

2011 IL 111127

**IN THE  
SUPREME COURT  
OF  
THE STATE OF ILLINOIS**

---

(Docket No. 111127)

THE CITY OF CHICAGO, Appellant, v. STUBHUB, INC.,  
Appellee.

*Opinion filed October 6, 2011.*

JUSTICE THEIS delivered the judgment of the court, with opinion.

Chief Justice Kilbride and Justices Freeman, Thomas, Garman, Karmeier, and Burke concurred in the judgment and opinion.

**OPINION**

¶ 1 This case comes before us on certification from the United States Court of Appeals for the Seventh Circuit. See Ill. S. Ct. R. 20 (eff. Aug. 1, 1992). That court asked us to determine “whether municipalities may require electronic intermediaries to collect and remit amusement taxes on resold tickets.” Our answer is no.

¶ 2 **BACKGROUND**

¶ 3 In 1923, the Illinois General Assembly passed the Ticket Scalping Act, which prohibited owners of public entertainment venues from selling admission tickets anywhere other than the venues’ box offices. See 1923 Ill. Laws 322. In 1935, the legislature broadened that statute beyond venue owners, and outlawed the sale of such tickets for more than face value. See 1935 Ill. Laws 707. This statute remained unchanged until 1991, when the legislature rewrote it to provide an exception for ticket brokers, who could avoid any penalties for selling tickets above the box office price by meeting several requirements,

including registering with the Secretary of State and paying all applicable state and local taxes. See Ill. Rev. Stat. 1991, ch. 121½, ¶ 157.32. The legislature amended, and expanded upon, these requirements in 1995. See 720 ILCS 375/1.5 (West 1996).

¶ 4 That year, the City of Chicago also amended its municipal code to extend its existing amusement tax, which applied to admission fees for entertainment events in the city, to ticket resales. Under this amendment, “every reseller” was required to pay the amusement tax on “that portion of the ticket price that exceeds the amount that the reseller paid for the tickets.” Chicago City Council, Journal of Proceedings, November 15, 1995, at 12016.

¶ 5 In 2002, the legislature amended the Auction License Act, requiring “Internet Auction Listing Services” either located in Illinois or dealing with persons or property located in Illinois to register with the state’s Office of Banks and Real Estate. See 225 ILCS 407/10-27(b) (West 2010). This amendment brought online auctioneers under the same regulatory umbrella that covered more traditional auctioneers, but the amendment also recognized the significant differences between them. Specifically, the statute defined an internet auction listing service as a website or other interactive computer service that brings together prospective sellers and buyers of personal property, but “does not examine, set the price, or prepare the description of the personal property \*\*\*, or in any way utilize the services of a natural person as an auctioneer.” 225 ILCS 407/10-27(a)(1) (West 2010). The statute mandated that an internet auction listing service must certify that it “does not act as the agent of users who sell items on its website, and acts only as a venue for user transactions,” and that it retains identification information on its users and provides customer support for its users. 225 ILCS 407/10-27(c)(1) (West 2010).

¶ 6 Shortly thereafter, as tickets to entertainment events began to appear on such websites, the legislature replaced the Ticket Scalping Act with the Ticket Sale and Resale Act (Act) (720 ILCS 375/0.01 *et seq.* (West 2010)). The new statute still prohibited the sale of tickets for more than face value, but contained more exceptions, including one for internet auction listing services, which featured extensive and detailed consumer protection measures. Section 1.5(c) provides:

“This Act does not apply to the sale of tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind for a price in

excess of the printed box office ticket price by a reseller engaged in interstate or intrastate commerce on an Internet auction listing service duly registered with the Department of Financial and Professional Regulation under the Auction License Act and with the Office of the Secretary of State on a registration form provided by that Office. This subsection (c) applies to both sales through an online bid submission process and sales at a fixed price on the same website or interactive computer service as an Internet auction listing service registered with the Department of Financial and Professional Regulation.

