

INTERGOVERNMENTAL CONFLICT IN THE REGULATION OF BLOCKBUSTING ACTIVITIES

In *Summer v. Township of Teaneck*,¹ a licensed real estate broker whose business consisted in large part of making uninvited solicitations for real estate listings sought to have the New Jersey Supreme Court declare void a municipal ordinance designed to prevent "blockbusting."² The township adopted the ordinance under the authority of a statute³ granting municipal corporations power to enact ordinances "not contrary" to the laws or constitutions of the United States or New Jersey. It requires "any person who receives or expects to receive pecuniary gain from the sale of real property"⁴ and who intends to conduct uninvited solicitations for the purpose of getting real estate listings or to speak to owners about real estate transactions to file a form with the township clerk between 10 and 30 days before the soliciting is to take place. The form contains "a listing of the particular block or blocks in the Township which the person intends to canvass, as well as the date or dates of canvass."⁵

The Supreme Court of New Jersey upheld the validity of the ordinance, notwithstanding an alleged conflict with a rule of the state Real Estate Commission prohibiting conduct defined as blockbusting.⁶ The

1. 53 N.J. 548, 251 A.2d 761 (1968).

2. The court defined "blockbusting" as "the practice of inducing owners of property to sell because of the actual or rumored advent into the neighborhood of a member of a racial, religious, or ethnic group." *Id.* at 551, 251 A.2d at 762.

3. N.J. REV. STAT. § 40:48-2 (Supp. 1969).

4. Township of Teaneck, N.J., Ord. No. 1274, in Brief and Appendix of Defendant-Appellant at 2a.

5. Brief and Appendix for Defendant-Appellant at 2a. The term "canvass" was defined in the ordinance to include "door to door soliciting or soliciting by the use of circulars, visitations, or any other means where the canvasser, or his employer has not been invited or requested by the owner . . . to obtain a listing of real property or to confer with the owner regarding a real estate transaction."

6. "Rule No. 26. BLOCK BUSTING

"No broker or salesman shall affirmatively solicit the sale, lease, or the listing for sale or lease, of residential property on the grounds of alleged change of value due to the presence or prospective entry into the neighborhood of a person or persons of another race, religion, or ethnic origin nor shall distribute, or cause to be distributed, material or make statements designed to induce a residential property owner to sell or lease his property due to such change in the neighborhood." 53 N.J. at 555 & n. 1, 251 A.2d at 765 & n. 1.

REGULATION OF BLOCKBUSTING ACTIVITIES

Commission had promulgated its rule in exercise of its power to license real estate brokers and to define permissible broker conduct.⁷

New Jersey law regarding conflicts between state statutes and municipal ordinances appears to be that if the legislature has "preempted" a particular field, no conflicting ordinance may stand.⁸ Furthermore, even if the legislature has not spoken, no municipality may regulate a subject "inherently" in need of uniform, statewide control.⁹ Only where the field has not been preempted and the subject matter is one of local concern is an ordinance valid.¹⁰ The issues on which the case turned were: (1) whether the creation of the Real Estate Commission to license and regulate brokers indicated legislative intent to preempt the field of blockbusting control, and (2) whether blockbusting is a subject over which municipal legislation is powerless because of a need for statewide uniformity. In an opinion by Chief Justice Weintraub, the court answered both questions negatively.

The Commission's rule had been promulgated under general authority in the real estate statute "to make, prescribe, and enforce any and all rules and regulations for the conduct of the real estate brokerage business . . ." ¹¹ The court reasoned that this rule did not mean that other levels of government cannot "move against the same misconduct."¹² In other words, the rule should not be regarded as an immunity from all forms of regulation and prosecution for those who hold licenses from the Commission. Citing the municipality's general authority to legislate,¹³ and impressed with the New Jersey constitutional provision requiring liberal construction of statutes in favor of municipalities,¹⁴ the court held that the creation of the Real Estate Commission did not preempt the field. And since "blockbusting depends very much on the local scene and varies accordingly. . . ,"¹⁵ this subject did not require uniform state action.¹⁶

7. 53 N.J. at 555, 251 A.2d at 765.

8. See, e.g., *Kennedy v. City of Newark*, 29 N.J. 178, 148 A.2d 473 (1959).

9. See, e.g., *In re Public Service Electric & Gas Co.*, 35 N.J. 358, 173 A.2d 233 (1961).

10. For a more detailed examination of the field of municipal-state conflicts, see Note, 72 HARV. L. REV. 737 (1969).

11. N.J. REV. STAT. § 45:15-17 (Supp. 1969).

12. 53 N.J. at 555, 251 A.2d at 765.

