GENERAL BUSINESS LAW §§ 40, 46, 48(1); MUNICIPAL HOME RULE LAW §§ 10(1)(ii)(a)(12), 10(1)(ii); VILLAGE LAW § 4-412(1)(a); PENAL LAW § 1590; SESSION LAW 1960, ch. 981; 1980, ch. 790; 1981, ch. 206; 1981, ch. 977; 1984, ch. 427; 2005, ch. 651

The interest rate and redemption period provisions of sections 46 and 48 of the General Business Law, relating to collateral loan brokers, are preemptive.

January 13, 2012

Anthony M. Cerreto
Village Attorney
Village of Port Chester
222 Grace Church Street
Port Chester, New York 10573

Informal Opinion
No. 2012-3

Dear Mr. Cerreto:

You have requested an opinion concerning the validity of the Village's local code provisions prohibiting collateral loan brokers (called "pawnbrokers" in the Village's provisions) from imposing certain loan terms that are permitted under state law regulating such brokers. The village code (adopted in 1966 by local law) prohibits a collateral loan broker from charging an interest rate that exceeds 3% for the first six months of the loan; the maximum interest rate decreases thereafter. The village code also prohibits a pawnbroker from selling any pawn or pledge until it has remained one year in the pawnbroker's possession. In contrast, the comparable state provisions governing collateral loan brokers (adopted in 1960 and subsequently amended) are less restrictive. State law prohibits a collateral loan broker from charging an interest rate that exceeds 4% for up to 15 months and for any extension, up to 15 months, made at the request of the pledgor. General Business Law § 46. And state law prohibits a pawnbroker from selling a pawn or pledge until it has remained four months in the broker's possession. *Id.* § 48(1).

We are of the opinion that the village code provisions are not valid. We conclude that while the village code provisions fall within the home rule authority of the village and are not necessarily inconsistent with state law, they are preempted by state law because the State Legislature has expressed a clear intent to establish statewide uniformity and to preempt local regulation on this subject.

In general, villages are authorized to adopt local laws relating to the protection, order, conduct, safety, health and well-being of persons or property within the village. Municipal Home Rule Law § 10(1)(ii)(a)(12); *see also* Village Law § 4-412(1)(a). This includes the power to adopt local laws providing for the regulation or licensing of occupations or businesses. Municipal Home Rule Law § 10(1)(ii)(a)(12). Such a local law, however, must be consistent with the State's general laws, and not be precluded by the State Legislature. Municipal Home Rule Law § 10(1)(ii).

We believe that the Village's proscriptions relating to pawnbrokers fall in the first instance within its home rule authority. Moreover, the local code provisions are not necessarily inconsistent with the relevant General Business Law provisions simply because the Village's provisions are more restrictive. A local law that is more stringent than state law governing the same area can be consistent with the state law. For example, in *Vatore v. Commissioner of Consumer Affairs*, 83 N.Y.2d 645 (1994), the Court upheld a local law that imposed greater restrictions on the locating of cigarette vending machines than state law imposed. In *Jancyn Mfg. Corp. v. County of Suffolk*, 71 N.Y.2d 91 (1987), the Court of Appeals upheld a local law regulating cesspool additives more stringently than state law. Thus, in each case the Court held that a local law could properly extend the protection provided by state law. The Village's local law regulating the terms of loans offered by pawnbrokers similarly extends the protection provided by state law to consumers who obtain collateral loans.

A local law is inconsistent with a state statute, however, even in the absence of an express conflict, when the State Legislature has preempted local legislation in the field. *Albany Area Builders Ass'n v. Town of Guilderland*, 74 N.Y.2d 372, 377 (1989). In both *Vatore* and *Jancyn*, the Court found that the Legislature had not expressed an intent to preempt the area of regulation; if it had, any local enactments in the field would have been precluded. *Vatore* at 649-50; *Jancyn* at 98-99. The Legislature's intent to preempt local legislation can be implied from the nature of the subject matter being regulated and the purpose and scope of the state legislative scheme, including the need for statewide uniformity in a given area. *Albany Area Builders Ass'n*, 74 N.Y.2d at 377. In this instance, we believe that the Legislature has evinced an intent to establish uniform, statewide provisions governing the interest rates and redemption periods applicable to collateral loan brokers, and that as a result the Village's provisions are preempted.

This conclusion is compelled by the legislative history of the relevant state statutes. In the 1950s, the Attorney General and the Comptroller conducted a joint investigation into the business practices of pawnbrokers. Sponsor's Memorandum in Support of A.1984 (Feb. 8, 1960), *reprinted in* Bill Jacket for ch. 981 (1960), at 17.