This subsection (c) applies to resales described in this subsection only if the operator of the Internet auction listing service meets the following requirements:

(1) the operator maintains a listing of the names and addresses of its corporate officers;

(2) the operator is in compliance with all applicable federal, State, and local laws relating to ticket selling activities, and the operator's officers and directors have not been convicted of a violation of this Act within the preceding 12 months;

(3) the operator maintains, either itself or through an affiliate, a toll free number dedicated for consumer complaints;

(4) the operator provides consumer protections that include at a minimum:

(A) consumer protection guidelines;

(B) a standard refund policy that guarantees to all purchasers that it will provide and in fact provides a full refund of the amount paid by the purchaser (including, but not limited to, all fees, regardless of how characterized) if the following occurs:

(i) the ticketed event is cancelled and the purchaser returns the tickets to the seller or Internet auction listing service; however, reasonable delivery fees need not be refunded if the previously disclosed guarantee specifies that the fees will not be refunded if the event is cancelled;

(ii) the ticket received by the purchaser does not allow the purchaser to enter the ticketed event for reasons that may include, without limitation, that the ticket is counterfeit or that the ticket has been cancelled by the issuer due to non-payment, unless the ticket is cancelled due to an act or omission by such purchaser;

(iii) the ticket fails to conform to its description on the Internet auction listing service; or

(iv) the ticket seller willfully fails to send the ticket or tickets to the purchaser, or the ticket seller attempted to deliver the ticket or tickets to the purchaser in the manner required by the Internet auction listing service and the purchaser failed to receive the ticket or tickets; and

(C) standards of professional conduct;

(5) the operator has adopted an independent and disinterested dispute resolution procedure that allows resellers or purchasers to file complaints against the other and have those complaints mediated or resolved by a third party, and requires the resellers or purchasers to submit to the jurisdiction of the State of Illinois for complaints involving a ticketed event held in Illinois;

(6) the operator either:

(A) complies with all applicable requirements of the Retailers' Occupation Tax Act and collects and remits all applicable federal, State, and local taxes; or

(B) publishes a written notice on the website after the sale of one or more tickets that automatically informs the ticket reseller of the ticket reseller's potential legal obligation to pay any applicable local amusement tax in connection with the reseller's sale of tickets, and discloses to law enforcement or other government tax officials, without subpoena, the name, city, state, telephone number, e-mail address, user ID history, fraud complaints, and bidding and listing history of any specifically identified reseller or purchaser upon the receipt of a verified request from

law enforcement or other government tax officials relating to a criminal investigation or alleged illegal activity; and

(7) the operator either:

(A) has established and maintains a consumer protection rebate fund in Illinois in an amount in excess of \$100,000, which must be cash available for immediate disbursement for satisfaction of valid consumer complaints; or

(B) has obtained and maintains in force an errors and omissions insurance policy that provides at least \$100,000 in coverage and proof that the policy has been filed with the Department of Financial and Professional Regulation.” 720 ILCS 375/1.5(c) (West 2010).

¶ 7

StubHub, Inc., registered as an internet auction listing service in compliance with the Act. StubHub describes itself as “the world’s largest online ticket marketplace” and operates a website or “platform” where users can buy and sell tickets to various events around the country. All users must register by providing personal information on the website. A user who wants to sell a ticket may list it on the website by submitting information about the event—the venue, date, time, and location of the ticket—as well as choosing a method and period for the sale, through a series of interactive prompts on the site. A user who wants to buy a ticket may then search for it on the site by the event, the date, or the venue. A prospective buyer and a prospective seller can communicate with each other only via the website. Once they have agreed upon a price, Stubhub processes the sale, charging the buyer a service fee of 10% of that price, and the seller a 15% fee. Pursuant to the Act, StubHub informs its sellers of their tax obligations.

