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Ohio Supreme Court Decision Makes Future of Local Fracking Regulations Unclear

On February 17, 2015, the Ohio Supreme Court issued a 4–3 decision in *State ex rel. Morrison v. Beck Energy Corp.*, holding that the Home Rule Amendment to the Ohio Constitution does not grant local governments the power to regulate oil and gas activities and operations within their limits. Specifically, the Court held that Ohio Revised Code Chapter 1509 gives state government “sole and exclusive authority” to regulate the permitting, location, and spacing of oil and gas wells and production operations within the state.

Background

Beck Energy Corporation obtained a permit, pursuant to Ohio Revised Code Chapter 1509, to engage in drilling operations within the corporate limits of the City of Munroe Falls. Despite obtaining the proper state-issued permit, the City sought to prevent Beck Energy from drilling within its limits by issuing a stop-work order and filing a complaint for injunction in the Summit County Court of Common Pleas. The City argued that the drilling operations were in direct violation of five local ordinances, which provided additional regulations regarding oil and gas drilling (think fracking) and prohibited construction or excavation without a zoning certificate issued by the City’s zoning inspector.

The trial court granted the City’s request for injunction and prohibited Beck Energy from drilling until it complied with all local regulations. The court of appeals reversed, holding that R.C. 1509.02 prevented the City from enforcing its ordinances. The City appealed and the Ohio Supreme Court granted review of whether the City’s ordinances were a valid exercise of home-rule authority.

Ohio Supreme Court Analysis

The Ohio Supreme Court instructed that a municipal ordinance must yield to a state statute if: (1) the ordinance is an exercise of

police power, rather than local self-government; (2) the statute is a general law; and (3) the ordinance is in conflict with the statute.

First, the Court found that the ordinances, which prohibited the act of drilling for oil and gas without a permit, did not regulate the form and structure of local government. Thus, the Court held, and the City conceded, that the ordinances represented an exercise of police power rather than local self-government.

Second, the Court found that R.C. 1509.02 is a general law because it satisfies the four definitive conditions of a general law: (1) it is part of a statewide and comprehensive legislative enactment; (2) it applies to all parts of the state alike and operates uniformly; (3) it sets forth police, sanitary, or similar regulations; and (4) it prescribes a rule of conduct upon citizens. The City attempted to argue that R.C. 1509.02 failed the uniformity requirement because only the eastern Ohio region contains economically viable quantities of gas and oil. The Court rejected this argument, stating that a general law can operate uniformly even if there is a disparate geographic effect within the state.

Finally, the Court held that the City's ordinances were in conflict with R.C. 1509.05 because they operated to prohibit what the state statute permitted – oil and gas drilling. Additionally, the Court held that the state statute provided the Ohio Department of Natural Resources the sole and exclusive authority to regulate oil and gas wells and production operations.

The City also presented a variety of policy reasons for why local governments and the state should work together in the oil and gas regulatory scheme. The City reasoned that the state should be responsible for regulating well construction and operation, while local governments should be permitted to designate the specific areas in which those activities may be performed. Although the Court acknowledged the various policy arguments, it ultimately deferred to the General Assembly.

Practical Effects on Local Governments

The decision in *State ex rel. Morrison v. Beck Energy Corp.* concerns many local governments as it appears to take another bite out of

municipalities' constitutionally-granted home rule powers. On its face, the decision is particularly concerning for local governments with regards to their planning and zoning regulations.

While the impact of this decision is yet to be determined, the Court explicitly limited its holding to the instant case. Notably, the Court made clear that it is making "no judgment as to whether other ordinances could coexist with the General Assembly's comprehensive scheme. Rather, our holding is limited to the five municipal ordinances at issue in this case."

This limited scope was reiterated by Justice O'Donnell, who separately concurred with the opinion in judgment only. Justice O'Donnell stated that "This appeal does not present the question whether R.C. 1509.02 conflicts with local land use ordinances that address only the traditional concerns of zoning laws, such as ensuring compatibility with local neighborhoods, preserving property values, or effectuating a municipality's long-term plan for development, by limiting oil and gas wells to certain zoning districts without imposing a separate permitting regime applicable only to oil and gas drilling." He continued by seemingly foreshadowing future action by the courts or the General Assembly: "it remains to be decided whether the General Assembly intended to wholly supplant all local zoning ordinances limiting land uses to certain zoning districts without regulating the details of oil and gas drilling expressly addressed by R.C. Chapter 1509."

The three dissenting Justices commented on the local zoning issues as well. Justice Pfeifer stated that he "would find that R.C. 1509.02 leaves room for municipalities to employ zoning regulations that do not conflict with the statute." Similarly, Justice Lanzinger stated that she "believe[s] that local zoning ordinances can have a place beside the state's statutes regulation oil and gas activities." She further stated that zoning ordinances "reflect traditional zoning concerns, while the state statutes control technical aspects of the drilling of an oil and gas well."

The dissenting Justices echo many of the arguments, concerns, and reasoning presented by the City of Munroe Falls and local governments all over the state.

The full opinion can be [read here](#).

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