

***Horne v. City of Mesquite*, 120 Nev. Adv. Op. 79, (November 10, 2004)¹**

ADMINISTRATIVE LAW – DECLARATORY JUDGMENT

Summary

City of Mesquite Mayor Charles Horne appealed a Declaratory Judgment of the Eighth Judicial District Court, holding City of Mesquite initiative ordinance MQ1 to be invalid as conflicting with state statutes, but that the severability clause of the ordinance evaded total invalidity. Furthermore, that same declaratory judgment held City of Mesquite initiative ordinance MQ3 to be totally invalid as conflicting with state statutes.

Outcome/Disposition

The lower court ruling was affirmed in part and reversed in part. The court found both ordinances to be totally invalid, and so affirmed that portion of the order by the district court which found MQ1 to be invalid, and MQ3 to be totally invalid, but reversed that portion which found MQ3 to be not totally invalid.

Factual & Procedural History

At the November 5, 2002 general election, City of Mesquite voters approved initiative ordinances MQ1 and MQ3. The city petitioned the district court for judicial confirmation or, in the alternative, declaratory judgment regarding validity of the ordinances.

MQ1 amended the city municipal code by adding a section which specified that “[a]ll public land sales by the City of Mesquite must be conducted through a properly noticed public auction or open to the public sealed bid process. The City must set a minimum acceptable bid, in the notice for sale.”

MQ3 amended that portion of the city municipal code which controlled the election of city officers to specify that:

No officer whose term of office would continue through the upcoming election or employee of the city, receiving compensation under the provisions of this code or any City ordinance, shall be a candidate for or eligible for the office of Council member or Mayor, without first filing a “Declaration of Resignation” from office or employment with the Mesquite City Clerk, which shall become effective at the time of the swearing in of newly elected City Officers. This “Declaration of Resignation” must be filed at least 10 calendar days preceding the opening of filing for a Declaration of Candidacy for the office he seeks and shall be published as soon as possible within the aforementioned 10 calendar days by the City Clerk. This publication shall include all local print media as well as postings at all regular legal notice posting sites.

¹ Summarized by Ira David

The City argued that these ordinances were invalid, as being repugnant to several NRS provisions.

The district court held that MQ1 invalidly limited the discretion of the city council in public land sales. However, as the ordinance included a severability clause, providing that “[I]f any section of this Ordinance or portion thereof is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not invalidate the remaining provisions of this Ordinance,” the ordinance could be reformed by (1) deleting the word “all,” and (2) providing the city council with statutorily mandated discretion, removing the conflict with NRS Chapter 26. Ergo, the ordinance was invalid on its face, but, as it could be reformed to conform with the state statutes, it was not totally invalid.

Further, the district court held that MQ3 impermissibly shortened an elected officer’s term, in conflict with NRS 266.405(1), which provides a four-year term for certain officers. As an initiative ordinance cannot thus negate an NRS provision, MQ3 was held to be totally invalid.

Mayor Horne thereupon appealed the ruling of the district court, claiming that the Nevada Constitution reserves the right for citizens [of Mesquite] to legislate by ballot initiative and, as NRS 266.105(1) requires all ordinances *passed by the city council* to conform to the provisions of NRS Chapter 26, as well as state and federal constitutions, initiative ordinances, which are not passed by the city council, are not so bound. In the alternative, Mayor Horne argued that the ordinances at issue were not repugnant to any NRS provisions.

Discussion

The Nevada Supreme Court rejected appellant’s argument on applicability of NRS 266.105(1), and found both ordinances to be totally invalid.

1. NRS 266.105(1)

NRS 266.105(1) provides that actions *passed by the city council* must conform to all provisions of NRS Chapter 266. This is distinct from initiative ordinances, which are passed by the electorate. However, NRS 295.220(1) provides that initiative ordinances, if passed, “shall be treated *in all respects* in the same manner as ordinances of the same kind adopted by the city council.” (emphasis added) Therefore, the limitations of NRS 266.105(1) apply to initiative ordinances as well as actions of the city council, and, arguments by appellant to the contrary were held to be without merit.

2. MQ1

NRS 266.267 provides procedures for sale or exchange of city property. Included therein is the potential for the city council to approve a sale for less than fair value, should such an action be in the best interest of the public, or should such action encourage or retain business within the city. MQ1 impermissibly removes such authority from the city council. As this capability is key to the function of the city council, such a limitation is unreasonable, and hence the ordinance was held to be invalid.

While the district court averted total invalidity by reforming the ordinance, the supreme court held such reformation to be impracticable, and hence that the ordinance was totally invalid.

3. MQ3

MQ3 requires an elected officer desiring to run for either mayor or for the city council to file a “Declaration of Resignation” to take effect upon the swearing in of newly elected officers. This is to avoid potential overlapping of terms, but the resignation takes effect whether or not the candidate is successful in the election.

This is in direct conflict with NRS 266.405(1) which provides that city officers “shall hold their respective offices for 4 years and until their successors are elected and qualified.” Thus, as MQ3 requires the unconditional “Declaration of Resignation” to be filed prior to the conclusion of their statutorily mandated term of office, MQ3 is in direct conflict with NRS 266.405(1) and is thereby totally invalid.

Conclusion

This case effectively limits the power of an initiative ordinance to evade or supersede prior state statutes. Where such an initiative does conflict with a state statute, as written or as applied, in fact or in spirit, the statute must prevail. The electorate may not use the initiative process to evade the need for such conformity.