

Home Builders Assn. v. City of Lincoln, 271 Neb. 353 (2006)

Supreme Court Headnotes

In this case challenging the ordinance of a city as being enacted outside of its power under the home rule charter, the Nebraska Supreme Court finds that a tax imposed by that ordinance, which conditioned the issuance of a building permit for new residential development on the payment of "impact fees," intended to offset the expenses associated with providing municipal services to the new development, was within the home charter rule.

Judgments:

- **[Appeal and Error.]** When reviewing questions of law, an appellate court has an obligation to resolve the questions independently of the conclusions reached by the trial court.

Municipal Corporations.

- There is a distinction between a legislative charter, which emanates from the sovereign legislature and grants power to a municipality, and a home rule charter, which has as its basis a constitutional provision enacted by the sovereign people authorizing the electorate to empower municipalities with the authority to govern their own affairs. ••• The purpose of a home rule charter is to render the city as nearly independent as possible from state interference. ••• There is a distinction between a home rule charter that operates as a grant of powers, which expresses the specifically enumerated functions of the municipality and is strictly construed, and a limitation of powers charter, which empowers a municipality to exercise every power connected with the proper and efficient government of the municipality which might be lawfully delegated to it by the Legislature, without waiting for such delegation. ••• A rule of strict construction of a municipality's express powers, also known as Dillon's rule, does not apply to a city operating under a limitation of powers home rule charter.

Constitutional Law:

- A constitution represents the supreme written will of the people regarding the framework for their government.

- **[Municipal Corporations.]** Under a home rule charter, a city's power must be consistent with and subject to the constitution and laws of this state, except as to local matters of strictly municipal concern. **(Legislature: Taxation.)** Neb. Const. art. VIII, §§ 1 and 6, provide that the Legislature can empower a city to tax, and Neb. Const. art. XI authorizes a city with a limitation of powers home rule charter to exercise that power to tax without first waiting for express delegation.

Municipal Corporations:

- **[Statutes.]** The constitutional limitation that a home rule charter must be consistent with and subject to the laws of the state means that on matters of such general concern to the people of the state as to involve a public need or policy, the charter must yield to state legislation; but until the superior authority of the state has been asserted by a general statutory enactment, the municipality may properly act under its charter.

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Court Appealed From: Appeal from the District Court for Lancaster County: Paul D. Merritt, Jr., Judge.

Attorneys for the Appeal: William G. Blake, Mark A. Hunzeker, and Jason L. Scott for Home Builders Association of Lincoln, a Nebraska not-for-profit corporation, and Hartland Homes, Inc., a Nebraska corporation, appellants and cross-appellees. Dana W. Roper and Ernest R. Peo III for The City of Lincoln, a municipal corporation, appellee and cross-appellant.

Justices: Wright, Connolly, Gerrard, Stephan, McCormack, and Miller-Lerman, JJ.

Not Participating: Hendry, C.J.

Not Participating in the Decision: Connolly, J.

Authored By: Gerrard, J.

Summary: The plaintiffs in this action have challenged the legal authority of the City of Lincoln (the City) to enact an ordinance conditioning the issuance of a building permit for new residential development on the payment of "impact fees," intended to offset the expenses associated with providing municipal services to the new development.

In 2003, the City enacted an "Impact Fee Ordinance" Lincoln Mun. Code § 27.82.050 (2003) (the Ordinance) which set forth the findings of the Lincoln City Council that new development in the City was creating additional demand for public facilities such as water treatment and wastewater systems, arterial streets, and neighborhood parks and trails. The city council further found that protection of the citizens of the City required expansion of new development for public facilities and that the City's revenue structure did not generate sufficient funds to serve the new development. The city council therefore found that "[t]he creation of an equitable impact fee system would enable the City to impose a more proportionate share of the costs of required improvements to the water and wastewater systems, arterial streets, and neighborhood parks and trails on those developments that create the need for them." § 27.82.020(f). In the Ordinance's statement of intent, it was explained that the intent of the Ordinance was not to collect moneys from new development in excess of the actual amount necessary to offset demands generated by new development, or for moneys collected from the impact fee to be commingled with moneys from a different impact fee account, or to be used for a type of facility different from that for which the fee was paid, rather, it was the intent of this ordinance is to ensure that adequate water and wastewater systems, arterial streets, and parks and trails are available "to serve new growth and development in the City of Lincoln and to regulate the use and development of land so as to ensure that new growth and development bears its proportionate share of the cost of improvements to the City's water and wastewater systems, arterial streets, and neighborhood parks and trails needed to serve such new growth and development; to ensure that the proportionate share for each type of public facility does not exceed the cost of providing that type of public facility to the new development that paid the fee; and to ensure that funds collected from new developments are actually used to construct public facilities that benefit such new developments."

The plaintiffs, the Home Builders Association of Lincoln and Hartland Homes, Inc., filed a complaint against the City in district court, seeking declaratory and injunctive relief declaring the Ordinance invalid and unenforceable. Following cross-motions for summary judgment, the court concluded that the Ordinance was within the power granted to the City and granted the City's motion for summary judgment.

The plaintiffs' first two assignments of error addressed the dispositive conclusion of the district court that pursuant to its home rule charter, the City had the legal authority to enact the Ordinance in the absence of express statutory authorization to that effect. The plaintiffs argued that this understanding of the home rule charter is incorrect and that in matters of taxation, the City can act only pursuant to an express grant of authority from the Legislature. The Nebraska Supreme Court reminded that the purpose of a home rule charter is to render the city as nearly independent as possible from state interference and pointed to the language of the Nebraska Constitution authorizing home rule charters, Neb. Const. art. XI. Here, the Court found that the City's current home rule charter "does not merely enumerate specified powers, but grants all powers possible to the City."

The Court added that the constitutional language relied upon by the plaintiffs does not act as a restriction of the authority a municipality may exercise under a home rule charter. "Had this purpose been intended, it could have been expressed in article XI in no uncertain terms. Instead, when read together, article VIII, §§ 1 and 6, and article XI support the City's position in this case. The very purpose of a home rule charter is to permit municipalities to exercise 'every power connected with the proper and efficient government of the municipality, including those powers so connected, which might lawfully be delegated to it by the legislature, without waiting for such delegation.'" Article VIII, §§ 1 and 6, simply establishes the Legislature's power to tax, and its authority to delegate that power to governmental subdivisions. In short, article VIII, §§ 1 and 6, provides that the Legislature can empower a city to tax, and article XI authorizes a city with a limitation of powers home rule charter to exercise that power to tax without first waiting for express delegation. The plaintiffs' reading of the constitution would frustrate the will of the sovereign people in that regard, as it would limit the sovereignty acquired by the adoption of a home rule charter, and contravene the intent of article XI.

The Court concluded that the district court correctly determined that the City was empowered, under its home rule charter, to enact the Ordinance. "Having so determined, we need not address the plaintiffs' remaining assignments of error, as they would have been relevant only if express statutory authority for the Ordinance was required. Similarly, we decline to address the City's cross-appeal, as the issues it presents are unnecessary to our disposition of this appeal." **AFFIRMED.**