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Rent Control by Municipal Ordinance not Within Home Rule Power

Richard A. Herman

RENT CONTROL BY MUNICIPAL ORDINANCE— NOT WITHIN HOME RULE POWER

Declaring that an inflationary spiral and a housing shortage existed in the city, the Miami Beach City Council enacted an ordinance entitled "Housing and Rent Control Regulations" for the purpose of solving these problems.[1] Plaintiffs, several lessors directly affected by the ordinance, filed a complaint seeking declaratory and injunctive relief. Upon plaintiffs' motion for summary judgment, the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, declared the ordinance unconstitutional.[2] On direct appeal, the Supreme Court of Florida, *held*, affirmed: (1) The City of Miami Beach did not have the power to enact a rent control ordinance either pursuant to its municipal powers or to a grant of general police power; (2) the rent control ordinance conflicted with state law; and (3) the rent control ordinance constituted an unlawful delegation of legislative authority. *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So.2d 801 (Fla. 1972).

By the common law of municipal corporations, the state legislature is vested with all power regarding the affairs of the municipality unless prohibited by the federal or state constitutions.[3] Florida has accepted this rule, holding that the power of the legislature is plenary except as limited by the Florida Constitution.[4] Therefore, a municipal corporation can only exercise those powers delegated to it by the state through the constitution, statutes, or the city charter.[5] In *Fleetwood*, the Supreme Court of Florida was unable to find any such delegation of power to the city to enact rent control ordinances.

The court concluded that the power to enact a rent control ordinance was not delegated to municipalities by article VIII, section 2(b) of the 1968 Florida Constitution.[6] The apparent mandate of this section is that municipalities are given the power to conduct and perform all municipal functions unless such powers are limited by the legislature or the con-

1. Miami Beach, Fla., Ordinance 1791, Oct. 15, 1969 [hereinafter cited as Ordinance 1791], provided for the regulation of rents in all private housing comprised of four or more rental units completed before December 1, 1969, except hospitals, nursing homes, asylums, college or school dormitories, or charitable, educational or nonprofit institutions, hotels, and certain high rental housing accommodations, such as condominiums and co-operatives.

2. Fleetwood Hotel, Inc. v. City of Miami Beach, No. 69-17689 (Fla. Dade Co. Cir. Ct. May 5, 1970) [hereinafter cited as *Fleetwood*].

3. McBain, *The Doctrine of an Inherent Right of Local Self-Government*, 16 COLUM. L. REV. 299 (1916); Sandalow, *The Limits of Municipal Power Under Home Rule: A Role for the Courts*, 48 MINN. L. REV. 643 (1964).

4. Town of Palm Beach v. Vlahos, 153 Fla. 76, 15 So.2d 839 (1943), *modified on other grounds*, 154 Fla. 159, 15 So.2d 848 (1944); State v. City of Boca Raton, 172 So.2d 230 (Fla. 1965).

5. Pursley v. City of Ft. Myers, 87 Fla. 428, 100 So. 366 (1924). Although powers are reserved by the constitution for the cities, such a reservation is in fact a delegation from the state to the municipalities, since all powers ultimately rest in the state. It will be referred to herein as a delegation.

6. 261 So.2d at 804.

stitution.[7] The Florida Constitution of 1885,[8] under which municipalities had only those powers expressly granted to them, is in sharp contrast with the corresponding provision of the 1968 Constitution[9] which is intended to secure for municipalities the broad exercise of home rule powers.[10] Consequently, under a home rule provision,[11] the question becomes whether the matter being legislated is of local or state concern.