¶ 8

In 2006, the City amended its amusement tax ordinance again to require not only “resellers,” but also “reseller’s agents” to collect and remit the amusement tax. Under the ordinance, a reseller’s agent is:

“a person who, for consideration, resells a ticket on behalf of the ticket’s owner or assists the owner in reselling the ticket. The term includes but is not limited to an auctioneer, a broker or a seller of tickets for amusements, as those terms are used in 65 ILCS 5/11-42-1, and applies whether the ticket is resold by bidding, consignment or otherwise, and whether the ticket

is resold in person, at a site on the Internet or otherwise.” Chicago Municipal Code § 4-156-010 (amended May 24, 2006).

The amendment further provided that ticket resellers and reseller’s agents have a joint and several duty to collect and remit the tax to the City. Chicago Municipal Code § 4-156-020(A) (amended May 24, 2006). However, when a licensed ticket broker is not involved in the sale, the ordinance provides that the reseller’s agent “shall be primarily responsible for collecting and remitting the tax, and the reseller shall be responsible for collecting and remitting only if the reseller’s agent fails to do so.” Chicago Municipal Code § 4-156-030(F) (amended May 24, 2006).

¶ 9 In 2007, the City sent a letter to StubHub stating that it might be deemed a reseller’s agent under the ordinance, and might be required to collect and remit the amusement tax on behalf of its users. The letter requested information and documents with respect to StubHub’s “facilitation” of ticket resales to entertainment events located in Chicago since January 1, 2000. StubHub declined to provide any of the information, and in 2008, the City filed a four-count complaint against StubHub. The City alleged that StubHub was a reseller’s agent under the ordinance because it “resold and/or facilitated the resale” of tickets. Accordingly, the City claimed, StubHub had a joint and several duty to collect and remit the amusement tax on thousands of ticket resales from 2000 to the present. The City sought a declaration that StubHub was required to do so; a writ of *mandamus* ordering StubHub to produce records and submit to an audit; fines for StubHub’s violation of the ordinance in refusing to comply with the City’s request to produce records; and a monetary judgment in the amount of the tax revenues plus interest and penalties.

¶ 10 StubHub removed the case to federal court on diversity grounds (see 28 U.S.C. § 1332(a) (2006)), and filed a motion to dismiss. The federal district court granted that motion. *City of Chicago v. StubHub, Inc.*, 622 F. Supp. 2d 699, 704 (N.D. Ill. 2009). The federal district court stated that the City’s power to impose an obligation on StubHub to collect and remit the amusement tax depended upon the nature of the tax. *Id.* at 703. Because our appellate court had decided that ticket resales were sales of tangible personal property (see *Mr. B’s, Inc. v. City of Chicago*, 302 Ill. App. 3d 930, 937 (1998)), and the state legislature had preempted the City’s authority to tax such property (see 65 ILCS 5/8-11-6a (West 2010)), the federal district court held

that the City lacked the authority to require StubHub to collect and remit the amusement tax incurred by its sellers. *StubHub*, 622 F. Supp. 2d at 703-04.

The City appealed. The federal circuit court first examined, then rejected, StubHub's argument that federal law prohibited the City from imposing a tax on internet sites. *City of Chicago v. StubHub!, Inc.*, 624 F.3d 363, 367 (7th Cir. 2010). The federal circuit court then discussed Illinois law, noting that in a diversity case a district court is bound by state appellate court case law, but a circuit court is not:

“We could make a decision, confident that any error would be corrected by the state judiciary before too much time had passed. As far as we can tell, however, the state judiciary will be unable to address this subject unless we certify. There are only two pending cases, both in federal court.<sup>[1]</sup> \*\*\* Both suits began in state court and were removed under the diversity jurisdiction. Any similar suit likewise would be removable. \*\*\* This means that the state judiciary may never have an opportunity to resolve this dispute. The only way the federal judiciary can be sure that it is applying authentic state law is to certify the subject to state court.” *Id.* at 367-68.

