

SUPREME COURT OF GEORGIA

Garden Club v. Shackelford

274 Ga. 653 (2002) · Decided February 25, 2002

SUMMARY

The Georgia Supreme Court held that OCGA § 32-6-75.3, authorizing removal of vegetation from public rights-of-way to improve visibility of private outdoor advertising signs, did not violate the Georgia Constitution’s gratuities clause. The court held that the Department of Transportation’s regulations were invalid because the department failed to consult the Roadside Enhancement and Beautification Council as required by statute. The court affirmed in part and reversed in part, and rejected the challenge to the Manual of Guidance.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Fletcher, Chief Justice; Sears, Presiding Justice; Carley, Justice; Thompson, Justice; Joe C. Bishop, Chief Judge
JURISDICTION	Georgia
DECIDED	February 25, 2002
DISPOSITION	other
PROCEDURAL POSTURE	The Garden Club appealed after a nonjury trial in which the trial court upheld OCGA § 32-6-75.3, the Department of Transportation's regulations, and its Manual of Guidance, and dissolved an interlocutory injunction.
STANDARD OF REVIEW	The constitutionality of the statute presented a mixed question of law and fact. The court deferred to the trial court's factual findings unless clearly erroneous but independently reviewed its legal conclusions and applied the legal principles to the facts.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion
PARTIES	Garden Club of Georgia v. Wayne Shackelford, Georgia Department of Transportation

TOPICS

- rulemaking
- administrative law
- constitutional law
- statutory interpretation
- environmental law

PRACTICE AREAS

constitutional law

administrative law

environmental law

statutory interpretation

QUESTIONS PRESENTED

1. Whether OCGA § 32-6-75.3 violates the gratuities clause of the Georgia Constitution by permitting removal of public vegetation to improve views of private outdoor advertising signs.
2. Whether the Department of Transportation's regulations were validly promulgated when the Department failed to consult the Roadside Enhancement and Beautification Council as required by OCGA § 32-6-75.1.
3. Whether the Department of Transportation's Manual of Guidance was required to be promulgated under the Georgia Administrative Procedure Act.

HOLDINGS

1. OCGA § 32-6-75.3 is constitutional because the state receives a substantial benefit from the information provided to the traveling public by outdoor advertising and from payment of the value of trees or vegetation removed from public property.
2. The regulations were invalid because the Department of Transportation failed to involve the Roadside Enhancement and Beautification Council in the rulemaking process as required by OCGA § 32-6-75.1.
3. The challenge asserting that the Manual of Guidance had to be promulgated under the Georgia Administrative Procedure Act was without merit.

KEY QUOTATIONS

“Because the DOT failed to involve the Roadside Enhancement and Beautification Council in the rule-making process as required by OCGA § 32-6-75.1, we conclude that the regulations were not validly promulgated under the statute.” (656)

“Therefore, we affirm the trial court’s ruling that the statute is constitutional.” (655-656)

FACTUAL BACKGROUND

Georgia enacted OCGA §§ 32-6-75.1 to 32-6-75.3 after the Supreme Court invalidated earlier Department of Transportation rules permitting trimming of trees and vegetation on highway rights-of-way to improve views of private billboards. The new statutory scheme authorized permits for trimming or removing vegetation, required billboard owners to pay application and renewal fees and the appraised value of removed trees or vegetation, and directed the Department to promulgate regulations with assistance from a Roadside Enhancement and Beautification Council. The Department promulgated regulations without waiting for the council's appointment or involving it in the rulemaking process.

PROCEDURAL HISTORY

After an earlier appeal in which the Supreme Court affirmed an injunction barring the Department of Transportation from issuing tree-cutting permits until a final hearing, the case proceeded to a nonjury trial. The

trial court entered an order upholding the statute, regulations, and manual and dissolving the injunction. The Garden Club appealed to the Supreme Court of Georgia.

DISPOSITION

other

CASES CITED

- Garden Club v. Shackelford, 266 Ga. 24 (463 S.E.2d 470) (1995)
- Outdoor Advertising Ass'n v. Garden Club, 272 Ga. 146 (527 S.E.2d 856) (2000)
- Swanberg v. City of Tybee Island, 271 Ga. 23 (518 S.E.2d 114) (1999)
- Haggard v. Board of Regents, 257 Ga. 524 (360 S.E.2d 566) (1987)
- Smith v. Board of Commissioners, 244 Ga. 133 (259 S.E.2d 74) (1979)
- Suggs v. State, 272 Ga. 85 (526 S.E.2d 347) (2000)
- Lamar Advertising of South Georgia, Inc. v. City of Albany, Lamar Advertising v. City of Albany, 260 Ga. 46 (389 S.E.2d 216) (1990)
- Thompson v. State, 254 Ga. 393 (330 S.E.2d 348) (1985)
- Board of Tax Assessors v. Tom's Foods, 264 Ga. 309 (444 S.E.2d 771) (1994)
- Georgia Board of Dentistry v. Brooks, 273 Ga. 852 (548 S.E.2d 284) (2001)

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