RENT CONTROL AS A MUNICIPAL FUNCTION IN FLORIDA

In 1969 the City Council of the City of Miami Beach enacted a rent control ordinance for certain specific types of housing[1] in order to correct an inflationary spiral and housing shortage. The ordinance empowered the City Rent Agency to establish maximum rents, make decreases in rent where appropriate, and determine which housing was exempt from the regulation. Several lessors filed a complaint seeking declaratory and injunctive relief. The circuit court held the ordinance invalid.[2]

Three questions faced the Supreme Court of Florida in *City of Miami Beach v. Fleetwood Hotel, Inc.*[3] (1) did the city have the right or authority to enact a rent control ordinance? (2) did the city have the authority to enact an ordinance delegating such wide discretion to the City Rent Agency? (3) did the ordinance conflict with any State law?[4]

Generally, the legislative powers of municipalities are of a limited nature.[5] Municipalities have no inherent right of self-government beyond that granted them by the state,[6] and municipalities' power to legislate is governed by a variety of fundamental rules. First, the

1. Miami Beach, Fla., Ordinance 1791, Housing and Rent Control Regulations, October 15, 1969. The ordinance provided for rent regulation in all housing with four or more rental units except for hospitals, nursing homes, asylums or public institutions, college or school dormitories or other charitable or educational or non-profit institutions, hotels, motels, public housing, condominiums and any housing completed after December 1, 1969. The ordinance also required the City Rent Agency to determine the rents, set aside rents if needed, and make appropriate decreases.

2. City of Miami Beach v. Fleetwood Motel, Inc., 33 Fla. Supp. 192 (Cir. Ct. 1972).

3. 261 So. 2d 801 (Fla. 1972).

4. For the purposes of this comment, discussion of the third issue has been omitted. The court found that the ordinance conflicted with FLA. STAT. ANN. §§ 83.03, 83.04, 83.06, 83.20 (Supp. 1973). The court discussed the issue only in passing and it was not necessary to do more in light of the holding on the first two issues.

5. 56 AM. JUR. 2d *Municipal Corporations* § 125 (1971).

6. Kansas City v. J. I. Case Threshing Mach. Co., 337 Mo. 913, 87 S.W.2d 195 (1935).

laws of a city must conform to its charter; the charter is to the city what the constitution is to the state.[7] Second, a city cannot pass laws in conflict with state laws.[8] Third, legislation must relate to "municipal concerns."[9]

Traditionally, the grant of power to municipalities has been restricted to police powers, that is, matters of public health, safety, morals and general welfare. The delegation of police powers to municipalities has been held to not necessarily include the power to regulate rents.[10] For example, the Supreme Court of Connecticut has held that a conferral by the state in 1947 of rent control power and its subsequent withdrawal in 1956 indicated that such a power could be conferred only directly by the state.[11]

The ordinary presumption of validity that attaches to regularly enacted ordinances will not suffice to allow courts to uphold an ordinance based on a power not inferrable from the police powers,[12] but some courts have found rent control ordinances valid if they are of a temporary nature[13] and have been enacted to ease a public emergency.[14] Such a public emergency has been defined in strict terms by the Supreme Court to embrace a situation caused by "an insufficient supply of dwelling houses and apartments, so grave that it constituted a serious menance to the health, morality, comfort, and even to the peace of a large part of the people . . . ."[15] It would seem, therefore, that municipal control of rents is warranted only during emergencies and then only when such ordinances are of a temporary nature.

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7. 5 E. McQuillin, Municipal Corporations § 15.19 (1969).

8. 56 Am. Jur. 2d *Municipal Corporations* § 361 (1971); 5 E. McQuillin, *supra* note 7, § 15.20.

9. 5 E. McQuillin, *supra* note 7, § 15.18.

