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Supreme Court of Ohio Rejects Local Governments' Attempts to Regulate Oil and Gas Activities

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In the Appalachian basin, several states have recently faced the issue of whether local governments have the ability to regulate oil and gas operations, potentially causing a maze of varying rules and requirements from one township to the next. While court decisions in Pennsylvania and New York have permitted local governments to exercise such authority, the Ohio Supreme Court recently reached the opposite result. In *State ex rel. Morrison v. Beck Energy Corp.*,ⁱ the Supreme Court of Ohio held that the Home Rule Amendment to the Ohio Constitutionⁱⁱ does not grant a local government the power to enforce its own oil and gas ordinances over Ohio's comprehensive regulatory scheme for oil and gas operations in Ohio's oil and gas statute, R.C. Chapter 1509.

Although the Ohio Supreme Court's decision in *Morrison* is limited to the specific ordinances in question, the decision provides indication that Ohio's comprehensive regulatory scheme for oil and gas operations likely will control in the event of conflict between a municipality's power under the Home Rule Amendment and the state's oil and gas requirements.

What Happened in *Morrison*?

Beck Energy attained a state permit from a division of Ohio Department of Natural Resources (ODNR) to drill an oil and gas well in the city of Munroe Falls, pursuant to R.C. Chapter 1509. However, the city of Munroe Falls filed a request for injunctive relief preventing Beck Energy from drilling until it complies with five local ordinances. The first of the five ordinances "is a general zoning ordinance in Chapter 1163 that prohibits any construction or excavation without a 'zoning certificate' issued by the zoning inspector." Additionally, the "remaining four ordinances [. . .] specifically relates to oil and gas drilling." Moreover, "[a] person who violates any of the ordinances in [. . .] Munroe Falls Codified Ordinances is guilty of a first-degree misdemeanor and 'shall be imprisoned for a period not to exceed six months, or fined not more than one thousand dollars (\$1,000), or both.'"

The trial court granted an injunction in favor of the city, but "[t]he court of appeal reversed, holding that R.C. 1509.02 prohibited the city from enforcing the five ordinances." The Supreme Court of Ohio accepted the city's appeal.

Key Holdings and Analysis

The Supreme Court of Ohio held that R.C. 1509.02 supersedes the city of Munroe Falls' ordinances under *Mendenhall v. Akron's*ⁱⁱⁱ three-step analysis for determining whether a municipal ordinance must yield to a state statute when a city exercises its Home-Rule power.

The city argued that its Home-Rule power allows a municipality to impose ordinances relating to oil and gas drilling and production notwithstanding state oil and gas law. However, under *Mendenhall*, "a municipal ordinance must yield to a state statute if (1) the ordinance is an exercise of the police power, rather than of local self-government, (2) the statute is a

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general law, and (3) the ordinance is in conflict with the statute.” Under this three-step analysis, the *Morrison* Court held that the city’s ordinances do not represent a valid exercise of its Home-Rule power.

The Ordinances Constitute an Exercise of Police Power

Ohio law makes clear that within the meaning of the Home Rule Amendment, “any municipal ordinance, which prohibits the doing of something without a municipal license to do it, is a police regulation.” The Court noted that, “[t]he city does not dispute that its ordinances constitute an exercise of police power rather than local-self government.” Furthermore, “the city’s ordinances do not regulate the form and structure of local government,” but rather, the ordinances go as far as criminalizing “the act of drilling for oil and gas without a municipal permit.”

R.C. 1509.02 Is a General Law

The Court held that R.C. 1509.02 is a general law under *Mendenhall*. The city argued against categorizing R.C. 1509.02 as a general law, because it cannot apply to the western part of the state where oil and gas drilling does not occur; thus, the city asserted, R.C. 1509.02 neither applies to all parts of the state alike nor operates uniformly throughout the state. The Court, however, rejected this argument, and held that regardless of where oil and gas drilling occurs within the state of Ohio, R.C. 1509.02 applies and operates uniformly throughout the state and, therefore, is a general law.

The Ordinances Conflict with R.C. 1509.02

Finally, the Court recognized that “[t]he city’s ordinances conflict with R.C. 1509.02 in two ways.” First, the ordinances prohibit state-licensed oil and gas production within Munroe Falls, which is what R.C. 1509.2 allows. The state permit Beck Energy obtained “expressly ‘granted permission’ to ‘Drill [a] New Well’ for ‘Oil & Gas’ within Munroe Falls. But the city ordinances would render the permit meaningless unless Beck Energy also satisfied the permitting requirements in Chapters 1163 and 1329 of the Munroe Falls Ordinances.” The city argued that the laws do not conflict, because the city and the state regulate two different areas of oil and gas activities: “the ordinances address ‘traditional concerns of zoning,’ whereas R.C. 1509.02 relates to ‘technical safety and correlative rights topics.’” The Court rejected this argument, and recognized that “[t]his is a classic licensing conflict under [the] home-rule precedent.” Furthermore, the “ordinances and R.C. 1509.02 unambiguously regulate the same subject matter—oil and gas drilling—and they conflict in doing so.”

The second conflict the Court identified related to the General Assembly’s intention “to preempt local regulation on the subject.” R.C. 1509.02 “not only gives ODNR ‘sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations’ within Ohio; it explicitly reserves for the state, to the exclusion of local governments, the right to regulate ‘all aspects’ of the location, drilling, and operation of oil and gas wells, including ‘permitting relating to those activities.’” Furthermore, it “prohibits cities from exercising powers that ‘discriminates against, unfairly impedes, or obstructs’ the activities and operations covered by R.C. 1509.02.” Therefore, the city’s ordinances were found to conflict with R.C. 1509.02 and, because all three parts of *Mendenhall*’s analysis were met, the Court held that the city’s ordinances did not represent a valid exercise of its home-rule power.

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What is *Morrison's* Impact?

Although the Ohio Supreme Court limited its ruling to the city's five ordinances at issue in this case, the Court made it clear that "the Home Rule Amendment to the Ohio Constitution, Article XVIII, Section 3, does not allow a municipality to discriminate against, unfairly impede, or obstruct oil and gas activities and production operations that the state has permitted under R.C. Chapter 1509." Going forward, if and where municipalities attempt to regulate oil and gas operations, oil and gas companies should closely evaluate whether the *Morrison* decision precludes those efforts.

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ⁱ Slip Opinion No. 2015-Ohio-485.

ⁱⁱ Article XVIII, Section 3.

ⁱⁱⁱ 881 N.E.2d 255 (2008).