



Pittsburgh Suffers Defeat in Three Major Court Cases

Summary: On May 17th, the Commonwealth Court of Pennsylvania affirmed the December 2015 Allegheny County Common Pleas Court ruling that the City of Pittsburgh did not have the authority to impose a paid sick leave requirement on businesses in the City. Of the seven judges hearing the appeal of lower court decision, only one dissented from the Court’s decision.

To compound the City’s judicial problems, on the same day the Commonwealth Court also upheld a Common Pleas decision that struck down an ordinance requiring certain building security and service employees to receive emergency training. Five days later the Supreme Court reversed a Commonwealth Court decision on an arbitration award regarding residency requirements for police officers. The two cases that imposed requirements on businesses were similar to previous court decisions (Smaller Manufacturers Council in 1984 and the Building Owners and Managers Association in 2009) in which the courts ruled against the City.

This *Brief* addresses the decision in the suit over the Paid Sick Days Act (the Act), which we wrote about previously (see *Policy Brief Volume 15, Numbers 35, 37, and 38*). The Commonwealth Court ruling goes to considerable length to answer the arguments brought by the City. In short, however, the decision is based on the straightforward language of 53 Pa.C.S. §2962(f), that states “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*” (italics added in court decision).

Quoting from the Court’s written discussion of the case, “The City argued that: (1) the Paid Sick Days Act enjoys a presumption of validity; (2) the Pennsylvania Constitution provides the City a broad grant of authority; (3) the Home Rule Charter Law requires that the City’s authority be liberally construed in favor of the City; and (4) the City’s charter contains a broad statement of authority. However, the City’s assertions in this regard are followed by little analysis and do not address Section 2962(f) of the Home Rule Charter Law, upon which the trial court based its decision.”

The first assertion can be dismissed on its face. There is no presumption of validity by the Court. The law had already been struck down by the Common Pleas Court. On points 2 and 3; the Home Rule Charter law does not require –indeed it is silent on the topic—that the City’s authority

be liberally construed in every case. And although the Constitution does grant broad authority to the City, it is not complete authority. More important is what the Constitution does say on the matter. Article IX, Section 2, says, “A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or *by the General Assembly at any time*” (italics added for emphasis). Obviously, the General Assembly in Section 2962(f) is very explicit in its prohibition of the authority claimed by the City.

The City also claimed the Act is a health regulation authorized by Section 2962(c)(4) of the Home Rule Charter Law, which allows the City “to enact and enforce ordinances related to building codes or any other safety, sanitation or health regulation *pertaining thereto*.” However the Court brushed that claim aside by citing the language of the home rule law. The Section states:

(c) Prohibited Powers- *A municipality shall not:* (4) Enact or promulgate any ordinance or regulation with respect to definitions, sanitation, *health*, standards of identity or labeling pertaining to the manufacture, processing, storage, distribution and sale of any foods, goods, or services subject to any Commonwealth statutes and *regulations unless the municipal ordinance or regulation is uniform in all respects with the Commonwealth statutes and regulations thereunder. This paragraph does not affect the power of any municipality to enact and enforce ordinances relating to building codes or any other safety, sanitation or health regulations pertaining thereto* (italics in decision).

Thus, the City has based its claim on only a part of the cited Home Rule statute. The Court rightly says “it [*the City*] does not explain how the Paid Sick Days Act ‘*pertains to*’ building codes.”

And to complete the reasoning behind the affirmation of the lower Court, it is only necessary to go back to the language of 53 Pa.C.S. §2962(f) cited earlier. Paid sick day ordinances by municipalities (other than Philadelphia which is exempt by other legislation) ***have not been expressly provided*** to all municipalities or a class of municipalities.

This should be enough to satisfy most judges and impartial observers. Of course the City is not happy having developed a mindset that it is the guarantor of its view of how an economy should operate.

Nor were all the judges happy with the ruling. One dissented claiming the majority did not understand the Constitution which the dissenter apparently believes gives home rule municipalities virtual carte blanche in enacting laws regarding public health. The dissenter quotes *Home Rule in Pennsylvania*, Ninth Edition January 2017 which says “Another of the basic police powers of municipalities is the protection of the health and welfare of its citizens. Courts have long upheld the right of municipalities to regulate business operations impinging on the health of its citizens.”

No one has argued to the contrary. Businesses are not permitted to dump garbage in the street; they must meet fire codes; they must prevent hazardous substances from endangering the public, etc. The municipality has that power. It involves protecting the public which only the governing body can do. But regulations of the internal management of businesses that are not directly related to the health of the general public are not expressly permitted by the General Assembly and in fact are prohibited. There are plenty of regulations addressing internal business operations imposed by the state, Federal and county governments—minimum wages, prevailing wage laws, collective bargaining laws, safety regulations, environmental regulations, accounting rules and

regulations covering food processing, preparation and serving. Reams of business regulations regarding health and safety of employees are in effect. But the City has not been given the authority to impose these regulations.

The dissenter concludes, “This case involves an effort to protect health and safety. That indeed is what municipalities are for. In exercise of the political power to do so, the present ordinance was enacted. If the people of Pittsburgh disagree with this action, they will address their dissatisfaction through the political process. It is not for this court to interfere. I therefore, and respectfully, dissent.”

But municipalities are not exclusively about health and safety. They are also 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 dissenter presumes too much. If the writers of the Constitution and the 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. Indeed, the General Assembly did the opposite with Home Rule Charter provisions by expressly prohibiting such regulations. The purported authority claimed by supporters of the City Act simply cannot be read into the Constitution and statutes after the fact.

The law means what it plainly says and is being duly enforced by the courts against the City’s efforts to force businesses to undertake actions for the purpose of promoting its economic views. Apparently the lesson is hard to learn.

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