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City of Hudson v. County of Summit, 2001 Ohio App. LEXIS 2601 (Ohio Ct. App. June 13, 2001)

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City of Hudson v. County of Summit, 2001 Ohio App. LEXIS 2601 (Ohio Ct. App. June 13, 2001)

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provides "the state engineer shall not issue a permit to appropriate water for the purpose of watering livestock on public lands unless the applicant for the permit is legally entitled to place the livestock on the public lands for which the permit is sought."

Argument centered over the meaning of "legally entitled." The BLM contended that the plain language of the statute authorizes the State Engineer to issue stockwater permits to the United States as landowner of public lands. The BLM argued the plain meaning of "legally entitled" meant that either the landowner, or a person with the landowner's permission to use the land, was legally entitled to place livestock on the land.

The State Engineer contended that "legally entitled to place livestock on the land for which the permit is sought" excluded the United States because it does not possess either a grazing permit or lease through the BLM. The State Engineer argued that the United States, as owner of public land, must issue itself a BLM permit to place livestock on its land.

The standard of review applied in cases of statutory construction is *de novo*. Because statute authorized the State Engineer to administer the stockwater permits, the court gave statutory interpretations of that office "great deference." Though the decision of the State Engineer was not controlling, it was presumed correct and the burden or proving error fell on the challenging party, The BLM.

In evaluating these conflicting interpretations, the Supreme Court of Nevada held that for a statute to be considered ambiguous it must be capable of two or more reasonable but inconsistent interpretations. However, the State Engineer's interpretation, that the United States, the owner of public land must issue itself a permit or lease to graze livestock upon the land that it owns was an "illogical and unreasonable construction of statutory language." With this interpretation the State Engineer exceeded his authority by ignoring the plain meaning of the statute. On those grounds, the Nevada Supreme Court reversed the order of the district court and remanded the matter with directions to grant the petition for judicial review.

Erika Delaney-Lew

OHIO

City of Hudson v. County of Summit, 2001 Ohio App. LEXIS 2601 (Ohio Ct. App. June 13, 2001) (holding that a water system does not pass by operation of law at the merger of townships, and a county may only sell a water system to the municipality that the water system services).

Subsequent to the creation of Hudson Township, developers created and conveyed a water system to Summit County ("County") for

the public good, Hudson Township and the Village of Hudson merged creating the City of Hudson ("Hudson"). Hudson, five years later, sought declaratory relief seeking control over the water system. A few months later, the County inquired about possible buyers of the water system. The City of Akron ("Akron") responded, but Hudson did not. Soon after, Hudson moved for an emergency restraining order and a preliminary injunction preventing the sale of the water system they believed passed by the operation of law to them at the creation of Hudson. The trial court, the Summit County Common Pleas Court, determined the water system did not pass to Hudson by the operation of law, and the County was free to sell the water system.

This court addressed whether a water system held in public trust in a township is incorporated into a city at its creation, and whether a county may sell a water system in one municipality to another municipality. The Ohio Constitution art. XVIII, § 4 provides that any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility. Further, the Ohio Revised Code § 6103.22 provides that a water works system may be acquired by mutual agreement or conveyance. Hudson allowed the County to operate the water system for five years without objection. Moreover, the language of the Ohio Constitution suggests the water system may be acquired only by an affirmative act. Hudson could have obtained control over the water system by eminent domain. The Revised Code suggests Hudson also could have gained control through an agreement with the County or through a conveyance. No language suggested the water system passed by the operation of law. Thus, the court held the water system remained in the County's control.

Regarding the second issue, the court again looked to the Ohio Revised Code. Sections 6103.21 and 6103.22 are interrelated. The former addresses the contractual and payment responsibilities, as well as the party's rights. The latter relates to the transfer of a completed water system. The court found a county may only transfer ownership to the municipality the water facility serves. Therefore, the County could only transfer the water system to Hudson, but remained in control of the water system because no agreement or affirmative act transferred the water system from the County to Hudson.

Staci A. McComb

PENNSYLVANIA

Segal v. Zoning Hearing Bd., 771 A.2d 90 (Pa. Commw. Ct. 2001) (holding the filling of wetlands and waters of the United States did not constitute a dimensional variance, and the filling of wetlands based on a self-imposed hardship was not authorized).