¶ 11

The federal circuit court found no precedent from this court on the three principal questions in dispute, namely, “whether the tax works as an occupation tax, whether the history of the 2005 amendment prevents Chicago from defining Internet auction sites as resellers’ agents, and whether the amusement tax is one on ‘tangible personal property.’ ” *Id.* at 367. Under Rule 20, the court certified a broader question: “whether municipalities may require electronic intermediaries to collect and remit amusement taxes on resold tickets.” *Id.* at 368. According to the federal circuit court, it phrased the question in that way “to ensure maximum flexibility for the state judiciary, which may elect to address any of the three sub-questions we have already identified, or may conclude that some other issue altogether determines the appropriate answer.” *Id.* We accepted certification, and allowed the County of Cook to file an *amicus*

---

<sup>1</sup>The other case is *City of Chicago v. eBay Inc.*, No. 10-1144, which was argued before the court of appeals in tandem with the *StubHub* case, and held in abeyance pending our decision here. See *StubHub!, Inc.*, 624 F.3d at 367. According to *StubHub*, eBay is its “corporate parent.”

*curiae* brief in support of the City and eBay and Netchoice Coalition to file an *amicus curiae* brief on behalf of StubHub.

¶ 12

## ANALYSIS

¶ 13

Initially, we must address the threshold question of whether StubHub is a “reseller’s agent” under the ordinance. If it is not, the ordinance does not apply.

¶ 14

StubHub argues it is not a reseller’s agent because it is not an agent for its users. StubHub notes that in order to obtain a license, it must certify that it is not its users’ agent. See 225 ILCS 407/10-27(c)(1) (West 2010). According to StubHub, this statutory requirement recognizes that internet auction listing services do not act as agents, but rather as marketplaces that bring buyers and sellers together. Further, StubHub asserts that under common law agency principles, it lacks control over its users. Though it may terminate a user’s access to its website, it does not dictate the terms of any sales.

¶ 15

The City argues that under the ordinance a reseller’s agent is simply a person who, for consideration, resells a ticket for the ticket’s owner or assists the owner in reselling the ticket. According to the City, StubHub fits this description. It allows ticket owners to list tickets for sale on its website, and offers them ways to do so that help potential buyers find the tickets they want. In return for these services, StubHub collects a fee from both buyers and sellers.

¶ 16

We agree with the City. The City is free to define terms in its code, and need not track common law agency principles. Under the ordinance, a reseller’s agent on “a person who, for consideration, resells a ticket on behalf of the ticket’s owner or assists the owner in reselling the ticket.” Chicago Municipal Code § 4-156-010 (amended May 24, 2006). That term applies to StubHub because it provides services that help users sell their tickets, and it is compensated for those services. See *StubHub*, 624 F.3d at 366-67 (“intermediaries that take an active role in staging an auction and exchanging goods for money, as StubHub[] does, are resellers’ agents”). We now turn to the central and dispositive issue in this case: whether the City has the authority to impose an obligation upon internet auctioneers to collect and remit its amusement tax. Our discussion begins, and ends, with home rule.

¶ 17

Under the 1870 Illinois Constitution, the balance of power between our state and local governments was heavily weighted



toward the state. Municipalities “were limited to those powers which were expressly authorized, implied or essential in carrying out the legislature’s grant of authority.” *Kanellos v. County of Cook*, 53 Ill. 2d 161, 166 (1972); see ILCS Ann., 1970 Const., art. VII, § 6, Constitutional Commentary, at 264 (Smith-Hurd 2006). The 1970 Illinois Constitution drastically altered that balance, giving local governments more autonomy. *Schillerstrom Homes, Inc. v. City of Naperville*, 198 Ill. 2d 281, 286-87 (2001); *City of Evanston v. Create, Inc.*, 85 Ill. 2d 101, 107 (1981) (quoting 4 Record of Proceedings, Sixth Illinois Constitutional Convention 3024). Section 6(a) of article VII provides:

“Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.” Ill. Const. 1970, art. VII, § 6(a).