At that time, the General Business Law provisions regulating pawnbrokers applied to only those cities with a population of at least 200,000. General Business Law § 40 (McKinney 1941). New York City and Rochester, cities that would have met that qualification, were explicitly excepted from the application of the statute's provisions. Buffalo was also not subject to its provisions by virtue of a State-enacted charter that granted the city authority with respect to licensing and regulating pawnbrokers and fixing the rates they could charge. *Stone v. Jacobson*, 258 A.D. 300 (4th Dep't 1939). Pawnbroking in other communities not subject to the provisions of the General Business Law was governed by Penal Law § 1590. 1914 Op. Att'y Gen. 330. As a result, the authorized lending practices of pawnbrokers varied across the State.

When the Attorney General and the Comptroller conducted their investigation, they reported finding "an archaic form of regulation of pawnbrokers which in practice varied from locality to locality." Sponsor's Memorandum in Support of A.1984 (Feb. 8, 1960), *reprinted in* Bill Jacket for ch. 981 (1960), at 17. The Attorney General and the Comptroller proposed corrective legislation that the Legislature enacted in 1960. Act of Apr. 28, 1960, ch. 981, 1960 N.Y. Laws 2419. The legislation was intended to "provid[e] effective Statewide regulation" that was "designed to correct the abuses uncovered" in the joint investigation, and it included suggestions from the pawnbroker industry itself. Sponsor's Memorandum in Support of A.1984 (Feb 8, 1960), *reprinted in* Bill Jacket for ch. 981 (1960), at 17; Comptroller's Report to the Governor on Legislation (Mar. 31, 1960), *reprinted in* Bill Jacket for ch. 981 (1960), at 26. It eliminated language limiting the statute's applicability to only certain cities, rendering it applicable to collateral loan brokers across the State, and established the maximum interest rate that pawnbrokers could charge, "[n]otwithstanding any general or special statutes, local laws and ordinances to the contrary." Act of Apr. 28, 1960, ch. 981, §§ 1 and 4, 1960 N.Y. Laws 2419, 2421. It simultaneously reduced the period that pawnbrokers outside New York City had to retain collateral before they could sell it from one year to six months. *Id.*, § 6, 1960 N.Y. Laws at 2421-422.

Subsequent legislation amending the maximum interest rate and redemption period reflects the Legislature's continued intent to balance consumer protection measures with maintaining the viability of the pawnbroker industry and the consequent continued availability of collateral loans for cash-poor borrowers. *See*, *e.g.*, Act of June 30, 1980, ch. 790, 1980 N.Y. Laws 1935 (increasing maximum interest rate for loans greater than $100); Act of June 9, 1981, ch. 206, 1981 N.Y. Laws 1295 (authorizing extension of loan and continuation of interest charges after 15 months); Act of July 31, 1981, ch. 977, 1981 N.Y. Laws 2565 (authorizing certain service fees); Act of July 20, 1994, ch. 427, 1994 N.Y. Laws 3013 (reducing redemption period from six to four months); Act of Sept. 16, 2005, ch. 651, 2005 N.Y.

Laws 3446 (increasing interest rate from three to four percent per month). The legislative history of these laws demonstrates the balancing of interests that the Legislature aimed to adequately protect. *See*, *e.g.*, Letter from William F. Passannante, Speaker Pro Tem., to Hugh L. Carey, Governor (May 21, 1980), at 1, *reprinted in* Bill Jacket for ch. 790 (1980) (increase in interest rate necessary to prevent few remaining pawnbrokers from going out of business; bill was modified to get support of consumer advocates); Letter from Ivan C. Lafayette, Assembly Sponsor, to Mario Cuomo, Governor (July 8, 1994), *reprinted in* Bill Jacket for ch. 427 (1994), at 6 (reduction of redemption period will insure collateral loans remain available to borrowers; protections for borrowers exist in Collateral Loan Law); Letter from Dean G. Skelos, Senate Sponsor, to Richard Platkin, Counsel to the Governor (Sept. 19, 2005), *reprinted in* Bill Jacket for ch. 651 (2005), at (3-4) (moderate increase of interest rate from three to four percent per month will encourage growth of collateral loan industry).

In light of the Legislature's clear intent to establish a uniform scheme of regulation with respect to the maximum interest rates and redemption periods applicable to collateral loan brokers, and the Legislature's continuing intent to protect both borrowers and the collateral loan industry, we are of the opinion that the interest rate and redemption period sections of the Village's code are preempted by the provisions of sections 46 and 48 of the General Business Law.

The Attorney General issues formal opinions only to officers and departments of state government. Thus, this is an informal opinion rendered to assist you in advising the municipality you represent.

Very truly yours,

KATHRYN SHEINGOLD
Assistant Solicitor General
in Charge of Opinions