

Ohio Supreme Court Finds That Local Ordinances Conflict With Statewide Statutory Scheme For Permitting Of Oil And Gas Operations

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On February 17, 2015, the Ohio Supreme Court issued its long awaited decision in [Ohio ex rel. Morrison et al. v. Beck Energy et al.](#), with a majority of the justices of the high court finding that R.C. §1509.02 gives the Ohio Department of Natural Resources (ODNR) “sole and exclusive” authority to regulate the permitting, location and spacing of oil and gas wells and production operations in Ohio and that the Home Rule Amendment to the Ohio Constitution, Article XVIII, Section 3, does not allow the City of Munroe Falls the power to enforce its own conflicting permitting scheme for oil and gas production within its municipal boundaries.

Beck Energy Corporation obtained a permit from ODNR to drill an oil and gas well on property within the corporate limits of the City of Munroe Falls. Shortly after Beck Energy began drilling, the City issued a stop-work order and filed a complaint seeking injunctive relief in the Summit County Court of Common Pleas. The Complaint alleged that Beck Energy was violating multiple provisions of the Munroe Falls Codified Ordinances, the first a general zoning ordinance that prohibits construction or excavation without a “zoning certificate” issued by the zoning inspector, and the remaining four related to Chapter 1329 of the Munroe Falls Codified Ordinances relating to oil and gas drilling. Beck Energy opposed the City’s request for injunctive relief on the basis that the City’s ordinances conflicted with the statewide regulatory scheme outlined in R.C. Chapter 1509. The trial court granted the injunction prohibiting Beck Energy from drilling until it complied with all local zoning ordinances. The court of appeals reversed. A majority of the Justices of the Ohio Supreme Court affirmed, with the majority opinion written by Justice Judith French.

The Home Rule Amendment to the Ohio Constitution, Article XVIII, Section 3, provides that “[m]unicipal corporations shall have the authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” The Ohio Supreme Court described the amendment as giving municipalities the “broadest possible powers of self-government in connection with all matters which are strictly local and do not impinge upon matters which are of a state-wide nature or interest,” citing *State ex rel Hackley v Edmonds* 150 Ohio St. 203, 212, (1948) . It does not, however, allow municipalities to exercise their police powers in a manner that “conflict[s] with general laws.” Article XVIII, Section 3, and *State ex rel Mill Creek Metropolitan Park District Board of Commissioners v Tablack*, 86 Ohio St. 3d 293, 296 (1999). The Ohio Supreme Court cited its prior decision

in *Mendenhall v Akron* 117 Ohio St. 3d 33 (2008) as describing the circumstances under which a municipal ordinance must yield to a state statute : (1) where the ordinance is an exercise of the police power, rather than of local self-government, (2) where the statute is a general law, and (2) where the ordinance is in conflict with the statute to find that the Munroe Falls ordinances must yield to R.C Chapter 1905.02.

The City's arguments focused on the second and third prongs of the *Mendenhall* test, that R.C. Chapter 1509.02 is not a "general law" insofar as it does not operate in all geographic areas of the state and that there was no conflict between R.C. Chapter 1509.02 and its ordinances because the statute and ordinances "regulate two different things." The Ohio Supreme Court rejected both arguments. With respect to the uniformity issue, the Court held that "[w]hether or not every acre of Ohio constitutes viable drilling land, R.C. 1509.02 imposes the same obligations and grants the same privileges within the state. Moreover, the statute applies to all municipalities in the same fashion....by prohibiting all local governments from interfering in the regulation of any oil and gas activities covered by R.C. Chapter 1509." With respect to the conflict issue, the Court found that the City's ordinances conflicted with R.C. §1509.02 in two ways, the first being that they prohibit what R.C. §1509.02 allows (i.e., oil and gas production within the municipal boundaries of the City) and the second being the language of R.C. § 1509.02 itself, which gives ODNR "sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations within Ohio" reserving to the state, to the exclusion of local governments, the right to regulate all aspect of the locating, drilling, and operation of oil and gas wells, including their permitting.

Justices O'Connor and Kennedy concurred in the judgment. Justice Terrence O'Donnell also concurred, but wrote separately to emphasize the limited scope of the holding in the case to the five municipal ordinances at issue. Justices Pfeifer, Lanzinger and O'Neill dissented, all of whom articulated the view that local zoning ordinances differ from and can co-exist with R.C. Chapter 1509 and its statewide regulatory scheme for oil and gas drilling. Each would have reversed the judgment of the court of appeals and remanded the case to that court for an examination of whether the ordinances actually conflicted with the state statutory scheme.

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