

EXHIBIT 6 - continued

Court Ordered Injunction of Town's "Free Air Law"  
Page 3 of 5

preliminary injunction is to maintain the *status quo* pending determination of the action (*Matter of 1650 Realty Assoc, LLC, supra; Arcamone-Makinano, supra*).

The Court turns its attention the third cause of action alleged in the second amended complaint sounding in preemption.

Presently, General Business Law (GBL) § 396-x, entitled "Gasoline stations; air pumps required," reads in pertinent part as follows:

Any dealer must provide on the premises where motor fuel is sold at retail for use in motor vehicles a functioning motor driven air compressor capable of inflating automobile tires for use by customers during hours in which such station is open for business. Willful failure to comply. . . shall subject a dealer to a civil penalty of up to twenty-five dollars for each day such failure occurs

While the GBL is silent on the issue as to whether a fee may be imposed for the air, the 2017 Resolution adopted by the Town requires that the air be provided at no charge, i.e., for free. In fact, it is in this silence that other municipalities have determined to require gasoline service stations to provide free air to motorists at all times when the station is open for business, as emphasized by the defendants in opposition to the instant motion.

Plaintiffs have submitted two letters in support of their application, one from the New York State Department of Motor Vehicles (DMV) dated August 21, 1985, and the other from the Office of the Town Attorney dated November 8, 1991. The DMV letter advises inspection stations that an air pump must be maintained for public use, but that "[t]he pump may be free or require payment." The Town Attorney's letter is addressed to plaintiff McCabe, and it advises that "it is the opinion of this office as well as the Town of Hempstead Building Department that coin-operated machines installed in gasoline service stations within the Town of Hempstead which provide air are not in violation of Article 33, Section 336 (G)(3) of the [BZO] as long as such machines provide for free air during the hours that the station is open for business."

Although this State's legislature has remained silent on the issue of whether a fee may be charged for the air, the Court notes that the most recent Assembly and Senate bills that have been introduced, but not enacted, specifically state that a "reasonable fee may be charged when such tire inflation service is provided using a coin-operated or credit card device-operated air machine" (*S06641* [June 9, 2017]; *A08280* [June 6, 2017]).

The purpose of the Assembly's bill is stated in the annexed memorandum in support of the legislation "to clarify that service stations that are required to provide tire inflation services for use by customers during hours in which such station is open for