

METRO LOUISVILLE HOSPITALITY COALITION, ET AL.

PLAINTIFFS

VS.

OPINION AND ORDER

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, ET AL.

DEFENDANTS

OPINION

On October 12, 2006, the Legislative Council of the Louisville/Jefferson County Metro Government (“Metro Council”) enacted Ordinance 189, Series 2006, codified in Chapter 90 of the Louisville/Jefferson County Metro Government Code of Ordinances. This Ordinance is commonly known and shall be referred to in this Opinion and Order as the “Smoke Free Law” or “the Law”.

The purpose of the Smoke Free Law is “...to prohibit smoking in all buildings open to the public and other establishments where employees work on the premises.” It specifically provides that “[n]o person shall smoke within any building or establishment which is open to the public, used to host or hold a public event, or employs one or more persons which work on the premises...” Excepted from the Law is any facility or property owned, leased or operated by either a person or an entity licensed and regulated by the Kentucky Horse Racing Authority (“KHRA”).

Plaintiffs brought this action seeking declaratory relief. They assert that the Smoke Free Law violates Sections 1, 2, 3, 10, 13, 19 and 59 of the Kentucky Constitution. They argue that the Smoke Free Law is an arbitrary restriction on their private property and commercial activity, that it permits arbitrary and selective enforcement based upon unreasonable searches of their premises, that the Law is unconstitutionally vague and that there are no distinctive nor natural reasons to exempt KHRA facilities from application of the Law.

Plaintiffs now seek summary judgment on the issue of whether the Smoke Free Law constitutes special legislation. They submit that the test set forth in Schoo v. Rose, 270 S.W.2d 940 (Ky. 1954) requires that legislation must apply to all in a class equally and that there must be "distinctive and natural reasons inducing and supporting the classification." Plaintiffs rely on the "Order Denying Emergency Relief" issued by the Kentucky Court of Appeals in support of its argument that the Smoke Free Law fails the Schoo test. Specifically, they cite the Court of Appeals Order at p. 11:

Based on the record now before the Court, it appears that the Smoke Free Law does not apply equally to all businesses in the affected class. Further, at this point, the City has failed to show any distinctive or natural reasons for exempting Churchill Downs and Sports Spectrum from the scope of the ordinance. To the contrary there appear to be no valid reasons to exempt these businesses from a law which is designed to protect the health of the public and employees.

The Plaintiffs argue that, based on the above finding by the Kentucky Court of Appeals, the Smoke Free Law does not apply equally to all among the affected class, it is unconstitutional based on the holding in Schoo. The Plaintiffs continue their argument before this Court with the assertion that all possible reasons for enacting the Smoke Free Law and exempting KHRA establishments were presented to and rejected by the Kentucky Court of Appeals in its above-

referenced Order.

The defendants contend that the Plaintiffs' challenge to the Smoke Free Law under Section 59 of the Kentucky Constitution is unfounded because it does not apply to ordinances enacted by local legislative bodies, but only to laws passed by the Kentucky General Assembly. Section 59 provides that:

The General Assembly shall not pass local or special acts concerning any of the following subjects, or for any of the following purposes...

The defendants then assert that while Section 59 does not apply to local ordinances, the Kentucky Constitution does have power to regulate such ordinances under the equal protection provisions of Sections 2 and 3. The defendants cite to the case of Parker v. Rash, 236 S.W.2d 687, 689 (Ky. 1951), and the following language in support of their position regarding the applicable sections of the Kentucky Constitution in this case:

[J]ust as Section 59 of our Constitution prohibits the General Assembly from passing special or local acts, accepted constitutional principles forbid lesser legislative bodies from passing special laws.

Defendants contend that this standard requires that an ordinance must not be arbitrary. They argue that the Smoke Free Law's exemption for KHRA facilities must be judged by the rational basis analysis. Commonwealth v. Crutchfield, 157 S.W. 3d. 621 (Ky. 2005). Such analysis, they assert, dictates that a law must be upheld if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.

