

COURT OF APPEALS OF TEXAS, THIRD DISTRICT, AT AUSTIN

In re Jim Hollis and Christopher Juusola

No. 03-09-00589-CV · No. No. 03-09-00589-CV · Decided November 19, 2009

SUMMARY

The Texas Court of Appeals, Third District, denied a petition for writ of mandamus seeking to compel the Buda City Council to submit an amendment concerning land use in the city's extraterritorial jurisdiction to voters through the municipal referendum process. The court held that the amendment was not legislative in character because it operated through a temporary development agreement and therefore was not subject to the referendum provisions of Buda's city charter.

CASE DETAILS

COURT	Court of Appeals of Texas, Third District, at Austin
WRITING FOR THE COURT	Diane M. Henson; Chief Justice Jones; Justice Waldrop; Justice Henson
JURISDICTION	Texas
DECIDED	November 19, 2009
DOCKET	No. 03-09-00589-CV
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original proceeding seeking a writ of mandamus to compel the Buda City Council to submit Amendment No. 3 to the qualified voters of Buda through the City's charter referendum process.
STANDARD OF REVIEW	Mandamus is appropriate when the challenged matter is proper for initiative and referendum—meaning its subject matter is legislative in character and it has not been excluded by general law or charter—and the relators are entitled to relief under the governing election law and charter.
PRECEDENTIAL VALUE	Published memorandum opinion; precedential status is not otherwise specified in the opinion text.
PARTIES	Jim Hollis, Christopher Juusola v. Buda City Council

TOPICS

- election law
- appellate procedure
- ordinances
- zoning
- municipal law

PRACTICE AREAS

election law

municipal law

land use

QUESTIONS PRESENTED

1. Whether the City Council's approval of Amendment No. 3 constituted an ordinance or other legislative act subject to the referendum process under Buda's City Charter.
2. Whether the relators were entitled to mandamus relief compelling the City Council to submit Amendment No. 3 to the voters.

HOLDINGS

1. Amendment No. 3 was not legislative in character because it changed the land-use designation of property in the City's extraterritorial jurisdiction pursuant to a development agreement with the landowner, rather than through a legislative act. Its temporary nature further demonstrated that it was not a legislative act and therefore was not subject to the City's initiative and referendum process.
2. The petition for writ of mandamus was denied because Amendment No. 3 was not subject to the referendum process.

KEY QUOTATIONS

“A matter is proper for the initiative and referendum [process] if (1) the subject matter of the proposed ordinance is legislative in character; and (2) it has not been withdrawn or excluded by general law or the charter, either expressly or by necessary implication, from the operative field of initiative. If these conditions are met, mandamus is appropriate.” (at 2)

“‘legislative’ relates to subjects of a general or permanent character, as distinguished from those subjects which are transitory, temporary, or routine.” (at 3)

FACTUAL BACKGROUND

The Buda City Council approved Amendment No. 3 on June 2, 2009, modifying an agreement involving creation of a municipal utility district and land located in Buda's extraterritorial jurisdiction. The amendment permitted light-industrial use on part of the property. Although Buda voters submitted a sufficient referendum petition, the City Council refused to submit the amendment to the voters because it determined that the amendment was not an ordinance. The agreement was temporary and could be accomplished only through an agreement with the landowner rather than through municipal legislation.

PROCEDURAL HISTORY

The Buda City Council approved Amendment No. 3 to an agreement concerning a municipal utility district and land in Buda's extraterritorial jurisdiction. After the City Secretary certified a referendum petition as sufficient, the City Council refused to submit the matter to the voters because it concluded that Amendment No. 3 was not an ordinance subject to referendum. The relators then filed a mandamus petition in the Court of Appeals, which denied relief.

DISPOSITION

writ_denied

CASES CITED

- Glass v. Smith, 244 S.W.2d 645, 654 (Tex. 1951)
- Humphrey v. Balli, 61 S.W.3d 519, 523 (Tex. App.—San Antonio 2001, no pet.)
- City of Pharr v. Tippitt, 616 S.W.2d 173, 175 (Tex. 1981)
- Weatherford v. City of San Marcos, 157 S.W.3d 473, 487 (Tex. App.—Austin 2004, pet. denied)
- City of Austin v. Findlay, 538 S.W.2d 9, 11 (Tex. Civ. App.—Austin 1976, no writ)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/federal/court-of-appeals-of-texas-third-district-at-austin/2009/in-re-jim-hollis-and-christopher-juusola-804t0ecj>