

Durham Municipal Court,
No. 4838.

STATE v. FRED H. JENKINS.

Argued June 7, 1960.

Decided June 30, 1960.

[REDACTED]

[REDACTED]

Louis C. Wyman, Attorney General and *Robert A. Carignan*, county attorney (*Mr. Wyman* orally), for the State.

Burns, Bryant & Hinchey (*Mr. Hinchey* orally), for the defendant.

[REDACTED]

WHEELER, J. The Attorney General joins with the defendant in challenging the validity of the by-law.

Towns are empowered by statutory authority to make by-laws for a variety of purposes. These generally fall into the category of health, welfare and public safety. Suitable penalties to insure their enforcement "not exceeding ten dollars for each offense" may be provided (emphasis supplied). RSA 31:39.

Towns derive their power from the Legislature and "are bound by the limits imposed upon them" *Opinion of the Justices*, 101 N. H. 544, 545, and cases cited. "In the nature of things, such [local] legislation must be not inconsistent with the laws of the state" *State v. Paille*, 90 N. H. 347, 349.

The State has undertaken to regulate hunting, fishing and the use of firearms throughout the state during certain periods of the year. RSA Tit. XVIII, FISH AND GAME. Among other provisions, a hunter may enter upon improved land of another and discharge firearms during a certain period of the year unless such land is posted (RSA 572:15) and likewise a hunter may enter upon uncultivated land unless ordered to leave by the owner or unless said land is posted by orders of the Fish and Game Department. RSA 572:50 (supp.).

The Durham by-law would prohibit hunting and the discharge of a firearm in the entire town unless written permission of the owner was obtained and is thus inconsistent with the statutory law of the state regulating hunting and the discharge of firearms. The by-law "assumes authority which the legislature has taken away" (*State v. Paille, supra*, 351) and hence is invalid. *State v. Angelo*, 71 N. H. 224. In attempting to provide for a maximum fine of \$50, the town has exceeded its statutory authority. RSA 31:39.

Complaint quashed.

All concurred.