

SUPREME COURT OF NEW HAMPSHIRE

Anderson v. McCann

124 N.H. 249 (1983) · Decided December 12, 1983

SUMMARY

Taxpayer-plaintiffs sought to enjoin Manchester officials and the Manchester Housing Authority from performing contracts for the Granite Street Development Project, arguing that the arrangements violated parts II, articles 5 and 83 of the New Hampshire Constitution. The New Hampshire Supreme Court held that the redevelopment project served a valid public purpose and was not barred by those constitutional provisions, and it declined to consider a challenge to related revenue bonds that had not been raised below.

CASE DETAILS

|                       |                                                                                                                                                                                                                                  |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of New Hampshire                                                                                                                                                                                                   |
| WRITING FOR THE COURT | Brock, J.                                                                                                                                                                                                                        |
| JURISDICTION          | New Hampshire                                                                                                                                                                                                                    |
| DECIDED               | December 12, 1983                                                                                                                                                                                                                |
| DISPOSITION           | affirmed                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Taxpayer plaintiffs appealed from the Superior Court's denial of their petition for injunctive relief seeking to enjoin performance of contracts for the Granite Street Development Project.                                     |
| PRECEDENTIAL VALUE    | Published New Hampshire Supreme Court opinion; precedential.                                                                                                                                                                     |
| PARTIES               | Anderson and other taxpayer plaintiffs v. Robert McCann, Executive Director of the Manchester Housing Authority, Emile Beaulieu, Mayor of Manchester, Other officials of the City of Manchester and Manchester Housing Authority |

TOPICS

- municipal finance
- constitutional law
- municipal law
- equitable relief
- preservation of error

PRACTICE AREAS

- constitutional law
- municipal law
- municipal finance
- remedies
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Granite Street Development Project contracts violated part II, article 5 of the New Hampshire Constitution by giving or lending public money or credit for the benefit of a private profit-making corporation.
2. Whether the contracts violated part II, article 83 of the New Hampshire Constitution concerning monopolies, combinations, conspiracies, and unfair means of impairing free and fair competition.
3. Whether the plaintiffs could challenge the validity of revenue bonds on appeal after expressly declining to challenge the bonds in the Superior Court.

#### **HOLDINGS**

1. Contracts for a redevelopment project serving a valid public purpose are not barred by part II, articles 5 and 83 merely because private interests receive incidental benefits. The Granite Street Development Project served a valid public purpose and therefore was not unconstitutional under those provisions.
2. The plaintiffs were barred from raising the validity of the revenue bonds on appeal because they expressly declined to challenge the bonds in the Superior Court.

#### **KEY QUOTATIONS**

*“There was ample evidence, both in the terms of the contract and in the planning director’s testimony, to support a finding that the project would eliminate a blighted area, alleviate traffic problems at a dangerous intersection, provide employment for several hundred people, and generate significant tax revenues to the City of Manchester.” (251)*

*“We therefore hold that the contracts in this case were likewise not barred by those constitutional provisions.” (251)*

#### **FACTUAL BACKGROUND**

The Manchester Housing Authority entered into a 1981 agreement with a predecessor of JPA III Development Company to undertake the approximately \$45 million Granite Street Development Project in downtown Manchester. The project involved closing or relocating streets and constructing a hotel, retail mall, and underground parking garage. The plaintiffs, who were taxpayers, alleged that the agreement gave JPA excessively favorable terms and violated constitutional restrictions on public assistance to private corporations and unfair restraints on competition. The evidence supported findings that the project would eliminate a blighted area, alleviate traffic problems, create employment, and generate substantial tax revenues.

#### **PROCEDURAL HISTORY**

The plaintiffs brought an action in the New Hampshire Superior Court challenging redevelopment contracts entered into by the Manchester Housing Authority and alleging violations of part II, articles 5 and 83 of the New Hampshire Constitution. After a merits hearing at which the plaintiffs presented the development contract, supporting documents, and testimony from the MHA's director of planning, the Superior Court denied injunctive relief. The plaintiffs appealed, and the Supreme Court of New Hampshire affirmed.

#### **DISPOSITION**

affirmed

#### CASES CITED

- Velishka v. Nashua, 99 N.H. 161, 106 A.2d 571 (1954)
- Club Joliet, Inc. v. Manchester & a., 110 N.H. 172, 262 A.2d 844 (1970)
- Carbur's Inc. v. A & S Office Concepts, Inc., 122 N.H. 421, 445 A.2d 1109 (1982)

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