohio Department of Agriculture retains exclusive jurisdiction for sanitary inspection of meat slaughtering and processing establishments licensed under section 918.08 R.C. to the exclusion of all other municipalities within the state."

Ohio's new meat inspection act, Chapter 918, Revised Code, became effective on July 1, 1969. Those code provisions require licensing of establishments that slaughter cattle, sheep, swine and goats, or otherwise prepare them for food purposes. They further require annual license fees for such establishment.

Prior to such enactment, many municipalities licensed and regulated such establishments pursuant to Article XVIII, Section 3, Ohio Constitution. See City of Dayton v. Jacobs, 120 Ohio St. 225 (1929).

In effect, your question is whether or not the new enactment pre-empts such municipal licensing and regulation, so that one holding a license from the State need not obtain one from the municipality. In that connection, the provisions of Section 918.10, Revised Code, become immediately pertinent. Division (B) of that Section is as follows:

> "(B) Each establishment licensed under division (A) of Section 918.08 of the Revised Code is exempt from any local ordinances, rules, or regulations pertaining to the inspection and sale of animals, carcasses, meat products, or subjects relating thereto."

That provision, in turn, requires a summary of the regulatory scheme so enacted. The Department of Agriculture is required to inspect slaughter houses, meat processors, animals, carcasses and products, and to license establishments engaging in slaughtering and meat processing. All establishments are subject to license, except (1) establishments subject to federal inspection, (2) private and contract slaughtering for family use where no sale is to be made, and (3) such processing as is performed in retail stores on meat theretofore inspected. Section 918.10 (A), Revised Code. Particularly relevant to your question is Section 918.07, Revised Code, providing that meat and meat products for human consumption, produced in accordance with the Chapter, shall be eligible for movement and sale in Ohio. This is as follows:

> "Meat or meat products produced for human food in accordance with Chapter 918. of the Revised Code shall be afforded movement for sale and may be sold throughout Ohio without restriction except as provided in Chapter 918. of the Revised Code."

There is no reason to believe that such language should be read so restrictively as to defeat its plainly expressed intention that state licensing and inspection pre-empts municipal licensing ordinances and regulations. Thus, the question becomes the effect of such statutory exclusion of local regulation in context with the above cited provision of the Constitution (Article XVIII, Section 3). That Section is as follows:

> "Municipalities shall have authority to exercise all powers of local self government and to adopt and enforce within their limits, such local police, sanitary and other similar regulations, as are not in conflict with general laws." (Emphasis added)

The delineation of the limits of State and local power to regulate under the police power has been and remains an extremely troublesome one. An exhaustive review of all the cases in which conflict of powers have been considered is hardly possible in this Opinion. Review of those more immediately pertinent to your question, however, does become necessary.

The early leading case is Village of Struthers v. Sokol, 108 Ohio St. 263 (1923). There, the state prohibition acts and municipal prohibition ordinances overlapped in part, diverged in part, and prescribed different penalties. The defendants were found guilty of ordinance violation. The Court upheld the con-

victions, finding that both sets of enactments had common aims and that one did not authorize what the other prohibited. The second branch of the syllabus is as follows:

> "2. In determining whether an ordinance is in 'conflict' with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa."

In Niehaus v. State, ex rel. Board of Education, 111 Ohio St. 47 (1924), a municipal building department was prevented from charging a fee, required by ordinance, for reviewing and approving plans for a public school where a state statute required such review and approval, on the ground that the power to collect such fee could thwart the operation of the state statute. The second branch of the syllabus is as follows:

> "2. The General Assembly of the state having enacted a general law requiring the building inspection departments of municipalities having a regularly organized building inspection department to approve plans for the construction of public school buildings erected within such municipalities, a municipality is without power to thwart the operation of such general law by the enactment of an ordinance requiring the payment of a fee as a condition precedent to compliance therewith."

The reconciliation of local and general needs has occupied the Supreme Court frequently since. Where direct conflict of regulatory measures occurs, the issue, generally, has been resolved against the local interest. The Neil House Hotel Co. v. City of Columbus, 144 Ohio St. 248 (1944) (invalidating an ordinance setting closing time of bars earlier than that authorized through state statute); State, ex rel. McElroy v. Akron, 173 Ohio St. 189 (1962) (invalidating city licensing of watercraft, licensed under statute expressly forbidding local licensing); Auxter v. City of Toledo, 173 Ohio St. 444 (1962) (invalidating local license for liquor sales, where state license specifically authorized the licensee to sell); and Anderson v. Brown, 13 Ohio St. 2d 53 (1968) (invalidating a local prohibition of trailer courts, where authorization for operation was specifically granted through license issued pursuant to state statute).

On the other hand, where the local regulation affects a different privilege than that conveyed by the State, local preeminence has been recognized. Stary v. Brooklyn, 162 Ohio St. 123 (1954) (upholding ordinance limiting period for individual occupancy in a trailer court, as against state license of the court itself).

Where a statute permits the operation of local regulatory or prohibitory measures, of course, the local interest has been up-

held. State, ex rel. Electric Illuminating Co. v. City of Euclid, 169 Ohio St. 476 (1959) (upholding ordinance, enacted under statutory authorization, requiring underground electric cables); Union Sand & Supply Corp. v. Village of Fairport, 172 Ohio St. 387 (1961) (local limitation of truck weights, lower than those contained in statute, upheld where a statutory authorization existed for municipal action). Statutory limitation on the scope of local action, however, must be observed (The Cleveland Electric Illuminating Co. v. City of Painesville, 15 Ohio St. 2d 125 (1968)), but local action cannot be restrained in the absence of state regulation of the subject matter. Village of West Jefferson v. Robinson, 1 Ohio St. 2d 113 (1965) (upholding an ordinance regulating door to door salesmen against a statute ostensibly limiting local ordinance powers).

Here, the statutes prescribing and regulating slaughtering and meat processing specifically authorize meat and meat products produced in accordance with such regulations to be moved and sold throughout the state (Section 918.07, supra) and specifically exempt establishments so licensed from local ordinances, rules or regulations pertaining to inspection and sale of such items (Section 918.10 (B), supra). Such provisions constitute the effective exercise of state pre-emption (State, ex rel. McElroy v. Akron, supra; Auxter v. City of Toledo, supra; and Anderson v. Brown, supra), so as to invalidate local ordinances not otherwise permitted by statute (cf. Union Sand & Supply Corp. v. Village Fairport, supra), but only in as far as local ordinance may purport to regulate the same activities as the statute (cf. Stary v. Brooklyn, supra).

In specific answer to your question, it is my opinion that the Ohio Department of Agriculture has exclusive jurisdiction to make sanitary inspections of meat slaughtering and processing establishments in the State of Ohio pursuant to Chapter 918, Revised Code, to the exclusion of municipal regulation of the same functions.