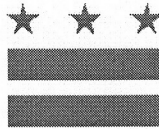


GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

August 10, 2005

Cody Rice
Commissioner, ANC 6A03
310 9th Street, NE
Washington, D.C. 20002

Re: Whether District noise regulations apply to churches

Dear Commissioner Rice:

This responds to your letter of May 10, 2005 regarding the District's noise control regulations. In your letter you ask: (1) what the statutory and/or legal basis is for Title 20, § 2704.10 of the District of Columbia Municipal Regulations (DCMR), which partially exempts churches from noise regulations; (2) whether this exemption can be reconciled with the stated purpose of District noise regulations to protect residents from detrimental noise levels; and (3) whether the exemption for churches contained in the Noise Control Act of 1977 is overridden by the provision against certain noises over 60 dB(A) within the Noise Control Amendment Act of 1996. As you have not provided us with any facts, this letter will only provide a general interpretation of the relevant statutes and regulations.

1. "What is the statutory and/or legal basis for [20 DCMR] § 2704.10 which states that 'Church bells or music connected with worship or official church ceremonies shall be exempt?' Is this an exemption that was specifically required through the enabling legislation? Would this exemption cover a choir practice?"

The legal basis for 20 DCMR § 2704.10 comes from section 5(b)(11) of the District of Columbia Noise Control Act of 1977 (Noise Control Act), effective December 9, 1977, which states in relevant part that "[c]hurch bells or music connected with worship or official church ceremonies shall be exempt." The language in the statute is identical to the language in the regulation. The Noise Control Act itself is codified in this portion of the DCMR, not in the D.C. Official Code as most other statutes are.¹ In other words, though its codification is in the DCMR rather than the D.C. Official Code, the church

¹ In addition to its absence in the D.C. Official Code, a later amendment to the Noise Control Act actually references the DCMR codification as it also amends the organic law.

exemption nevertheless is statutory in nature and accordingly carries the full weight of Council-enacted law.² It serves as its own enabling legislation.

As to the regulation's application, choir practice would certainly be exempted from the noise regulations because it is "music connected with worship."

2. "How can this exemption, which is not limited by hours or maximum levels, be reconciled with the general purpose of the regulation to protect residents from noise levels that are detrimental to life, health, and enjoyment of property?"

There is no legal conflict between the exemption and the general purpose of the regulation or statute. In your letter you correctly quote the purpose of the regulation as follows: "It is the declared public policy of the District that every person is entitled to ambient noise levels that are not detrimental to life, health, and enjoyment of his or her property." 20 DCMR § 2700.1. Section 2 of the Noise Control Act outlines the purpose of the statute in similar terms: "to control noise levels in the District of Columbia so as to preserve, protect and promote the public health, safety and welfare, and the peace and comfort of the inhabitants of the city...."

Similar general-purpose policy statements are frequently found at the beginning of legislation and it is a basic principle of statutory interpretation that specific statutory requirements override general statements of policy. See *First Nat'l City Bank v. Compania De Aguaceros, S. A.*, 398 F.2d 779, 785 (5th Cir., 1968), *Kimbrell v. Fischer*, 15 F.3d 175 (Fed. Cir., 1994) and *Cuyahoga Metropolitan Housing Authority v. Cleveland*, 342 F. Supp. 250, 254 (D. Ohio, 1972). The Council of the District of Columbia evidently made the legislative determination that the typical noises emitted from churches do not endanger the public health, safety, and welfare. In any event if the exemption for churches is arguably inconsistent with the Noise Control Act's purpose, the specific provisions of that statute, including the exemption for churches, override any general policy goals described in the statute.

3. "Is it correct that the exemption [for churches] would not include 'Noise resulting from the musical instruments, loudspeakers, amplifiers, and unamplified voices' as described in [20 DCMR] § 2800.1 and subject to the maximum noise levels [of] '60 db(A) at a distance of not less than one meter from outside the establishment' at any time per § 2800.4?"

The second regulation that you cite, 20 DCMR § 2800.4, is no longer included in the DCMR. The subsection was erroneously included in an earlier edition of the DCMR and has since been removed per the publication of the Erratum Notice at 48 DCR 11747 by the Office of Documents and Administrative Issuances. 48 DCR 11747 (Dec. 28, 2001). Therefore, we will not further address this subsection.

² While the legal authority for the church exemption is clear, the entirety of the noise regulations contained in 20 DCMR §§ 2700 – 2899 derive their legal authority from numerous sources including statutes and rulemakings. A complete list of authority for the regulations not discussed herein can be found at the end of 20 DCMR § 2700 and the end of 20 DCMR § 2800.

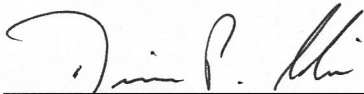
Turning to the remainder of your question, Title 20, § 2800.1 of the DCMR, is authorized by the Mayor's inherent power to adopt implementing rules under the Noise Control Act and section 442 of the Home Rule Act, approved Dec. 24, 1973, Pub. Law 93-198, 87 Stat. 801, D.C. Official Code § 1-204.22 (2004 Supp.). You suggest that § 2800.1 might conflict with the church exemption were a church, for instance, to use musical instruments or loudspeakers.

As noted above, the church exemption, 20 DCMR § 2704.10, derives directly from the Noise Control Act, while § 2800.1 is a rule promulgated by the Mayor. The mandate of a statute is generally superior to the mandate of executive rulemaking if there is a conflict, with certain exceptions that are not relevant here. Thus, the church exemption limits § 2800.1, not, as you suggest, the other way around.³

If you have any questions with regard to this memorandum, please do not hesitate to contact Darrin P. Sobin, Assistant Attorney General, Legal Counsel Division, at 724-5560.

Sincerely,

ROBERT J. SPAGNOLETTI
Attorney General



By: DARRIN P. SOBIN
Assistant Attorney General
Legal Counsel Division

RJS/dps

(AL-05-325)

³ It should be noted that 20 DCMR § 2800.2 similarly restricts the use of "any musical instrument or device, loud speaker, sound amplifier, or other similar device, or unamplified voice." Unlike § 2800.1, however, § 2800.2 is contained in Section 2(e) of the Noise Control Act, as amended by the Noise Control Amendment Act of 1996 (Noise Control Amendment Act), effective July 19, 1996, D.C. Law 11-161, 20 DCMR § 2800.2, and therefore carries the weight of Council-enacted law. Accordingly, a different interpretative analysis is necessary.

To begin, section 2(e) (20 DCMR § 2800.2) is an amendatory act and, as such, it is presumed to not "change existing law further than is expressly declared or necessarily implied." Norman J. Singer, Statutes and Statutory Construction, § 22:30 (6th ed. 2002). Though the Noise Control Amendment Act prohibits "any noise disturbance by the operation or use or playing of any musical instrument or device...or unamplified voice," the key phrase is "noise disturbance." According to the exemptions already written into the Noise Control Act, "church bells or music connected with worship," do not constitute a "noise disturbance." Further, the inclusion of musical instruments, loud speakers, amplifiers and unamplified voices within the Noise Control Amendment Act was likely intended to regulate the use of this equipment for entertainment purposes and was not intended to overrule the exemption for churches.

This conclusion is reinforced by the principle of statutory construction that repeals by implication are disfavored and that all parts of a statute should be construed in harmony in order to give all the maximum possible effect. See, e.g., *Luck v. D.C.*, 617 A.2d 509, 514 (D.C. 1992). Therefore, like § 2800.1, § 2800.2 does not override the exemption for churches.