¶ 18

This intentionally imprecise language grants “the broadest powers possible” (*Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 174 (1992)), but it also contains an inherent limit upon local government activity. See *Ampersand, Inc. v. Finley*, 61 Ill. 2d 537, 540 (1975) (“the most general and uncertain limitation upon home rule power is found in the language of the home rule grant itself”). The concept of home rule is based upon a preference for local solutions to local problems, and consequently the powers of local governments extend only to matters “pertaining to” their affairs, and not those of the State. *Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483, 501 (1984); 7 Record of Proceedings, Sixth Illinois Constitutional Convention 3056. “If a home rule unit attempts to exercise a power or to perform a function which is not within the scope of the grant contained in [ ]section 6(a)—*i.e.*, if the action does not pertain to the government and affairs of the home rule unit—\*\*\* the exercise or performance would be void unless authorized by statute or by another provision of the 1970 Constitution.” ILCS Ann., 1970 Const., art. VII, § 6, Constitutional Commentary, at 265 (Smith-Hurd 2006). The question is not whether section 6(a) itself imposes a limitation upon home rule, but instead how extensive that limitation should be. David C. Baum, *A Tentative Survey of Illinois Home Rule (Part I): Powers and Limitations*, 1972 U. Ill. L.F. 137, 153. The framers acknowledged that the answer to this question would lie in judicial interpretation of

this qualifying phrase. 4 Record of Proceedings, Sixth Illinois Constitutional Convention 3052.

¶ 19

An ordinance pertains to local government and affairs where it addresses local, rather than state or national, problems. *Schillerstrom Homes*, 198 Ill. 2d at 290. When a problem is purely statewide or purely local in nature, our task is easy. *Village of Bolingbrook v. Citizens Utilities Co. of Illinois*, 158 Ill. 2d 133, 138-39 (1994). More often, however, a problem is a concern for both state and local governments. *County of Cook v. John Sexton Contractors Co.*, 75 Ill. 2d 494, 508-09 (1979). In those cases, we must resolve the tension between the value of a uniform regulatory landscape and the value of a potentially more diverse one. The framers gave two examples of when state legislation would prevail. A home rule county ordinance limiting interest rates on mortgages or other loans would be invalid “because of the extensive federal and state regulation of credit institutions,” and a home rule city ordinance limiting telephone rates for local calls would be invalid because of “[l]ong standing state regulation of utility rates.” 4 Record of Proceedings, Sixth Illinois Constitutional Convention 3052. See also *People ex rel. Lignoul v. City of Chicago*, 67 Ill. 2d 480, 486 (1977) (holding that the “business of banking” does not pertain to local government and affairs because it is “pervasively regulated by the State and Federal governments”); *People ex rel. Bernardi v. City of Highland Park*, 121 Ill. 2d 1, 14 (1988) (holding that a minimum wage standard does not pertain to local government and affairs because it has “traditionally been a matter of State concern, outside the power of local officials to contradict”).

¶ 20

Thus, the extent and history of the State’s activity in resolving the problem will determine whether the problem pertains to local government and affairs. This analysis, however, does not rest on any specific constitutional formula. *Kalodimos*, 103 Ill. 2d at 501. Instead, it is more nuanced, and requires us to consider “the nature and extent of the problem, the units of government which have the most vital interest in its solution, and the role traditionally played by local and statewide authorities in dealing with it.” *Id.*

¶ 21

First, we must examine the nature and extent of the problem. Here, the City claims that the problem is one of revenue, and more specifically revenue sufficient to provide municipal services for entertainment events. The City imposes its amusement tax on initial sales of tickets, as well as resales. Presumably, it budgets for

municipal services based in part upon the number of events and the number of likely attendees. These considerations remain constant, regardless of whether tickets are resold at prices above face value. What the City has attempted in amending its code is not to generate revenue with a new tax, but to generate revenue through an existing tax by changing the mechanics of its collection and enlisting StubHub and other internet auctioneers to gather it from diasporic sources.

