

The United States Department of Energy regularly transports nuclear materials through a city on the way to a nuclear weapons processing plant it operates in a nearby state. The city recently adopted an ordinance prohibiting the transportation of any nuclear materials in or through the city. The ordinance declares that its purpose is to protect the health and safety of the residents of that city.

May the Department of Energy continue to transport these nuclear materials through the city?

- A. No, because the ordinance is rationally related to the public health and safety of the city's residents.
- B. No, because the Tenth Amendment reserves to the states certain unenumerated sovereign powers.
- C. Yes, because the Department of Energy is a federal agency engaged in a lawful federal function and, therefore, its activities may not be regulated by a local government without the consent of Congress.
- D. Yes, because the ordinance enacted by the city is invalid because it denies persons transporting such materials the equal protection of the laws.

Explanation:

Federal immunity from state & local taxes/regulations

Tax/regulation	Definition	Permissibility
Direct	Applies to federal government—including its agencies & instrumentalities	<i>Immune</i> unless: <ul style="list-style-type: none">• Congress consents to tax/regulation
Indirect	Applies to affiliates—including persons/entities employed by or doing business with federal government	<i>Not immune</i> unless: <ul style="list-style-type: none">• Congress grants immunity <i>or</i>• tax/regulation discriminates against or substantially interferes with federal duties

Under the Article VI [supremacy clause](#), the U.S. Constitution, federal laws, and treaties are the supreme law of the land. A corollary of this principle is that the **federal government**—including its agencies and instrumentalities—**need not comply** with a **local tax or regulation unless Congress consents**. This is because local laws could hinder or destroy the operations of the federal government.

Here, a city recently adopted an ordinance prohibiting the transportation of nuclear materials in or through the city. This hinders the operations of the U.S. Department of Energy since this federal agency is engaged in the lawful federal function of regularly transporting nuclear materials through the city. But since Congress did not consent to this regulation, the Department of Energy cannot be regulated by the city and may continue its operations.

(Choices A & D) Under the equal protection clause, state and local laws that do not substantially impact a fundamental right or [protected class](#) (as seen here) are subject to mere rational basis scrutiny. The city's ordinance satisfies this standard since it is rationally related to the public health and safety of its residents. Nevertheless, the federal agency is not subject to this regulation without congressional consent.

(Choice B) The Tenth Amendment reserves to state and local governments all powers not given to the federal government by the Constitution—including the police power to protect residents' health and safety. But when exercising such powers, these entities must comply with other constitutional provisions (eg, the supremacy clause).

Educational objective:

The federal government—including its agencies and instrumentalities—is not subject to state and local taxes or regulations in the absence of congressional consent.

References

- *McCulloch v. Maryland*, 17 U.S. 316, 436 (1819) (establishing that states cannot directly tax or regulate the federal government, its agencies, or its instrumentalities).
- *Env'tl. Prot. Agency v. California ex rel. St. Water Res. Control Bd.*, 426 U.S. 200, 211 (1976) (holding that states can directly regulate a federal agency only when Congress consents).
- 72 Am. Jur. 2d States, Territories, and Dependencies § 23 (2019) (explaining that federal agencies do not need to comply with state regulations).

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