10. Old Colony Gardens, Inc., v. City of Stamford, 147 Conn. 60, 156 A.2d 515 (1959).

11. *Id.*

12. Wagner v. Mayor of the City of Newark, 24 N.J. 467, 478, 132 A.2d 794, 800 (1957).

13. *See, e.g.,* Block v. Hirsh, 256 U.S. 135 (1921); Burton v. City of Hartford, 144 Conn. 80, 127 A.2d 251 (1956); Lincoln Bldg. Associates v. Barr, 1 N.Y.2d 413, 420, 135 N.E.2d 801, 806, 153 N.Y.S.2d 633, 639 (1956); Warren v. City of Philadelphia, 387 Pa. 362, 366, 127 A.2d 703, 705 (1956).

14. Block v. Hirsh, 256 U.S. 135 (1921); Kress, Dunlap & Lane, Ltd. v. Downing, 193 F. Supp. 874 (D. Virgin Isl. 1961); Lincoln Bldg. Associates v. Barr, 1 N.Y.2d 413, 135 N.E.2d 801, 153 N.Y.S.2d 633 (1956); Warren v. City of Philadelphia, 387 Pa. 362, 127 A.2d 703 (1956).

15. Edgar A. Levy Leasing Co. v. Siegel, 258 U.S. 242, 245 (1922).

The City of Miami Beach receives its power to legislate from the Florida constitution, which requires all cities to adopt or draft municipal charters.[16] The constitution provides that "municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law."[17] Thus, it would seem that municipalities in Florida can exercise their legislative powers only with respect to purely municipal functions, that is, those functions "granted for the specific benefit and advantage of the urban community embraced within the corporate boundaries."[18] This is made even clearer by the legislature's response to the Florida Constitutional Revision Commission's recommendations in 1968. In enacting the current provisions the legislature deleted the proposed words "municipalities shall have the power of self-government."[19]

Florida decisions regarding municipal exercise of legislative power follow the general rules set forth earlier. *City of Miami v. Girtman*[20] held that the governing body of a city is entitled to exercise its police power in favor of the general welfare, and where such exercise is valid, personal as well as property rights must yield. Such an ordinance, however, must not infringe unnecessarily on protected constitutional rights, nor be inconsistent with general state laws.[21] "Ordinances must be reasonable, equal and impartial in operation,"[22] but once properly enacted, an ordinance acquires a presumption of validity.[23] Because of this presumption, Florida courts have shown a

16. FLA. CONST. art. 8, § 2.

17. *Id.*

18. Loeb v. City of Jacksonville, 101 Fla. 429, 438, 134 So. 205, 208 (1931). The Miami Beach Charter adopts the police power language. CHARTER OF THE CITY OF MIAMI BEACH § 6(x) (1915).

19. FLA. CONST. art. 8, § 2 (commentary).

20. 104 So. 2d 62, 66 (Fla. Dist. Ct. App. 1958).

21. *Id.* at 66; Miami Shores Village v. American Legion, 156 Fla. 673, 678, 24 So. 2d 33, 35 (1945); Blitch v. City of Ocala, 142 Fla. 612, 615, 195 So. 406, 407 (1940).

22. City of Wilton Manors v. Starling, 121 So. 2d 172, 174 (Fla. Dist. Ct. App. 1960).

23. City of Miami Beach v. Texas Co., 141 Fla. 616, 637, 194 So. 368, 377 (1940).

reluctance to declare municipal ordinances invalid.[24] Due to the limitations placed on a municipality's power to legislate, however, all ordinances are subject to judicial review.[25]

Florida courts closely scrutinize ordinances that materially curtail the use of property. If no valid public safety, health, or moral purposes are involved, the power to enact such ordinances "will not ordinarily be inferred from general welfare powers . . . particularly when kindred or similar powers are not expressly conferred, and have not been customarily exercised pursuant to general powers relating to the public welfare."[26] Indeed, if any doubt arises during a court's inspection of an ordinance as to the municipality's authority to enact such an ordinance, such doubt should be resolved by the court against the municipality.[27]