13. N.J. REV. STAT. § 40:48-2 (Supp. 1969).

14. N.J. CONST., art. IV, § 7, ¶11 (1947).

15. 53 N.J. at 553, 251 A.2d at 764.

16. In the past, when testing the appropriateness of a given municipal ordinance, the court looked for one of two alternative elements: (1) the effect of the ordinance outside the municipality; or (2) evidence revealing a need for

In reaching these conclusions, the court did not discuss the earlier case of *State v. Stockl*¹⁷ in which a county court specifically held that by its delegation of power to the Real Estate Commission "[t]he state has preempted the field to the exclusion of municipal exercise of power or regulation or licensing in this field."¹⁸ In *Stockl*, a borough ordinance required any canvasser or solicitor first to obtain a municipal license and to wear an identifying badge during the time that he engaged in soliciting. The ordinance also provided for revocation of the license and prosecution in the event that the canvasser acted irresponsibly or unlawfully. It is evident that the ordinance was primarily intended to be a method of controlling the entry of strangers into the community to engage in unscrupulous or criminal activity through soliciting; it was not intended to regulate real estate brokers alone.¹⁹ But the *Stockl* court held that since the ordinance did apply to brokers it was in conflict with the statute which created the Real Estate Commission. Since the statute empowering municipalities to license certain professions²⁰ specifically provides that nothing in it should be construed to allow a municipality to regulate any person holding a state license, the court found that the legislature had preempted the field.

The ordinance in *Stockl* required those who wished to engage in soliciting to obtain a municipal license. In that respect it conflicted more directly with the state licensing statute than did the *Summer* ordinance, which provided only that would-be solicitors give the city notice of an intention to solicit. On the other hand, the *Stockl* ordinance was one of general application, but the Teaneck provision concerned real estate brokers exclusively.

The apparent inconsistency in the two cases may be explained by interpreting the *Summer* opinion as holding that it is the Commis-

statewide control. But if this is the court's test, it may become impossible to uphold any ordinance, since it is hard to imagine any subject which cannot, in some way, affect statewide concerns. 72 HARV. L. REV., *supra* note 10, at 742. The court in *Summer* seemed to abandon any search for the first alternative and, instead, relied solely on the second, while implying that the use of the second had been expanded far beyond its original application, which was to matters like "wills or titles to real property." 53 N.J. at 552, 251 A.2d at 763. By adopting as its sole test an evaluation of the need for statewide control, the court seems to adhere to the original purpose of the uniformity doctrine. It also seems to give the proper effect to the constitutional provision which encourages upholding municipal enactments.

17. *State v. Stockl*, 85 N.J. Super. 591, 205 A.2d 478 (Super. Ct. 1964)

18. *Id.* at 599, 205 A.2d at 483.

19. *Id.* at 594, 205 A.2d at 480.

20. N.J. REV. STAT. § 40:52-1 (Supp. 1969).

REGULATION OF BLOCKBUSTING ACTIVITIES

sion's responsibility to license brokers—thus the decision invalidating the *Stockl* licensure ordinance—but that business operations within the municipalities are primarily the concern of the cities themselves. Yet this reading of the case is difficult to support. The technique the municipality uses should not be determinative. There is no practical difference between licensing a broker and then prosecuting him for engaging in blockbusting, and requiring notice of intent to solicit and then prosecuting for the same activity.

The cases also may be distinguished by the fact that *Stockl* was decided by a county court and *Summer* by the highest court of the state. Yet this explanation fails to justify the court's disregard of the broad language of the *Stockl* opinion. Instead, *Summer* may have overruled the *Stockl* holding, and at the very least the latter case has not received a sympathetic reading by the New Jersey Supreme Court.

These two cases demonstrate the confusion attendant upon conflicts between state statutes and municipal ordinances, especially with regard to blockbusting. The problem is to find the appropriate governmental level of regulation of activities which clearly have racial dimensions. The Federal Fair Housing Act of 1968,²¹ and its prohibition of blockbusting,²² do not resolve the problem, because that statute only suggests a third possible governmental agency with an interest in controlling such activity. Application of this federal law, furthermore, increases the danger of multiple prosecution by the various governmental agencies at the local, state and federal levels. Finally, the character of the municipal regulations themselves may be difficult to identify because prosecution or licensure at the local level may amount in practice to a veiled means of accomplishing racial exclusion.

What is needed to answer the question of the proper limits on municipal power is a careful legislative determination, not a judicial one. Unfortunately, conflicting political pressures and difficulties in defining the activity make state legislative limits on municipal power in this area very difficult to conceive. We may thus look for continuing litigation over local ordinances that attempt to deal with these problems.

J. Stuart Showalter

21. 42 U.S.C.A. § 3601 et seq. (1969).

22. 42 U.S.C.A. § 3604(e) (1969).