In finding a lack of power in the city to control rents, the court, in effect, said that rent control is a matter of only state concern. However, as the dissent points out, it would appear "rent control can be a municipal function."[12] Matters pertaining to housing and to the control of land use have often been held to be of local concern.[13] The Supreme Court of Florida has held that municipalities have power to establish setback requirements,[14] control minimum plot size,[15] regulate tourist camps and trailer parks,[16] provide zoning regulations,[17] and enact plans for slum clearance and redevelopment.[18] Each of these powers interfere with the use of land in a like manner, requiring landowners to use their property in a restricted fashion. Rent control is merely a different method of imposing a similar type of regulation on the property owner.[19] The

7. Article VIII, section 2b of the 1968 Florida Constitution provides:

(b) Powers. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal service, and may exercise any power for municipal purposes except as otherwise provided by law.

8. Article VIII, section 8 of the Florida Constitution of 1885 provided:

The Legislature shall have power to establish, and to abolish, municipalities to provide for their government, to prescribe their jurisdiction and powers, and to alter or amend the same at any time.

9. 261 So.2d at 807 (dissenting opinion); FLA. CONST. art. 8, § 2 (1968) (commentary).

10. See FLA. STAT. § 167.005 (1971); Fla. Laws 1971, ch. 71-29, § 1, which states:

The constitution and general laws of Florida have provided home rule powers to municipalities and counties, except as limited by law. . . . [G]eneral laws of local application present significant problems to local government because of the questionable constitutionality of such legislation, as frequently reflected in court decisions on this subject. . . . It is . . . declared to be the legislative intent, by the repeal of such legislation, to restore the regulation of local government to the constitutionallity [sic] recognized modes of enactment. It is also the intent of the legislature to enact additional general legislation to expand the home rule powers of local government.

11. The legal doctrine of home rule deals with the distribution of power between state and local governments and the methods of allocating such power. It does not deal directly with the question of the state or condition of local autonomy. *See generally* Sandalow, *The Limits of Municipal Power Under Home Rule: A Role for the Courts*, 48 MINN. L. REV. 643 (1964); 1 C. ANTIEAU, MUNICIPAL CORPORATION LAW § 3 (1968).

12. 261 So.2d at 808.

13. Brief of Appellant at 11, City of Miami Beach v. Fleetwood Hotel, Inc., 261 So.2d 801 (Fla. 1972).

14. City of Miami v. Romer, 58 So.2d 849 (Fla. 1952).

15. Garvin v. Baker, 59 So.2d 360 (Fla. 1952).

16. Egan v. City of Miami, 130 Fla. 465, 178 So. 132 (1938).

17. State *ex rel.* Taylor v. Jacksonville, 101 Fla. 1241, 133 So. 114 (1931).

18. Grubstein v. Urban Renewal Agency, 115 So.2d 745 (Fla. 1959).

19. In Levy Leasing Co. v. Siegel, 258 U.S. 242, 247 (1922), the Court compared regulations requiring landlords to expend large sums, stating:

To require uncompensated expenditures very certainly affects the right of property in land as definitely, and often as seriously, as regulation of the amount of rent that may be charged for it can do.

peculiar characteristics of the City of Miami Beach as a tourist community providing a large amount of housing for a transient population furnish further support for the proposition that rent control could be considered a local rather than a state function. Judicial notice of the peculiar characteristics of the City of Miami Beach has been taken in a case involving aesthetic zoning.[20]

The creation of a local-state function test as the basis of allocation of powers under the home rule provisions places squarely in the lap of the judiciary the basic policy choice of which level of government can best serve the needs of the community. That the courts are the proper place for such basic policy decisions is questionable. The effect of compartmentalizing governmental power into areas of municipal and state competency is to limit municipal initiative. If the courts are free to determine that rent control is not a municipal function, what is to stop them from declaring that any other power not specifically delegated is of a state rather than a local nature? Thus, the decision rendered in this case sets a precedent for the judiciary to impose limitations upon the powers of a municipality. Such judicial discretion, if used improperly, could lead to contravention of the policy of homerule enunciated by the legislature of Florida in article VIII, section 2 and its implementing legislation.[21] In addition, the court's use of a local-state function test fails to recognize that some functions may be best performed by a sharing of governmental power among the various levels of government.

