STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

October 15, 2026

Opinion No. 26-10

Effect of Tenn. Code Ann. § 53-1-118 on Local Land-Use Controls Related to Construction

Question

Does Tenn. Code Ann. § 53-1-118(d) have the effect of preempting zoning and land-use regulations such as building permits for city and county governments?

Opinion

No. The preemptive effect of Tenn. Code Ann. § 53-1-118(d) is limited to "prohibiting and regulating the production and sale of homemade food items." Generally applicable land-use controls governing physical infrastructure or construction would not fall within these parameters.

ANALYSIS

Across the Nation, States have enacted what are known as "cottage food laws" to reduce the regulatory burdens that homemade food producers, i.e., "cottage food operators," might otherwise face. *See generally* Allison Condra, *Food Sovereignty in the United States: Supporting Local and Regional Food Systems*, 8 J. Food L. & Pol'y 281, 312–14 (2012). The focus of the request—Tenn. Code Ann. § 53-1-118—exists within this broader body of laws. Originally enacted in 2022 as part of the Tennessee Food Freedom Act,[1] and later amended in 2025,[2] Tenn. Code Ann. § 53-1-118 affords Tennessee citizens a wide degree of liberty to produce and sell homemade food items. *See generally* Tenn. Code Ann. § 53-1-118. Here, the question presented is one of statutory preemption, with the request seeking guidance on how Tenn. Code Ann. § 53-1-118(d) might impact local zoning and land-use regulations.

As discussed below, the statute's preemptive reach is limited. Although it extends to actions that prohibit or regulate "the production and sale of homemade food items," Tenn. Code Ann. § 53-1-118(d), it does not disturb general land-use controls that regulate physical infrastructure or construction.

Basic Statutory Overview

Tennessee Code Annotated § 53-1-118 removes certain regulatory burdens on Tennessee's cottage food industry. It does not, however, insulate cottage food operators from all regulations.

[1] *See* 2022 Tenn. Pub. Acts, ch. 862.

[2] *See* 2025 Tenn. Pub. Acts, ch. 431.

Tennessee Code Annotated § 53-1-118 provides that "the production and sale of homemade food items . . . are exempt from all licensing, permitting, inspecting, packaging, and labeling laws of this state," so long as certain statutory conditions are satisfied. Tenn. Code Ann. § 53-1-118(a)-(b). The same statute also "preempts county, municipal, and other political jurisdictions from prohibiting and regulating the production and sale of homemade food items." Tenn. Code Ann. § 53-1-118(d). Despite its seeming breadth, however, Tenn. Code Ann. § 53-1-118 expressly does not "[i]mpede the department of health in an investigation of a reported foodborne illness;" "[p]reclude the production or sale of food items otherwise authorized by law;" "[c]hange the regulation of other goods and services where homemade food items are also produced or sold;" "[e]xempt producers or sellers of homemade food items from any applicable tax law;" or "[a]pply to sales other than intrastate sales made within this state." Tenn. Code Ann. § 53-1-118(c).

Applying the natural and ordinary meaning of Tenn. Code Ann. § 53-1-118(a) and (d) and reading the language in the context of the surrounding statute, *see State v. Butler*, 980 S.W.2d 359, 362 (Tenn. 1998), we believe that the exemption and the preemption provision are best understood as simply relating to laws surrounding the production and sale of food. Tennessee Code Annotated § 53-1-118(a) "exempt[s] from all licensing, permitting, inspecting, packaging, and labeling laws of this state" only "the production and sale of homemade food items." Tennessee Code Annotated § 53-1-118(d) likewise preempts only that local governmental action that prohibits or regulates "the production and sale of homemade food items." Textual support for a more expansive interpretation of either provision is lacking. Put simply, Tenn. Code Ann. § 53-1-118's exemption and preemptive reach do not extend beyond those regulations pertaining to the cottage food industry.

Application of Tenn. Code Ann. § 53-1-118(d) to Local Zoning and Land-Use Regulations

Because Tenn. Code Ann. § 53-1-118(d) preempts local governments only from prohibiting or regulating "the production and sale of homemade food items," it leaves most local regulations undisturbed. By its text, the statute does not foreclose generally applicable land-use controls that govern matters of construction or physical infrastructure because such controls do not prohibit or regulate "the production and sale of homemade food items." *Cf. Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 549–50 (2001) (examining federal preemption under the Federal Cigarette Labeling and Advertising Act and opining that there is a "critical distinction . . . between generally applicable zoning regulations . . . and regulations targeting cigarette advertising"). In the case of a generic (and generally applicable) building-permit requirement, then, Tenn. Code Ann. § 53-1-118(d) has no preemptive effect. A generally applicable building-permit requirement does not involve a regulation of the cottage food industry within the meaning of Tenn. Code Ann. § 53-1-118(d); rather, the control relates to broader property matters of physical infrastructure and construction.

To be sure, the discriminatory *administration* of such a building-permit requirement could trigger concern. But possible discriminatory enforcement against cottage food operators is a different question entirely from the even-handed application of such a generally applicable local law. Indeed, similar to how this Office previously considered an issue involving the intersection

between a preempted field and local zoning, we think it is "reasonable to construe the statute to require [cottage food operators] to conform to the same general [building-permit] restrictions as those imposed on [others]." Tenn. Att'y Gen. Op. 17-26 (Apr. 11, 2017).

To illustrate the statutory limit, consider a residential property owner who sells homemade food items and wants to construct an additional building on her property that would normally be prohibited by zoning or land-use regulations. We fail to discern how Tenn. Code Ann. § 53-1-118(d) would help the residential property owner in this hypothetical. Because § 53-1-118(d) preempts local governments only from "prohibiting and regulating the production and sale of homemade food items"—not from imposing generally applicable land-use controls for construction—the owner in the hypothetical cannot rely on § 53-1-118(d), even if the owner participates in the cottage food industry. If generally applicable land-use controls prohibit the construction of an additional building, those legal regulations would remain enforceable.

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