SUPREME COURT, STATE OF COLORADO
CASE NO. 88 SC 413

BRIEF OF THE COLORADO MUNICIPAL LEAGUE AS AMICUS CURIAE

CITY OF FORT COLLINS, COLORADO, a Municipal corporation,

Petitioner,

v.

ROOT OUTDOOR ADVERTISING, INC.; GARDNER SIGNS, INC.; JAMES H. TRUJILLO; BEVERLY FAYE TRUJILLO; PAUL D. HENDRICKSON; GARY DUNCAN and RON MONTROSS, d/b/a D.M.H. ENTERPRISES, a Partnership; THELMA L. WALKER; and COLORADO DEPARTMENT OF HIGHWAYS

Respondents.

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I. STATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether the Court of Appeals erred by holding that Fort Collins cannot use its own money to pay the required just compensation for the removal of signs which do not conform with its sign code.

Whether the removal of a sign pursuant to a five year amortization method provided in the Fort Collins sign code violates the Federal Highway Beautification Act or the Colorado Outdoor Advertising Act which require that just compensation be paid for the taking of a sign.

II. STATEMENT OF CASE

The League hereby adopts and fully incorporates by reference the statement of the case in the opening brief submitted by Appellant, City of Fort Collins.

III. STATEMENT OF ARGUMENT

The Court of Appeals erred in holding that removal of signs subject to the Federal Highway Beautification Act and the Colorado Outdoor Advertising Act, when done pursuant to municipal ordinance, must await availability of a 75% "federal share" of

any compensation paid to the sign owner for such removal. Such a requirement is not found in the language of either the state or federal acts, leads to absurd results, is contrary to the purposes of the federal and state acts, and frustrates the legitimate removal of signs by municipalities. Payment by the municipality of 100% of any just compensation owed for removal of such signs does not conflict with the Colorado Outdoor Advertising Act or the federal act, and does not jeopardize receipt of federal funds. Further, the Court of Appeals erred in finding that amortization is not an acceptable form of just compensation for removal of signs such as those involved in the case at bar. Amortization is an important form of just compensation utilized by Colorado municipalities in their sign codes; amortization permits achievement of municipal safety and highway beautification goals, while conserving scarce municipal financial resources.

IV. ARGUMENT

A. **The Court of Appeals conclusion that removal of signs subject to the federal and state acts, when done pursuant to a municipal ordinance, must await availability of a "federal share" of any compensation owed, is not required by the federal or state acts, leads to absurd results and should be reversed.**

Congress' stated purpose in enacting the Federal Highway Beautification Act, 23 U.S.C. 131 et seq., was the control of outdoor advertising signs:

> . . . in order to protect the public investment in [interstate and primary system] highways, to promote the safety and recreational value of public travel, and to preserve natural beauty. 23 U.S.C. 131(a)

Similarly, the Colorado legislature declared that the purpose of the Colorado Outdoor Advertising Act, section 43-1-401, C.R.S. et seq., was:

> . . . to control . . . future use of advertising devices in areas adjacent to the state highway system in order to protect and promote the health, safety, and welfare of the traveling public and the people of Colorado. Section 43-1-102(1)(a), C.R.S.

Among specified "substantial state interests" which the Colorado act is to serve are: protection of the public investment in the state highway system, promotion of safety, promotion of public pride and spirit, and preservation and enhancement of the natural and scenic beauty of the state. See: section 43-1-402(1)(a), C.R.S. The legislature further declared that, to further these substantial state interests "it is the

intent of the general assembly that Colorado comply with the federal 'Highway Beautification Act of 1965' and rules and regulations adopted thereunder." Section 43-1-402(1)(b), C.R.S.

Section 43-1-414(3) C.R.S. provides that:

> No advertising device shall be required to be removed until the federal share of the compensation required to be paid upon acquisition of such device becomes available to the state.