A second possible source for a delegation of the power to control rents is the charter of the city. The City of Miami Beach Charter contained no express delegation of power to regulate rents. However, it did contain a grant of the general police power of the state.[22] Thus, the issue became whether the city had the power to control rents under a general grant of police power. The Supreme Court of Florida found that the city did not have this power:

> The weight of authority is that without specific authorization from the state, the cities cannot enact a rent control ordinance either incident to its specific municipal powers or under its General Welfare provisions.[23]

A careful analysis of the cases comprising "the weight of authority" indicates subtle distinctions that render such a broad general proposition

20. In City of Miami Beach v. First Trust Co., 45 So.2d 681 (Fla. 1949), the court noted:

> We have already recognized . . . the peculiar qualities of the community of Miami Beach as an attraction to visitors. That is its very *raison d'etre.*

21. See notes 7 and 10 *supra.*

22. MIAMI BEACH, FLA. CODE § 6(x) (1970) provides the city with the power

> 6(x) [t]o adopt all ordinances or do all things deemed necessary or expedient for promoting or maintaining the general welfare, comfort, education, morals, peace, health, and convenience of said city, or its inhabitants and to exercise all of the powers and privileges conferred upon cities or towns by the general law of Florida, when not inconsistent herewith.

23. 261 So.2d at 804.

suspect.[24] In *Warren v. City of Philadelphia*,[25] the "Philadelphia Rent Control Ordinance of 1955," which had subsequently been suspended, was held void not because of the absence of authority in the city to enact it without an express grant, but because the evidence produced by the plaintiffs was sufficient to overcome the presumption that an emergency existed. In that case the court relied upon a previous decision of the same name challenging the original Philadelphia Rent Control Ordinance in which it had held that the enactment of a rent control ordinance by a city clothed with the general police power is within the power of the city, unless it is arbitrary and unreasonable.[26]

Henbeck v. City of Baltimore,[27] the second case constituting the "weight of authority," saw the court invalidate the rent control legislation because it conflicted with the general public law, not because the city lacked the power to enact it. The court stated that the city, under its police power,

> ha[d] the power to enact rent control legislation, even in the absence of an enabling act, provided such legislation [was] not in conflict with the Constitution or any Public General Law thereof.[28]

In *Grofo Realty Co. v. Bayonne*,[29] it was held that the City of Bayonne, New Jersey, did not possess the power to enact rent control legislation under a general grant of police power where the state had passed a statute regarding the control of rents. The court held that the state had preempted this area and that the exercise of a similar power by the city under a general grant of the police power would be inconsistent with state power. In another New Jersey decision, *Wagner v. Mayor and Municipal Council of City of Newark*,[30] the court ruled that in light of a history of rent control by the state legislature and a state enactment calling for uniform controls, it would be incongruous to find that the city had the power to enact rent control under its general police powers. In *Fleetwood*, however, the court did not allude that the proposition of preemption was applicable to the case at bar.

Finally, *Old Colony Gardens, Inc. v. City of Sanford*[31] is cited in *Fleetwood* for the proposition that "a city charter conferring police

24. It should be noted that the question is not whether the regulation of rent is an exercise of the police power, but rather whether a general grant by the state of that police power includes the power to control rents. As early as 1923, the United States Supreme Court held that the existence of an exigency will justify the legislature's exercise of its police power to restrict an owner's right in land through the use of rent controls. Block v. Hirsh, 256 U.S. 134 (1921).

25. 387 Pa. 362, 127 A.2d 703 (1956).

26. Warren v. City of Philadelphia, 382 Pa. 380, 115 A.2d 218 (1955).

27. 205 Md. 203, 107 A.2d 99 (1954).

28. Id. at 206, 107 A.2d at 101.

29. 24 N.J. 482, 132 A.2d 802 (1957).

30. 24 N.J. 467, 132 A.2d 794 (1957).

