

HOME RULE

Home Rule

City of Temple Terrace v. Tozier,
903 So. 2d 970 (Fla. 2d Dist. App. 2005)

Municipalities may predicate the effectiveness of an ordinance on the subsequent execution of a contract with a private party, provided the conditions within the contract are sufficiently definite. Courts cannot thereafter sever those conditions from the legislation unless the legislation would still accomplish the original legislative intent.

FACTS AND PROCEDURAL HISTORY

Kenneth Tozier appeared before the Temple Terrace City Council to request that the City vacate a right-of-way adjacent to his business. The City initially denied Tozier's request because it conflicted with proposed redevelopment plans for the area. However, at a subsequent hearing before the City Council, Tozier explained how he intended to use the additional space and presented drawings of the proposed addition to his business with an indication of the value that his improvements would add to the property. Following this presentation, the City adopted an ordinance conditionally vacating the right-of-way, provided that Tozier comply with the terms of a binding development agreement. The agreement required Tozier to submit a final site plan to the City before it finalized the vacation of the right-of-way.

The site plan Tozier submitted was substantially different, in both size and purpose, from the proposal that originally motivated the City to agree to vacate the right-of-way. Accordingly, the City denied Tozier's request to vacate the right-of-way. Tozier filed suit, claiming (1) the only valid bases for deciding to vacate a right-of-way was whether the City needed it for public access, and thus the City acted beyond its authority when it attached conditions to the vacation; and (2) the development agreement lacked the clarity and certainty requisite of municipal legislation. The trial court, relying in large part on a 1971 case, *City of Naples v. Miller*, 243 So. 2d 608 (Fla. 2d Dist. App. 1971), granted partial summary judgment for Tozier.

ANALYSIS

Municipal Authority to Condition Legislation

Article VIII, Section 2(b) of the Florida Constitution establishes home rule powers for municipalities. Through the constitutional provision, cities are given the authority to exercise powers necessary to carry out municipal purposes and duties. In 1973, the Legislature clarified the extent of municipal home rule powers by removing any judicially imposed limitations placed on that power prior to 1973. Fla. Stat. § 166.021(4) (2005).

Thus, the Second District Court of Appeal found that *Miller* was superseded to the extent that the case limited a municipality's authority to condition an ordinance on a subsequent contract with a private party. The court further noted that even if *Miller* was still relevant, it was distinguishable from *Tozier* because the conditions contained in the contract in *Miller* were so vague that neither party in that case understood them. The conditions in the present case, however, were sufficiently specific to meet the standard of certainty and clarity required of municipal legislation.

Severability

Severability of a legislative provision is appropriate only if the legislative intent will be maintained subsequent to the severance. *E. Air Lines, Inc. v. Dept. of Revenue*, 455 So. 2d 311, 317 (Fla. 1984). The Second District held that even if it found the conditional nature of the vacation to be invalid, severing the requirement of the development agreement from the vacate ordinance would negate the City's legislative intent.

Because the Florida Constitution and the Florida Statutes grant municipalities the authority to attach conditions to the vacation of a right-of-way, and because the conditions were sufficiently definite and necessary to the legislative intent of the ordinance, the court found that the conditions were not severable and that the City acted within the scope of its power when it refused to vacate the right-of-way.

SIGNIFICANCE

The case demonstrates that a municipality may attach conditions to legislation so long as those conditions are definite. Moreover, a court cannot nullify the conditions included within legisla-

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tion unless the remaining legislation would still serve the original legislative intent.

RESEARCH REFERENCE

- *Ordinance Law Annotations Validity* § 199 (Jon L. Craig et al. eds., Shepards 1990 & West Supp. 2005).

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