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Pittsburgh learns a hard legal lesson

By Colin McNickle

“Lawmakers ought not to be lawbreakers,” goes the 14th-century English proverb. Seven centuries later, it would be a wise axiom by which Pittsburgh lawmakers should learn to govern after being slapped by two state appellate courts on three major policy matters in less than a week.

The law means what it plainly says and is being duly enforced by the courts, say Jake Haulk, president of the Allegheny Institute for Public Policy, and Eric Montarti, a senior policy analyst there.

On May 17, the Pennsylvania Commonwealth Court affirmed an Allegheny County Common Pleas Court ruling that the City of Pittsburgh did not have the authority to impose a paid sick leave requirement on city businesses. The city asserted the requirement was a matter of public health.

The appeals court, on the same day, also affirmed another Common Pleas ruling that struck down a city ordinance requiring certain building security and service employees to receive emergency training.

Five days later, on May 22, the Pennsylvania Supreme Court, reversing a Commonwealth Court decision, ruled as impermissible Pittsburgh’s Home Rule Charter requirement that police officers live in the city. The city cited it as a matter of public safety.

These protracted cases, costing taxpayers an untold sum in legal fees, could have been avoided had city leaders better researched and understood the applicable law, Haulk and Montarti say.

It was in 2015 that Pittsburgh City Council approved legislation requiring city businesses of a certain employee size to give one hour of paid sick leave for every 35 hours worked.

And while Commonwealth Court necessarily went to great lengths to debunk the city's arguments, Haulk and Montarti (*in Policy Brief Vol. 17, No. 23*) say "the decision is based on the straightforward language" of state law:

"A municipality which adopts a home rule charter shall not determine duties responsibilities or requirements placed upon businesses, occupations and employers, including the duty to withhold, remit or report taxes or penalties levied or imposed upon them or upon persons in their employment, except as expressly provided by statutes which are applicable in every part of this Commonwealth or which are applicable to all municipalities or to a class or classes of municipalities."

From the Commonwealth Court decision:

"While the City repeatedly asserts that broad powers to regulate are conferred by other statutory provisions, its arguments cannot overcome the plain language of ... the Home Rule Charter Law, which is not a broad grant of authority, but instead, is an express limitation on the City's authority to impose obligations on business, occupations and employers."

Period.

It was in 2012 that the state Legislature repealed a requirement that police officers in second-class cities live within the city limits. A year later, however, Pittsburgh voters overwhelmingly adopted a residency requirement.

But in 2014, Common Pleas Court upheld a police arbitration ruling that allowed police officers to live within 25 air miles of the City-County Building. Last year, Commonwealth Court overturned that ruling. This week, the Supreme Court, citing state statute and constitutional language governing home rule municipalities, rejected the lower appellate court's ruling.

Simply put, Act 111 of 1968 – a state law establishing police bargaining rights – supersedes Pittsburgh's Home Rule Charter.

Period.

Haulk and Montarti remind that while municipalities do have, under certain laws, oversight of health and safety matters, they must also offer other protections.

"They also are about protecting the rights of property owners, individuals and businesses by maintaining law and order and a peaceful community to the greatest extent possible while protecting constitutional rights," the think tank scholars say.

"If the writers of the (state) Constitution and Home Rule Charter Law had intended that municipalities should have all the authority necessary to regulate business compensation and

labor relations for whatever purposes, they would have included it in those governing documents.”

Authority to do something cannot be read into the law after the fact, Haulk and Montarti stress.

“What’s more, by making it more difficult for businesses to earn a profit, laws such as mandatory paid sick leave make it more difficult to attract business and keep the ones it has,” they add.

“Pittsburgh’s reputation as business unfriendly is not enhanced by this type of regulatory legislation,” the researchers remind. “Besides, a very large share of larger companies already offer paid days off for illness.”

“Apparently, the lesson is hard to learn,” Haulk and Montarti say.

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