¶ 22 StubHub claims that the problem is a broader one of opening new markets while simultaneously protecting consumers through regulation of an emerging business model. The General Assembly saw the matter from StubHub’s perspective, as shown in the legislative record.

¶ 23 The General Assembly amended the Auction License Act in 2002 to allow the State to regulate internet auctioneers. In the House debates surrounding this amendment, its sponsor, Representative Meyer noted that internet auctioneers utilize an entirely different business model because they do not physically handle the property to be sold, nor do they handle the proceeds from the sale. 92d Ill. Gen. Assem., House Proceedings, April 4, 2002, at 171 (statements of Representative Meyer). Representative Meyer continued, “The regulatory provisions of the original Auction License Act do not fit the Internet auction business and would be unduly burdensome to the Internet auction industry.” *Id.* The amendment created a separate regulatory structure for internet auctioneers, but made them accountable to the Office of Banks and Real Estate, like traditional auctioneers, in order to guard the people of Illinois against fraud.

¶ 24 The Ticket Sale and Resale Act, adopted three years later, was consistent in these aims. It created an exception to the criminal offense of scalping for internet auction listing services, and imposed upon them many of the same registration and certification requirements that apply to ticket brokers. The transcripts from the House Committee on Consumer Protection hearings for House Bill 873, which later became the Act, are replete with references to the emerging market in internet ticket resales, and the lack of any regulation of those transactions. In one hearing Representative Saviano, the bill’s sponsor, stated, “There’s a new way of doing business, and we’re providing those consumer protections in the new way of doing business.” House Committee on Consumer Protection, March 1, 2005, at 11.

¶ 25 Similar themes emerge from the legislative debates. In the House, Representative Saviano noted that the bill resulted from six months of negotiations, in an effort to “get a handle” on, and impose consumer protection measures upon, internet ticket resales. 94th Ill. Gen. Assem., House Proceedings, April 15, 2005, at 129 (statements of Representative Saviano). In the Senate, Senator Harmon also mentioned that this was a “heavily negotiated bill,” which legalized a new secondary market for ticket resales. 94th Ill. Gen. Assem., Senate Proceedings, May 18, 2005, at 14 (statements of Senator Harmon). We conclude that the problem, as viewed by the legislature, was two-fold: opening a new market and protecting consumers.

¶ 26 Second, we must examine whether the State or the municipality has a greater interest in solving that problem. The City again argues that it has a vital interest in maximizing revenue, reminding us of the adage that “taxes are the lifeblood of government” and of every person’s duty to contribute to municipal services. StubHub argues that the State has a greater obligation not only to protect consumers, but also to create uniform standards to govern internet auction listing services.

¶ 27 The Auction License Act, as we have noted, brought internet auctioneers under the same regulatory auspices as traditional auctioneers, even while it acknowledged significant differences between them. Several years later, after months of negotiations over the Act, the legislature reached a compromise, which took into account these differences. The legislature imposed some measure of order on internet ticket resales by requiring internet auctioneers to register with the State and make various assurances in the name of consumer protection, and in exchange allowed them to skirt the ban on scalping and, more importantly, the tax collection obligation the Act places on ticket brokers. See 720 ILCS 375/1.5(b)(4) (West 2010).

¶ 28 The Act gave internet auction listing services the choice of collecting and remitting all federal, state, and local taxes, or notifying resellers of their own liabilities for any applicable local amusement taxes and also disclosing any personal information about a reseller requested by municipal tax officials in relation to a criminal investigation. 720 ILCS 375/1.5(c)(6) (West 2010). In the House, Representative Saviano explained,

“[T]he bill states that if a ticket seller, for example, sells Chicago event tickets on eBay, eBay will automatically

inform the ticket seller of their obligation to collect and remit to the City of Chicago's amusement tax. If the City of Chicago becomes aware of an eBay user or specific group of eBay users who are habitually failing to remit and collect the city's tax \*\*\*, then the Bill gives the city the right to obtain from eBay that user's real name, address and transaction history upon submitting a specific request to eBay. From this information, the city may pursue whatever legal action it deems necessary to collect any back taxes or prosecute the user or users for fraud." 94th Ill. Gen. Assem., Senate Proceedings, April 15, 2005, at 130-31 (statements of Representative Saviano).

