



and (2) it purports to include every law and regulation of the State of Illinois, not just the Smoke Free Illinois Act, which violates Dillon's Rule. For the following reasons, we affirm.

¶ 3

### BACKGROUND

¶ 4

The Smoke Free Illinois Act (410 ILCS 82/1 to 75 (West 2010)) became effective January 1, 2008. The act is intended to eliminate health risks associated with indoor exposure to second hand smoke. 410 ILCS 82/5 (West 2010). Section 15 of the Smoke Free Illinois Act prohibits smoking "in a public place or in any place of employment or within 15 feet of any entrance to a public place or place of employment." 410 ILCS 82/15 (West 2010). Section 15 requires an owner of indoor public places and workplaces to reasonably assure that smoking is prohibited unless specifically exempted by section 35 of the Smoke Free Illinois Act. *Id.* None of the exemptions in section 35 are relevant to the present appeal. 410 ILCS 82/35 (West 2010).

¶ 5

The legislature designed the Smoke Free Illinois Act to be enforced administratively, not in criminal proceedings. *People v. Kane*, 397 Ill. App. 3d 851, 856, 924 N.E.2d 1120, 1124-25 (2010). Enforcing agencies are empowered under the statute to assess fines. *Id.* at 856, 924 N.E.2d at 1125 (citing 410 ILCS 82/40 (West Supp. 2007)). However, the statute also authorizes "[a]ny home rule unit of local government, any non-home rule municipality, or any non-home rule county within the unincorporated territory of the county" to regulate smoking in public places, but the regulation must be "no less restrictive than [the Smoke Free Illinois] Act." 410 ILCS 82/65(a) (West 2010).

¶ 6

Effective January 14, 2010, Vandalia's city council passed Ordinance No. 2010-1-4-A (the ordinance), which concerns business licenses issued by the city.

Section II of the ordinance provides as follows:

"Any licensee of the City of Vandalia may be fined not less than \$100.00 nor more than \$500.00 for any of the following causes.

\* \* \*

H. The occurrence upon the licensed premises of an event, activity or circumstance which shall be or constitute an event, activity or circumstance otherwise prohibited by the provisions of this Code or the laws or applicable regulations of the State of Illinois."

¶ 7 The defendant in the present case owns and operates a tavern within the city limits of Vandalia. The defendant operates the tavern under the business name "Redwood Inn" and pursuant to a liquor license issued by Vandalia. On August 12, 19, and 21, 2010, officers from the Vandalia police department went to the Redwood Inn to look for people smoking inside the tavern, and they witnessed at least one patron smoking a cigarette indoors on each of those occasions. On September 17, 2010, Vandalia filed three complaints against the defendant. Each complaint alleged that smoking occurred inside the Redwood Inn on a specific date in August 2010 and that the defendant and its employees failed to reasonably assure that smoking was prohibited on the premises on those occasions. The complaint alleged that the defendant violated the ordinance because the defendant or its employees' failure to keep patrons from smoking indoors at the Redwood Inn was an event, activity, or circumstance that was prohibited by the Smoke Free Illinois Act. Therefore, the smoking was an event, activity, or circumstance otherwise prohibited by the laws or applicable regulations of the State of Illinois.

¶ 8 The defendant filed a motion to dismiss Vandalia's complaints, raising a number of issues, including that the ordinance violates section 65(a) of the Smoke

Free Illinois Act (410 ILCS 82/65(a) (West 2010)) because it is less restrictive than the statute.<sup>1</sup> This argument is the main focus of the parties in this appeal.

¶ 9 Section 65(a) of the Smoke Free Illinois Act specifically provides as follows: "Any home rule unit of local government, any non-home rule municipality, or any non-home rule county within the unincorporated territory of the county may regulate smoking in public places, *but that regulation must be no less restrictive than this Act.*" (Emphasis added.) 410 ILCS 82/65(a) (West 2010).

¶ 10 In its motion to dismiss, the defendant argued that the ordinance was "less restrictive" than the Smoke Free Illinois Act because the Smoke Free Illinois Act applied to all public places, including public places and workplaces that are not operated under a business license issued by the city. The ordinance, however, applies only to the premises of licensees. Therefore, the defendant argued, because the ordinance is less restrictive than the statute, it is unenforceable.

¶ 11 In denying the defendant's motion to dismiss, the circuit court ruled as follows: "[The defendant] argues that the act is invalid under [s]ection 65(a) because it is less restrictive than the provisions of the Smoke Free Illinois Act. Section 65(a) allows a non-home rule municipality to essentially ban smoking in public places, so long as that ban is not less restrictive than the provisions of the act. [Vandalia] responds that it is not less restrictive, because the mandates of the act are applicable to all of its licensees, not just bars. This is an issue that I thought long and hard about.

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<sup>1</sup>The defendant also argued that the form of the complaint was deficient, that the circuit court lacked jurisdiction over the case, and that the Smoke Free Illinois Act was unconstitutional. The defendant does not raise any of these contentions on appeal. In addition, in its motion to dismiss, the defendant did not raise any constitutional challenges to the ordinance itself.

