

SUPREME COURT OF NEW HAMPSHIRE

City of Concord v. State

164 N.H. 130 (2012) · Decided August 31, 2012

SUMMARY

The New Hampshire Supreme Court considers whether a 2009 amendment changing the State and local subdivisions' respective funding shares for New Hampshire Retirement System employer contributions violated Part I, Article 28-a of the New Hampshire Constitution as an unfunded mandate. The court holds that Article 28-a requires a state-mandated substantive change to an underlying local governmental function, duty, or activity, in addition to necessitating additional local expenditures. Because the amendment changed only the allocation of existing retirement funding obligations and did not alter the scope of required retirement benefits, the court affirms summary judgment for the State.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Lynn, J.; Dallanis, C.J.; Conboy, J.; Hicks, J.
JURISDICTION	New Hampshire
DECIDED	August 31, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order granting the State's motion for summary judgment and denying the petitioners' motion for summary judgment in an action seeking declaratory and injunctive relief and damages.
STANDARD OF REVIEW	On cross-motions for summary judgment, the court considers the evidence in the light most favorable to each party as the nonmoving party and determines whether a genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law. Constitutional challenges to legislative acts are reviewed under a presumption of constitutionality and will succeed only upon a clear and substantial conflict with the constitution.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	City of Concord, County of Belknap, Mascenic Regional School District v. State of New Hampshire

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether section 52 of Laws 2009, chapter 144, violated Part I, Article 28-a of the New Hampshire Constitution as an unfunded mandate by increasing local subdivisions' share of NHRS employer contributions.
2. What elements must be shown to establish a violation of Part I, Article 28-a.
3. Whether an increased financial obligation, without a substantive change to an underlying local governmental function, duty, or activity, constitutes a new, expanded, or modified responsibility under Article 28-a.

HOLDINGS

1. A violation of Part I, Article 28-a requires the State to mandate or assign to a local subdivision a program or responsibility that is new, expanded, or modified from what existed before the state action and that necessitates additional expenditures by the local subdivision.
2. A new, expanded, or modified responsibility under Article 28-a must involve a substantive change to an underlying function, duty, or activity performed or to be performed by local government; a merely increased financial obligation is not enough.
3. Section 52 did not violate Article 28-a because it shifted part of the financial obligation for funding NHRS from the State to local subdivisions without changing any underlying local activity, function, employee category, or retirement-benefit obligation.

KEY QUOTATIONS

“Nonetheless, we believe that careful scrutiny of our cases reveals that the following four elements must be present before Article 28-a is violated: (1) the State must mandate or assign to a local subdivision (2) a program or responsibility (3) that is new, expanded or modified from what existed before the state action, and which- (4) necessitates additional expenditures by the local subdivision.” (164 N.H. at 140)

“Accordingly, we conclude that to constitute a new, expanded or modified “responsibility,” the state action must impose some substantive change to an underlying function, duty or activity performed or to be performed by local government.” (164 N.H. at 141-142)

“Rather, it merely shifts part of the financial obligation for funding NHRS from the State to the local subdivisions without altering any underlying activities.” (164 N.H. at 143)

FACTUAL BACKGROUND

New Hampshire's Retirement System is a tax-qualified pension trust covering certain public employees, including police officers, teachers, and firefighters, whose local-government employers must contribute to the

system. Before 2009, local subdivisions paid 65 percent of the employer contribution requirements and the State paid 35 percent. Section 52 changed the allocation to a 70/30 local-State split for fiscal year 2010 and a 75/25 split for fiscal year 2011, increasing local expenditures without changing which employees participated in NHRS or the underlying retirement-benefit obligations.

PROCEDURAL HISTORY

The petitioners challenged section 52 of Laws 2009, chapter 144, which increased the local subdivisions' share of employer contributions to the New Hampshire Retirement System. The Superior Court denied the petitioners' motion for summary judgment and granted summary judgment to the State on the merits. The court did not reach NHRS's separate motion for summary judgment because of its ruling for the State. The petitioners appealed.

DISPOSITION

affirmed

CASES CITED

- N.H. Assoc. of Counties v. State of N.H., 158 N.H. 284 (2009)
- N.H. Municipal Trust Workers' Compensation Fund v. Flynn, 133 N.H. 17 (1990)
- Opinion of the Justices (Solid Waste Disposal), 135 N.H. 543 (1992)
- Nashua School District v. State, 140 N.H. 457 (1995)
- Town of Nelson v. N.H. Department of Transportation, 146 N.H. 75 (2001)
- Opinion of the Justices (Voting Age in Primaries), 157 N.H. 265 (2008)
- Guildhall Sand & Gravel v. Town of Goshen, 155 N.H. 762 (2007)
- John A. Cookson Co. v. N.H. Ball Bearings, 147 N.H. 352 (2001)
- Izazaga v. Superior Court (People), 815 P.2d 304 (Cal. 1991)
- Advisory Opinion to the Governor, 96 So. 2d 541 (Fla. 1957)
- City of New Orleans v. Assessors' Retirement Fund, 986 So. 2d 1 (La. 2007)
- Swiezynski v. Civiello, 126 N.H. 142 (1985)
- Town of Hinsdale v. Town of Chesterfield, 153 N.H. 70 (2005)

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