The federal act requires payment of just compensation "upon the removal of any outdoor advertising sign . . . whether or not removed pursuant to or because of [the federal act]" 23 U.S.C. 131 (g), however, only when signs are removed pursuant to the federal act does the federal act require availability of the federal share of the compensation. 23 U.S.C. 131(n) provides that:

> No sign . . . shall be required to be removed <u>under this section</u> if the federal share of just compensation to be paid upon the removal of such sign . . . is not available to make such payment. (emphasis added)

Section 23 U.S.C. 131(g) states that this "federal share" will be seventy-five percent.

Unlike section 23 U.S.C. 131(g) of the federal act, wherein Congress requires just compensation to be paid whether or not a sign is removed pursuant to the federal act, section 23 U.S.C. 131(n) conditions only removal of signs pursuant to the federal act upon availability of the federal seventy-five percent share. There is no requirement in the federal act that removal of signs pursuant to a municipal ordinance must await availability of this "federal share" of any just compensation owed.

Removal of signs such as those involved in the present case pursuant to a municipal ordinance does not, therefore, run afoul of the requirement in the state act (in section 43-1-414(3), C.R.S.) that no sign be removed until the federal share of compensation "required to be paid" is "available to the state." As outlined above, a federal share is only "required to be paid" when a sign is removed pursuant to the federal act.

Language in the federal regulations, as well as in the Colorado act, provide further indications that the seventy-five percent federal share requirement was not intended to apply when signs were removed pursuant to municipal ordinance. As noted above, a principle purpose of the state act is to assure compliance with the federal act and regulations. See: section 43-1-402(1)(b), C.R.S. The federal regulations concerning just compensation under the act provide that:

> Federal reimbursement will be made on the basis of seventy-five percent of the acquisition, removal and incidental cost legally incurred or obligated by the state (emphasis added). 23 C.F.R. 750.302(b)(1)

No mention is made of a federal share requirement for costs legally incurred or obligated by a local government. The state act bars the removal of signs until any federal share "required to be paid" becomes "available to the state" (emphasis added) and provides that "no state funds shall be used" to pay the required compensation for sign removal until the federal share of such compensation "becomes available to the state." (emphasis added) Section 43-1-414(3), C.R.S. The state act seems to be directed towards assuring compliance with 23 U.S.C. 131(n) by conditioning use of state funds upon the availability of the federal share when compensation is to be paid for the removal of a sign pursuant to the federal act. Nowhere does the state act restrict the authority of local governments to use local funds for payment of just compensation until a federal share becomes available.

For the foregoing reasons the League respectfully disagrees with the conclusion of the Court of Appeals that ". . . the [state] act mandates that local municipalities allow nonconforming signs to remain until the applicable portion of the compensation is received from the federal government." Root Outdoor Advertising v. City of Ft. Collins, 759 P.2d 59, 61 (Colo. App 1988). Such a conclusion is not required by the

language of either the federal or state acts. Further, as indicated in the City's brief in support of its petition for certiorari, it has been undisputed throughout this case that federal funds are not available for payment of the federal share of any compensation owed. Petition for Certiorari at page 10. Thus, the practical effect of the Court of Appeals decision is a mutation of laws designed to facilitate removal of unsightly or unsafe signs into a device by which sign owners may frustrate municipal sign removal efforts. The Court of Appeals decision would preclude municipalities from removing signs such as those involved in this case even if public safety or some other compelling public necessity called for such removal, and the municipality was willing to pay any compensation owed. Surely, this absurd result could not be statutorily required. As this Court has observed on numerous occasions, "[t]here is a presumption that the general assembly intends a just and reasonable result when it enacts a statute, and a statutory construction that defeats the legislative intent or leads to an absurd result will not be followed." Ingram v. Cooper, 698 P.2d 1314, 1315 (Colo. 1985) In enacting a statute it is presumed that a just and reasonable result was intended by the legislature. See: Section 2-4-201(1)(c), C.R.S.