I came to the conclusion that [Vandalia] can only control what it has the authority to control. And [Vandalia] only has the authority to control what smoking occurs in its licensed buildings or via its licensees. So I can't find that because [Vandalia] makes this smoking regulation applicable to all of its licensees that it is less restrictive. So I'm finding that that argument fails as well."

¶ 12 The matter proceeded to a jury trial on December 1, 2011. At the conclusion of Vandalia's evidence and again at the conclusion of all of the evidence, the defendant moved for a directed verdict for reasons alleged in its motion to dismiss. The trial court denied the motions. The jury subsequently found that the defendant was guilty of violating the ordinance on August 12, 19, and 21, 2010, and the defendant was assessed a \$500 fine for each violation. The defendant now appeals.

¶ 13 ANALYSIS

¶ 14 On appeal, the defendant argues that Vandalia's ordinance is less restrictive than the Smoke Free Illinois Act and, therefore, is unenforceable because the ordinance violates section 65(a) of the statute. The defendant argues that the ordinance violates Dillon's Rule because Vandalia, a non-home-rule municipality, has no authority to regulate smoking except as authorized in the Smoke Free Illinois Act.

¶ 15 The defendant raised this argument in a motion to dismiss Vandalia's complaints and in motions for a directed verdict. The issue raises a question of statutory interpretation that we review under the *de novo* standard. *Taddeo v. Board of Trustees of the Illinois Municipal Retirement Fund*, 216 Ill. 2d 590, 595, 837 N.E.2d 876, 879 (2005). In addition, an adverse ruling on a motion for a directed verdict is also reviewed under the *de novo* standard. *Evans v. Shannon*, 201 Ill. 2d 424, 427, 776 N.E.2d 1184, 1186 (2002).

¶ 16 Our construction of the phrase "no less restrictive" in the Smoke Free Illinois

Act is governed by well-established principles. "Our primary goal when interpreting the language of a statute is to ascertain and give effect to the intent of the legislature." *Taddeo*, 216 Ill. 2d at 595, 837 N.E.2d at 879. Because all provisions of a statutory enactment are viewed as a whole, words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute. *In re Detention of Lieberman*, 201 Ill. 2d 300, 308, 776 N.E.2d 218, 223 (2002). Accordingly, in determining the intent of the legislature, the court may properly consider not only the language of the statute but also the reason and necessity for the law, the evils sought to be remedied, and the purpose to be achieved. *Id.*

¶ 17 The Smoke Free Illinois Act expressly grants non-home-rule municipalities, such as Vandalia, the authority to regulate smoking in public places as long as the municipality's regulation of smoking is no less restrictive than the statute. We believe that in order to construe the statutory language "no less restrictive," we must consider the powers of non-home-rule municipalities.

¶ 18 The power of a non-home-rule municipality is restrained by "Dillon's Rule." *People ex rel. Ryan v. Village of Hanover Park*, 311 Ill. App. 3d 515, 524, 724 N.E.2d 132, 138 (1999). "Under [Dillon's Rule], non-home-rule municipalities may only exercise powers granted by law or by the Illinois Constitution." *Id.* Non-home-rule municipalities possess "only those powers expressly granted, powers incident to those expressly granted, and powers indispensable to the accomplishment of the declared objects and purposes of the municipal corporation." *Pesticide Public Police Foundation v. Village of Wauconda*, 117 Ill. 2d 107, 112, 510 N.E.2d 858, 861 (1987).

¶ 19 In the present case, the ordinance at issue was used to enforce the Smoke Free Illinois Act which expressly authorizes non-home-rule municipalities to pass

ordinances that are no less restrictive than the statute. In construing the meaning of the phrase "no less restrictive," our task "is to ascertain and give effect to the intent of the legislature." *Landis v. Marc Realty, L.L.C.*, 235 Ill. 2d 1, 6, 919 N.E.2d 300, 303 (2009). "The best indicator of the legislature's intent is the language used in the statute, which must be accorded its plain and ordinary meaning." *Id.* Statutory language that is clear and unambiguous is applied as written without resorting to extrinsic aids of statutory construction. *Id.*

¶ 20 The defendant argues that the ordinance is invalid because it bans smoking only in "licensed premises." The defendant maintains that the regulation of only licensees is less restrictive than the Smoke Free Illinois Act because the statute applies to all public places. We disagree.