¶ 29

Senator Harmon stated that the City was "neutral," and the only opposition came from Senators sympathetic to the interests of ticket brokers. 94th Ill. Gen. Assem., Senate Proceedings, May 18, 2005, at 14-15 (statements of Senator Harmon). Senator Dillard offered a floor amendment, which he said would "level the playing field" between ticket brokers and internet auctioneers, and impose the same tax collection obligations on both groups. *Id.* at 15 (statements of Senator Dillard). Senator Harmon responded that the bill regulated millions of dollars worth of ticket resales, and would ultimately result in increased tax revenues for the city. *Id.* at 16 (statements of Senator Harmon). He later noted, "We are not changing the law with respect to the amusement tax. The seller still has to remit the amusement tax, if there is an amusement tax applicable." 94th Ill. Gen. Assem., Senate Proceedings, May 20, 2005, at 65-66 (statements of Senator Harmon). He then likened internet auction listing services to lessors, and stated that requiring them to collect and remit the amusement tax "would be like saying that the landlord of the ticket broker is now responsible for collecting the amusement tax on behalf of the ticket broker." *Id.* at 66 (statements of Senator Harmon).

¶ 30

StubHub contends that in order to comply with the City's ordinance, it would have to alter its business model, fashioning features on its website through which it could verify at least the face value of the ticket. However, under its current user agreement, and consistent with the Auction License Act (see 225 ILCS 407/10-27(a)(1) (West 2010)), StubHub does not examine the tickets that its users list for resale. StubHub also notes that if other municipalities followed the City's lead and required internet auctioneers to collect and remit amusement taxes, there could potentially be a patchwork of

local regulations. The legislature considered such burdens, and chose not to impose them, preferring instead a more comprehensive and uniform approach across the State. We conclude that the State has a greater interest than any municipality in regulating this emerging business model and protecting consumers.

¶ 31 Finally, we must examine whether the State or the municipality has a traditional role in solving the problem. If the problem is protecting consumers by regulating internet auctioneers, then neither the State or local governments have a traditional role. The State, however, has a long history of protecting consumers, dating back to 1961 with the criminalization of deceptive practices (720 ILCS 5/17-0.5 (West 2010)) and the enactment of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 2010)). Further, it has regulated auctioneers for more than 10 years, and ticket resales for 20 years. And it has regulated scalping in some form since 1923. In fact, the City did not begin to tax ticket resales until the State allowed ticket brokers to avoid the ban on scalping. And it did not impose a tax collection obligation on reseller’s agents until the State created a similar exception for internet auction listing services. We conclude that the State has traditionally played a greater role in addressing the problems in this area.

¶ 32 The statutory scheme, and the debates which produced the Act, evince an intent by the legislature to allow internet auction listing services to opt out of any obligation regarding local tax collection. That is a policy decision this court is ill-advised to ignore. The City’s ordinance—specifically the imposition of a joint and several duty on internet auction listing services to collect and remit its amusement tax (Chicago Municipal Code § 4-156-020(A)) and the requirement that internet auction listing services are primarily responsible for collecting and remitting this tax (Chicago Municipal Code § 4-156-030(F))—does not pertain to its own government and affairs. The City has overstepped its home rule authority.

¶ 33 CONCLUSION

¶ 34 For the reasons that we have expressed, we conclude that Illinois municipalities may not require electronic intermediaries to collect and remit amusement taxes on resold tickets.

¶ 35 Certified question answered.