

SUPREME JUDICIAL COURT OF MAINE

E. Perry Iron & Metal Co., Inc. v. City of Portland, 2008 ME 10

941 A.2d 457 (Me. 2008) · Decided January 15, 2008

SUMMARY

The Maine Supreme Judicial Court affirmed judgment for the City of Portland in a challenge to the City's Scrap Metal Recycling Facilities ordinance. The court held that the ordinance was not preempted by Maine's Solid Waste Act because the record did not show that it frustrated the Act's purposes or imposed stricter environmental standards, and it rejected the plaintiff's equal protection, substantive due process, takings, and Commerce Clause claims.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Mead, J.; Saufley, C.J.; Clifford, J.; Alexander, J.; Levy, J.; Silver, J.; Gorman, J.
JURISDICTION	Maine
DECIDED	January 15, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Superior Court judgment upholding the City of Portland's Scrap Metal Recycling Facilities ordinance against challenges based on statutory preemption and the Maine and United States Constitutions.
STANDARD OF REVIEW	Issues of law and interpretation of a local ordinance are reviewed de novo. Statutes and ordinances are interpreted beginning with their plain language. Legislation is presumed constitutional, and the challenger bears the burden of proving invalidity.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	E. Perry Iron & Metal Co., Inc. v. City of Portland

TOPICS

[municipal law](#)[ordinances](#)[home rule](#)[preemption](#)[environmental law](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Portland's Scrap Metal Recycling Facilities ordinance was implicitly preempted by the Maine Hazardous Waste, Septage and Solid Waste Management Act.
2. Whether the ordinance established standards stricter than those permitted by 38 M.R.S. § 1310-U.
3. Whether the ordinance violated equal protection through irrational classification or selective enforcement.
4. Whether the ordinance violated substantive due process.
5. Whether the ordinance effected an unconstitutional taking of private property.
6. Whether the ordinance violated the Commerce Clause.

HOLDINGS

1. The Scrap Metal Recycling Facilities ordinance was not implicitly preempted by the Solid Waste Act because the record did not show that the ordinance frustrated any defined state purpose.
2. The ordinance was not shown to impose standards stricter than those established by the Solid Waste Act, and its more rigorous testing procedures did not alone constitute impermissibly stricter standards.
3. The ordinance survived rational-basis review because regulating scrap-metal facilities as a source of pollution was rationally related to the legitimate governmental purpose of pollution control.
4. Perry failed to establish a selective-enforcement equal protection violation because it did not show differential treatment of a similarly situated person based on impermissible considerations or a bad-faith intent to injure.
5. Perry did not prove that the ordinance violated substantive due process.
6. Perry failed to establish that the ordinance effected an unconstitutional taking.
7. Perry failed to prove that the ordinance violated the Commerce Clause.

KEY QUOTATIONS

“Only where the municipal ordinance prevents the efficient accomplishment of a defined state purpose should a municipality's home rule power be restricted, otherwise [municipalities] are free to act to promote the well-being of their citizens.” (462)

“The adjective “stricter” modifies the noun “standards” in the Solid Waste Act.” (463)

“The mere fact that a local ordinance may establish a procedure that is more rigorous than the State's procedures does not, ipso facto, render the SMRF ordinance invalid.” (464)

FACTUAL BACKGROUND

E. Perry Iron & Metal Co., Inc. operated a scrap-metal recycling facility in Portland for decades and held annual municipal licenses under Maine's junkyard statute. In 2004, Portland enacted a Scrap Metal Recycling Facilities

ordinance regulating facilities that received, processed, or stored scrap metal, including requirements concerning groundwater and soil testing, waste handling, vehicle dismantling, setbacks, and visual screens. Perry alleged that the ordinance followed failed negotiations concerning redevelopment and relocation, and challenged the ordinance as preempted by the Maine Solid Waste Act and unconstitutional.

PROCEDURAL HISTORY

Perry operated a scrap-metal recycling facility under annual municipal junkyard permits. After the City enacted the Scrap Metal Recycling Facilities ordinance and failed to process Perry's permit-renewal application, Perry sought relief in the Superior Court, which ordered renewal of the permit through September 30, 2006. After the City's interlocutory appeal was dismissed, the parties submitted the ordinance challenges to the Superior Court on briefs; the court ruled that the ordinance was not preempted by the Solid Waste Act and was constitutional. The Supreme Judicial Court of Maine affirmed.

DISPOSITION

affirmed

CASES CITED

- E. Perry Iron & Metal Co., Inc. v. City of Portland, 2006 ME 52, 896 A.2d 956
- Peterson v. State Tax Assessor, 1999 ME 23, 724 A.2d 610
- Logan v. City of Biddeford, 2006 ME 102, 905 A.2d 293
- Gensheimer v. Town of Phippsburg, 2005 ME 22, 868 A.2d 161
- School Committee v. Town of York, 626 A.2d 935 (Me. 1993)
- Sawyer Environmental Recovery Facilities, Inc. v. Town of Hampden, 2000 ME 179, 760 A.2d 257
- Central Maine Power Co. v. Town of Lebanon, 571 A.2d 1189 (Me. 1990)
- Midcoast Disposal, Inc. v. Town of Union, 537 A.2d 1149 (Me. 1988)
- Maine Beer & Wine Wholesalers Association v. State, 619 A.2d 94 (Me. 1993)
- School Administrative District No. 1 v. Commissioner, Department of Education, 659 A.2d 854 (Me. 1995)
- Aseptic Packaging Council v. State, 637 A.2d 457 (Me. 1994)
- FCC v. Beach Communications, Inc., 508 U.S. 307 (1993)
- Yerardi's Moody Street Restaurant & Lounge, Inc. v. Board of Selectmen, 932 F.2d 89 (1st Cir. 1991)
- State v. Dhuy, 2003 ME 75, 825 A.2d 336
- B & B Coastal Enterprises, Inc. v. Demers, 276 F. Supp. 2d 155 (D. Me. 2003)
- Warren v. Municipal Officers, 431 A.2d 624 (Me. 1981)
- Tisei v. Town of Ogunquit, 491 A.2d 564 (Me. 1985)
- Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302 (2002)
- Wyer v. Board of Environmental Protection, 2000 ME 45, 747 A.2d 192
- City of Auburn v. Tri-State Rubbish, Inc., 630 A.2d 227 (Me. 1993)

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