Defendants argue that the Crutchfield Court held that the General Assembly need not articulate its reasons for enacting a statute or any distinctions made between classes exempted and included. Thus, the defendants contend that whether to exempt an entity regulated and

licensed by the KHRA is a policy question completely within the province of Metro Council.

Defendants argue that Churchill Downs is unique in its operation in that it is the only entity within Jefferson County that offers live horse racing and parimutuel wagering. They point to the fact that an overwhelming majority of Churchill Downs's facility is outdoors. The defendants point to the amount of space in which smoking is not allowed and that workers, under their collective bargaining agreement, may choose whether they work in smoking or non-smoking areas. They also point to the integral part of the economy that horse racing is in this Commonwealth, that it has "favored status". In fact, Defendants argue that Churchill Downs, as a licensed horse racing facility that offers parimutuel wagering, is historically and legally in a different class than the Plaintiffs to the extent that an exemption is a natural and reasonable one. This Court disagrees with Metro Government's analysis.

A summary judgment is used "...to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at trial warranting a judgment in his favor and against the movant." Paintsville Hospital Co. v. Rose, 683 S.W.2d 255, 256 (Ky. 1985), citing Robertson v. Lampton, 516 S.W.2d 838, 840 (Ky. 1974).

It is within the purview of local governments to enact ordinances which prohibit smoking. Lexington Fayette County Food and Beverage Association v. Lexington-Fayette Urban County Government, 131 S.W.3d 745, 749 (Ky. 2004). The Court found that, "...insofar as public health is concerned, private property may become of public interest and the constitutional limitations upon the exercise of the power of regulation come down to a question of 'reasonability.'" Id. Citations omitted.

The Order Denying Emergency Relief specifically found that on the record presented

"...it appears that the Smoke Free Law does not apply equally to all businesses in the affected class. Further, at this point, the City [Metro Government] has failed to show any distinctive or natural reasons for exempting Churchill Downs and Sports Spectrum from the scope of the ordinance." At p. 11.

Under the rational basis analysis of the equal protection clause of the Kentucky Constitution, a law must be upheld if there is a reasonable state of facts which could provide a rational basis for the classification. United States Railroad Retirement Board v. Fritz, 449 U.S. 166, 101 S.Ct. 453, 66 L.Ed.2d 368 (1980). If this step is passed, the court must then decide whether there is a legitimate government purpose the Metro Council could have been pursuing in enacting the Law. Crutchfield, supra, at p. 625. Citation omitted. Finally, the court must determine whether a rational basis exists for the Metro Council to believe that the Law would further that government purpose. Id. Citation omitted.

This Court finds that the exemption of facilities under the purview of the KHRA fails under even the first step of the rational basis analysis. There simply is no rational basis for exemption Churchill Downs and Sports Spectrum from application of the Law. None of the reasons provided by Metro Government meet this requirement. While it is true that horse racing is an important industry in this state, so is the hospitality industry. To hold one out as important above the other, is simply not a rational basis for exemption. Thus, this Court finds that the exemption of KHRA facilities from the Smoke Free Law is unconstitutional as it is a violation of the Equal Protection Clause of the Kentucky Constitution.

ORDER

WHEREFORE IT IS HEREBY ORDERED AND ADJUDGED that the section of Ordinance 189, Series 2006, codified in Chapter 90 of the Louisville/Jefferson County Metro Government Code of Ordinances which exempts "[a]ny facility or property owned, leased or otherwise operated by a person or entity licensed and regulated by the Kentucky Horse Racing Authority" is violative of the Equal Protection Clause of the Kentucky Constitution.

This 31 day of October, 2007.


DENISE CLAYTON, JUDGE
Jefferson Circuit Court

cc: John R. Wilson
N. Scott Lilly, Asst. County Attorney
C. Michael Hatzell

