

SUPREME COURT OF SOUTH CAROLINA

Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355

660 S.E.2d 264 (2008) · No. No. 26467 · Decided March 31, 2008

SUMMARY

The Supreme Court of South Carolina held that the City of Greenville's ordinance prohibiting smoking in enclosed public places, including bars and restaurants, was not preempted by the state's Clean Indoor Air Act or related tobacco-control legislation. The court also held that the ordinance did not violate Article VIII, section 14 of the South Carolina Constitution because its violations were civil infractions and did not criminalize conduct. The court reversed the trial court and upheld the ordinance as a valid exercise of municipal police power.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice Waller; Chief Justice Toal; Justice Moore; Justice Pleicones; Justice Beatty
JURISDICTION	South Carolina
DECIDED	March 31, 2008
DOCKET	No. 26467
DISPOSITION	reversed
PROCEDURAL POSTURE	Direct appeal from a trial court order declaring a municipal smoking ordinance unconstitutional and preempted by state law and permanently enjoining its enforcement.
STANDARD OF REVIEW	The court reviewed the validity of the ordinance as a legal issue under a two-step analysis: whether the municipality had authority to enact it, including whether state law preempted the field, and, if so, whether the ordinance was consistent with the Constitution and general law of the State.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	City of Greenville v. Foothills Brewing Concern, Inc., 4MB, Inc., Greenville Wings, Inc., Addy's, Inc., City Tavern, Inc., Greenville 0036, LLC, Euphoria, LLC, WTK, Inc., Drumcliff Abbey, Inc., Club Management, LLC

TOPICS

ordinances

municipal law

preemption

statutory interpretation

constitutional law

PRACTICE AREAS

municipal law

constitutional law

statutory interpretation

state and local government

public health regulation

QUESTIONS PRESENTED

1. Whether South Carolina law, including the Clean Indoor Air Act and Act 445, expressly or implicitly preempted Greenville's ordinance regulating smoking in bars, restaurants, and other areas.
2. Whether the ordinance violated Article VIII, section 14 of the South Carolina Constitution by criminalizing conduct that was not prohibited by statewide criminal law.
3. Whether the ordinance was consistent with the South Carolina Constitution and general law as a valid exercise of the municipality's police power.

HOLDINGS

1. The Clean Indoor Air Act and Act 445 did not preempt Greenville from enacting additional restrictions on smoking in public places. The ordinance was therefore within the City's authority.
2. The ordinance did not violate Article VIII, section 14 because classifying violations as infractions and public nuisances did not criminalize conduct.
3. The ordinance was a valid exercise of Greenville's municipal police power because additional restrictions on smoking to protect public health were neither inconsistent nor irreconcilable with state law.

KEY QUOTATIONS

"To preempt an entire field, 'an act must make manifest a legislative intent that no other enactment may touch upon the subject in any way.'" (at 361)

"In other words, it is patent that the language regarding 'ordinances' found in section 16-17-504 is intended to relate specifically to the distribution of 'tobacco products' to minors, and not to the regulation of indoor smoking." (at 364)

"In the instant case, however, where the violation of the Ordinance constitutes an infraction or a public nuisance, the conclusion is inescapable that the City does not seek to criminalize any conduct." (at 366)

FACTUAL BACKGROUND

Greenville enacted Ordinance No. 2006-91 in 2006 to prohibit smoking in enclosed public places, including bars and restaurants, places of employment, and specified outdoor areas. South Carolina's Clean Indoor Air Act already prohibited smoking in specified public indoor locations but did not comprehensively regulate smoking in

bars and restaurants. The ordinance classified violations as infractions and public nuisances, punishable by fines, rather than misdemeanors. Restaurant and bar owners challenged the ordinance after it took effect.

PROCEDURAL HISTORY

Respondents, owners and operators of restaurants and bars in Greenville, filed a declaratory judgment action challenging Ordinance No. 2006-91 and sought injunctive relief. The trial court denied temporary and preliminary injunctive relief, but later declared the ordinance unconstitutional and preempted by state law and permanently enjoined the City from enforcing it. The City appealed directly to the Supreme Court of South Carolina.

DISPOSITION

reversed

CASES CITED

- Denene, Inc. v. City of Charleston, 352 S.C. 208, 574 S.E.2d 196 (2002)
- Bugsy's v. City of Myrtle Beach, 340 S.C. 87, 530 S.E.2d 890 (2000)
- Town of Hilton Head Island v. Fine Liquors, Ltd., 302 S.C. 550, 397 S.E.2d 662 (1990)
- McAbee v. Southern Rwy., Co., 166 S.C. 166, 164 S.E. 444 (1932)
- Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000)
- TNS Mills, Inc. v. South Carolina Dep't of Revenue, 331 S.C. 611, 503 S.E.2d 471 (1998)
- South Carolina State Ports Auth. v. Jasper County, 368 S.C. 388, 629 S.E.2d 624 (2006)
- City of North Charleston v. Harper, 306 S.C. 153, 410 S.E.2d 569 (1991)
- Martin v. Condon, 324 S.C. 183, 478 S.E.2d 272 (1996)
- Connor v. Town of Hilton Head Island, 314 S.C. 251, 442 S.E.2d 608 (1994)
- Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 593 S.E.2d 462 (2004)
- Eargle v. Horry County, 344 S.C. 449, 545 S.E.2d 276 (2001)