Based on these principles, the Supreme Court of Florida held that the ordinance challenged in *Fleetwood* was constitutionally invalid.[28] First, the ordinance sought to interfere with a basic property relationship, that of landlord-tenant.[29] Second, the court doubted whether a sufficient public emergency, as defined by the Supreme Court in *Levy Leasing Co. v. Siegel*,[30] existed.[31] Third, rent regulation did not offer a sufficient framework by which to determine when the housing shortage would be over. The court found that such an absence of a time table or other indicators effectively made rent control permanent in Miami Beach,[32] a proposition directly contrary to the rule that rent control ordinances must be temporary only.[33] Based on these determinations, the court chose to invalidate the ordinance. In so deciding, the court also reached the second issue, whether the municipality had the authority to delegate such wide powers to the City Rent Agency.

24. City of Wilton Manors v. Starling, 121 So. 2d 172, 174 (Fla. Dist. Ct. App. 1960).

25. City of Miami v. Rosen, 151 Fla. 677, 683, 10 So. 2d 307, 309 (1942).

26. State v. Fowler, 90 Fla. 155, 159, 105 So. 733, 734 (1925).

27. City of Daytona Beach v. Dygert, 146 Fla. 352, 357, 1 So. 2d 170, 172 (1941).

28. 261 So. 2d at 801.

29. *Id.* at 804.

30. 258 U.S. 242 (1922).

31. 261 So. 2d at 804, 805.

32. *Id.* at 805.

33. Old Colony Gardens, Inc. v. City of Stamford, 147 Conn. 60, 156 A.2d 515 (1959).

There is no doubt that a municipality has some discretion in its choice of methods for implementing an ordinance. There are limits, however, on the extent and nature of this discretion. One obvious limit is good faith and reason.[34] Also, the powers delegated to agencies must be "so clearly defined, so limited in scope, that nothing is left to the unbridled discretion or whim of the administrative agency charged with the responsibility of enforcing the Act."[35] The holding of the court in *Amara v. Town of Daytona Beach Shores*[36] regarding the licensing of businesses is pertinent in this instance to delegating the power to control rents. That court held that even if the licensing of business could be classified as promoting health, safety, or the general welfare, it was necessary that the specifications be fixed in the ordinance with such certainty that the granting or denial of a license not be left to the whims of an administrative agency.[37]

The ordinance in the *Fleetwood* case sought to empower the City Rent Agency to exempt certain housing when the agency believed those tenants did not need protection.[38] The only guidelines for the agency were that it consider the "equities of the matter."[39] Such an imprecise direction clearly did not meet the rule that objective guidelines and standards should expressly appear in the act or be reasonably inferred.[40] The court had no choice but to find the delegation to be too imprecise.

The holdings in *Fleetwood* that a city cannot enact a permanent rent control ordinance and that they cannot delegate such broad powers to an agency without sufficient standards to guide the agency, have particular importance to the urban planner. Rent control at the local level could be a powerful tool which, when used judiciously, could help remedy problems such as blight, decay and numerous other housing problems. *Fleetwood* suggests municipalities have no authority to control rent, absent special circumstances. Municipalities have limited rent control authority during emergencies but that seems to defeat the very purpose of rent control—the avoidance of

34. State v. Tampa Waterworks Co., 56 Fla. 858, 47 So. 358 (1908).
35. Mahon v. County of Sarasota, 177 So. 2d 665, 666 (Fla. 1965).
36. 181 So. 2d 722, 725 (Fla. Dist. Ct. App. 1966).
37. *Id.*
38. 261 So. 2d at 805.
39. *Id.*
40. Smith v. Portante, 212 So. 2d 298, 299 (Fla. 1968).

future problems by controlling rent now. *Fleetwood* also suggests how *not* to delegate power to an agency. Specific guidelines should be laid down and standards imposed on an agency before courts will approve such delegations. Finally, the most important ramification of the *Fleetwood* decision is that in taking such a strong stand regarding the scope of police powers, the court retards future efforts by municipalities to correct a serious urban problem.

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