The League urges this Court to reject the Court of Appeals interpretation and hold instead that the seventy-five percent federal share must be available only when compensation is being

paid for removal of a sign pursuant to the federal act. See: 23 U.S.C. 131(n). Such a holding would be consistent with the language and serve the purposes of the Federal Highway Beautification Act and the Colorado Outdoor Advertising Act. Municipal ordinances which provide for removal of signs such as those involved in the present case without awaiting a seventy-five percent federal share of just compensation do not conflict with the Colorado Outdoor Advertising Act. Such ordinances do not permit what the state act forbids; they may thus coexist with the state act. See: City of Aurora v. Martin, 507 P.2d 868 (Colo. 1973), National Advertising Company v. Department of Highways, 751 P.2d 632 (Colo. 1988). Receipt of federal funds is not jeopardized by municipalities compensating for removal of such signs pursuant to ordinance out of their own funds.

B. Amortization is a legitimate exercise of municipal zoning power and is a valuable mechanism for providing just compensation to sign owners while conserving scarce municipal resources.

The League fully adopts and endorses the arguments made by the City in its opening brief that amortization is a legitimate exercise of local government zoning power and that amortization amounts to just compensation if the state and federal acts apply to the signs involved in this case.

Amortization provisions serve a very important function for

Colorado municipalities. Municipalities permit sign owners the benefit of continued use of their nonconforming signs, while ultimately obtaining modification or removal of such signs without the necessity of making a cash outlay. At a time when municipal financial conditions are poor, alternative forms of just compensation such as amortization are critical to conservation of scarce public funds.

These are not rosy financial times for Colorado municipalities. The League's 1988 report "Financial Condition of Colorado Municipalities" reached the following conclusion:

> In 1988, total general fund revenue growth over 1987 is projected to be an average 1.2 percent among the 165 municipalities responding to this portion of the survey. In 1987, average general fund growth was 3.5 percent over 1986 for these same municipalities, a 4.7 percent increase over the two-year period.
>
> With the 1988 projected general fund revenue growth sinking into the minus region for 38 percent of the municipalities providing this data (63 of 165 municipalities), cities and towns across the state are reducing street maintenance, postponing capital improvement projects, reducing services, and raising fees and charges. Twenty-three percent of the

responding municipalities have imposed a wage freeze for employees, 20.6 percent have reduced their work force by not filling vacant positions, and 9.4 percent are laying off employees. Some are also raising taxes or imposing new taxes in order to balance 1988 municipal budgets.

In preparation for the filing of this brief as amicus curiae, the League surveyed a portion of its member municipalities concerning sign code amortization provisions. Our survey, which focused primarily on municipalities with greater than 10,000 population, found that nearly two-thirds of these municipalities' sign codes contain amortization provisions, with the most common period being (as with the Ft. Collins ordinance) five years. Municipal officials whom we contacted stressed over and over again the importance of these amortization provisions as an alternative form of just compensation.

The League urges that if this Court finds that just compensation is owed for the signs at issue in this case, that amortization be preserved as a just compensation option for Colorado municipalities. If, on the other hand, this Court finds that amortization is not just compensation, the League urges this Court to limit such a finding to the facts in the case at bar, in order that any such finding not throw into question the use of municipal sign code amortization provisions with respect to signs

not subject to the Federal Highway Beautification Act and the Colorado Outdoor Advertising Act.

V. CONCLUSION

For the above stated reasons, the League respectfully requests this court to reverse the decision of the Court of Appeals and hold that the City of Fort Collins and other Colorado municipalities, may lawfully enforce removal of signs such as those involved in the present case pursuant to amortization provisions without payment of cash compensation. If the Court determines that cash compensation must be paid, the League urges this Court to hold that the City, and Colorado municipalities, may use their own resources to pay the required just compensation for removal of signs such as those involved in the present case, pursuant to municipal sign codes.

Respectfully submitted this 13th day of February, 1989.

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CERTIFICATE OF MAILING

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