31. 147 Conn. 60, 156 A.2d 515 (1959).

power in general terms [does] not empower the city to adopt a rent control ordinance."[32] This language, however, is misleading unless viewed in light of the peculiar facts of *Old Colony*. Connecticut had adopted rent control legislation and had terminated rent control by statute in 1959, declaring that rent controls were no longer needed in the interest of the public health, safety, and welfare and that the city could not enact such legislation under a general grant of police power because to do so would be contrary to public policy. While not obvious from its decision, it may be that the court in *Fleetwood* considered a lack of any state proclamation on the subject as a positive statement that rent control was not needed as a matter of public policy. Nevertheless, Florida has neither a history of rent control as a state function, nor has it preempted the rent control area by legislative enactment. It has not declared that rent control is unnecessary in the interest of the public health, safety, or welfare. In *Fleetwood*, the matter of the existence of an emergency was not in question. In fact, the Florida courts have recognized the particular applicability of the police power to a limited geographical area:

> In considering the matter of police power, as applied by municipalities, it must not be overlooked that in congested and heavily populated areas problems are presented which call for application of regulations which may not be required throughout the state generally . . . .[33]

Thus, it is clear that "the weight of authority" need not have precluded the enactment of a rent control ordinance by a municipality under a general grant of police power unless the ordinance conflicted with a state statute or the constitution.

In *Fleetwood*, the court found that the City of Miami Beach rent control ordinance conflicted with Florida Statutes sections 83.03, 83.04, 83.06 and 83.20 (1971).[34] It is well settled that municipal ordinances are subordinate to state statutes and that if they conflict the municipal ordinance is of no force.[35] While some courts have held that when doubt exists as to whether there is such a conflict, the controversy should be resolved in favor of the statute.[36] It has also been held that in passing upon the validity of a municipal ordinance, the ordinance should be construed to be legal if at all possible.[37] It would appear that the rent

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32. 261 So.2d at 804.

33. City of Miami v. Girtman, 104 So.2d 62, 66 (Fla. 3d Dist. 1958). *See also* State *ex rel.* Ellis v. Tampa Waterworks Co., 56 Fla. 858, 864, 47 So. 358, 360 (1908), which declared:

> The difficulty of making specific enumeration of all such power as the Legislature may intend to delegate to municipal corporations renders it necessary to confer powers in general terms.

34. 261 So.2d at 806.

35. 261 So.2d at 806; City of Wilton Manors v. Sterling, 121 So.2d 172 (Fla. 2d Dist. 1960); City of Coral Gables v. Siefeith, 87 So.2d 806 (Fla. 1956).

36. City of Wilton Manors v. Sterling, 121 So.2d 172, 174 (Fla. 2d Dist. 1960).

37. City of Miami v. Kayfetz, 92 So.2d 798 (Fla. 1957).

control ordinance defeats neither the intent nor the object of the state statutes. Florida Statutes chapter 83 (1971)[38] deals with the basic relationship between landlord and tenant. In no way does it relate to control of rent. On the other hand, the rent control ordinance does not deal with the basic relationship between landlord and tenant. It deals strictly with the restriction of rents to a reasonable amount during periods of emergency. Furthermore, chapter 83 was passed to set a basis for the landlord-tenant relationship during normal conditions. It is not clear that chapter 83 should preclude municipalities from supplementing the state law where an emergency housing shortage and an inflationary spiral exist simultaneously.

The court also ignored the possibility of concurrent state and municipal regulation. Florida has recognized such schemes of regulation provided that the municipal ordinance can be read to accomplish a purpose within the compass of the state statute[39] and that the ordinance supplements the state law.[40] The rent control ordinance can be viewed as supplementing chapter 83, with the intent of preserving the statutory goals under extraordinary conditions.