¶ 21 "Ordinances are presumed valid, and the party challenging an ordinance \*\*\* bears the burden of proving invalidity." *Village of Northfield v. BP America, Inc.*, 403 Ill. App. 3d 55, 58, 933 N.E.2d 413, 417 (2010). "[A] non-home-rule unit may regulate in a field occupied by state legislation when the Constitution or a statute specifically conveys such authority." *Village of Sugar Grove v. Rich*, 347 Ill. App. 3d 689, 694, 808 N.E.2d 525, 530 (2004). When exercising authority to regulate in a particular field, the non-home-rule unit may not adopt an ordinance that infringes upon the spirit of the state law or is repugnant to the general policy of this state. *Id.* The test for whether a municipal ordinance infringes upon state law or is repugnant to the general policy of this state is, in part, whether the ordinance permits an act that the state statute prohibits.<sup>2</sup> *Metropolitan Sanitary District of Greater Chicago v.*

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<sup>2</sup>The test is also whether the ordinance prohibits that which the State permits (*United States Brewing Co. v. Village of Alsip*, 81 Ill. App. 2d 235, 243, 225 N.E.2d 430, 434 (1967)), but that portion of the test is not relevant in the present case because the legislature

*Village of Romeoville*, 87 Ill. App. 3d 58, 60, 409 N.E.2d 131, 133 (1980), *rev'd on other grounds*, 86 Ill. 2d 213, 427 N.E.2d 170 (1981).

¶ 22 In interpreting the phrase "no less restrictive," we believe that the legislature did not require a non-home-rule municipality's ordinance to apply to every public place within its boundaries before it can be valid. Instead, we believe that the legislature intended that any ordinance passed pursuant to section 65(a) not infringe upon the coverage and spirit of the Smoke Free Illinois Act or be repugnant to the statute's general policy. Accordingly, in the present case, we do not believe that the ordinance that bans indoor smoking only inside licensed premises is invalid. Although Vandalia's ordinance applies only to the premises of business licensees, the ordinance does not purport to grant indoor smoking privileges to patrons of nonlicensed premises. Licensees must comply with the terms of the Smoke Free Illinois Act or face a fine under the ordinance or administrative enforcement pursuant to the Smoke Free Illinois Act. Therefore, the ordinance is not less restrictive with respect to licensees.

¶ 23 With respect to nonlicensees, they must also comply with the terms of the Smoke Free Illinois Act, and nothing in the ordinance infringes upon or is repugnant to the State's administrative enforcement of the statute with respect to nonlicensed premises. Accordingly, the ordinance is also not "less restrictive" with respect to nonlicensed premises. It does not purport to permit anything that is prohibited under the Smoke Free Illinois Act. For these reasons, we do not believe that the ordinance is invalid under section 65(a) of Smoke Free Illinois Act based on an argument that

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requires only that a municipality's nonsmoking ordinance be "no less restrictive" than the Smoke Free Illinois Act. It does not prohibit a non-home-rule unit from passing a smoking ban that is more restrictive than the statute.

the ordinance is "less restrictive."

¶ 24 In its brief, the defendant notes that the ordinance incorporates all of the laws and regulations of the State of Illinois. The defendant argues that a "non-home rule municipality has no business assuming that it can incorporate all laws of the State of Illinois as part of its ordinances" and that Vandalia's ordinance "presumes that the City's powers are as co-extensive as the State's." The defendant does not develop this argument under any constitutional or statutory theory except Dillon's Rule and the "no less restrictive" language in section 65(a) of the Smoke Free Illinois Act. For the reasons noted above, we do not find this argument to be persuasive.

¶ 25 We do have concerns with the validity of the broad, sweeping language with respect to Vandalia's purported authority to enforce every law and regulation in the State of Illinois with respect to licensed premises. However, in the present case, under the specific challenges raised on appeal, we are only concerned with application of the ordinance to enforce the terms of the Smoke Free Illinois Act against licensees. Under Dillon's rule, an ordinance enacted under powers conveyed by a statute must not conflict with the spirit and purpose of the statute. *Janis v. Graham*, 408 Ill. App. 3d 898, 902, 946 N.E.2d 983, 987-88 (2011). When there is a conflict between the statute and an ordinance, the ordinance must give way. *Id.* at 902, 946 N.E.2d at 988. Under the reasons noted above, we do not believe that the ordinance conflicts with the spirit and purpose of the Smoke Free Illinois Act.

¶ 26 We also note that we must uphold the validity of an ordinance when reasonably possible and will resolve doubts of its construction in favor of its validity. "In construing the validity of a municipal ordinance, the same rules are applied as those which govern the construction of statutes." *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 306, 891 N.E.2d 839, 846 (2008). We have a duty to uphold a statute when

reasonably possible, and if a statute's construction is doubtful, a court will resolve the doubt in favor of the statute's validity. *Id.* at 306-07, 891 N.E.2d at 846. Likewise, we resolve any doubt in favor of the validity of Vandalia's ordinance.

¶ 27 In the present case, under Dillon's Rule, the focus of our analysis is whether the ordinance is repugnant to the legislature's intent in passing the Smoke Free Illinois Act. We are not asked to analyze the ordinance under any other statutory or constitutional theory. Because Vandalia's ordinance does not conflict with the Smoke Free Illinois Act, we do not believe that the ordinance violates Dillon's Rule under the particular circumstances presented in this case. In reaching this conclusion, we offer no opinion on whether the ordinance can be used to enforce any other Illinois laws or regulations without violating Dillon's Rule or whether the ordinance is invalid under any other constitutional or statutory theory.

¶ 28 CONCLUSION

¶ 29 For the foregoing reasons, the circuit court's judgment is hereby affirmed.

¶ 30 Affirmed.