The third ground for invalidating the City of Miami Beach rent control ordinance was that some of its provisions unlawfully delegated legislative authority to the city rent agency.[41] The test for the delegation of legislative power is well settled:

> The Legislature may not delegate the power to enact a law, or to declare what the law shall be, or to exercise an unrestricted discretion in applying the law; but it may enact a law, complete in itself, designed to accomplish a general public purpose, and may expressly authorize designated officials within definite valid limitations to provide rules and regulations for the complete operation and enforcement of the law within its expressed general purpose.[42]

The delegation of power must contain objective standards and guidelines, or such standards should be capable of being reasonably inferred.[43] The same rules which apply to the delegation of legislative authority by the state legislature apply to the delegation of authority by a municipality to a city agency.[44] The court in *Fleetwood* found that Ordinance 1791 delegated unbridled discretion to one person, the city rent administrator.[45]

38. Hereinafter referred to as chapter 83.

39. Atwater v. City of Sarasota, 38 So.2d 681 (Fla. 1949) (dealing with the licensing of plumbers).

40. Egan v. City of Miami, 130 Fla. 465, 178 So. 132 (1938).

41. 261 So.2d at 805.

42. State v. Atlantic Coast Line R.R. Co., 56 Fla. 617, 636, 47 So. 969, 976 (1908); *Ex parte* Lewis, 101 Fla. 624, 631, 135 So. 147, 151 (1931); Stewart v. Stone, 130 So.2d 577, 579 (Fla. 1961).

43. Smith v. Portante, 212 So.2d 298 (Fla. 1968).

44. Blith v. City of Ocala, 142 Fla. 612, 195 So. 406 (1940).

45. 261 So.2d at 806.

This is questionable in that the ordinance clearly provides for control by a committee of not less than ten.[46] It also defines the type of housing to be controlled,[47] establishes the basis for the maximum rent to be charged,[48] defines the circumstances under which adjustments of maximum rents may be made by the city rent agency,[49] and finally the provisions state objective guidelines for the exercise of power by the city rent agency.

In sum, while *Fleetwood* precludes the establishment of rent controls by a municipality in the absence of enabling state legislation, it has far broader implications. The judicial limitation on the home rule powers of municipalities, imposed by the creation of a local-state function test for allocating power, effectively places basic policy choices on the judicial branch of the government. It is submitted that the courts are neither the proper forum for such decisions to be made, nor are they the best mechanism for determining the needs of the people at any particular time.

RICHARD A. HERMAN

MERCHANT-BUYER'S GOOD FAITH DUTY TO INQUIRE UNDER 9-307: A CONFUSION OF CONCEPTS

The plaintiff, J. I. Case Company, sold a tractor to Florida Tractor Mart, Inc., and took back a security agreement (a conditional sales contract), and a financing statement which it recorded.[1] Florida Tractor then delivered possession of the tractor to Gator Tractor Company pursuant to an oral lease.[2] Shortly thereafter Gator Tractor traded the tractor to the defendant, Swift, in exchange for three other items of equipment.[3]

46. Section 16.A.3.C. of Ordinance 1791, provides:

> There shall be an advisory committee composed of not less than 10 members who shall be appointed by the city council. The committee shall be provided by the administrator with all data necessary for it to advise and consult with the Mayor and City Council *for all its actions*. (Emphasis added.)

Mr. Justice Ervin, in his dissent, points out that the city rent agency is a branch of the Miami Beach government and as such is subject to the controls of, and accountable to the Mayor and city council. 261 So.2d at 811.

47. *See* note 1 *supra.*

48. *See* note 41 *supra.*

49. *See* note 39 *supra.*

1. *See* FLA. STAT. § 679.302(1) (1971). Florida has adopted the Uniform Commercial Code in chs. 671-79 FLA. STAT. (1971). The Code sections correspond to the last four numbers of the statute section.

2. Once Case Company's security interest was perfected, it continued, despite the leasing of the tractor by Florida Tractor to Gator Tractor. FLA. STAT. § 679.306(2) (1971).

3. The exchange of equipment between Swift and Gator Tractor constituted a "buying" and therefore Swift became a "buyer" of the tractor. FLA. STAT. § 671.201(9) (1971).