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Town of Lincoln v. City of Pawtucket, 745 A.2d 139 (R.I. 2000)

**RHODE ISLAND****Town of Lincoln v. City of Pawtucket, 745 A.2d 139 (R.I. 2000)**

(holding that legislation which delegated power on the Narragansett Bay Commission (“NBC”) to abate combined sewer overflows that polluted Narragansett Bay did not violate the equal protection and due process rights of four towns and one landowner, did not violate the Home Rule Amendment, and was not an unreasonable delegation of authority to the NBC).

The Rhode Island legislature created the Narragansett Bay Commission (“NBC”) to deal with the discharge of pollutants into the Narragansett Bay, Rhode Island’s “greatest natural resource.” The NBC developed a water remediation project to abate combined sewer overflows (“CSO”). CSO’s were overflows of sewer and storm water that occur during a significant rainstorm and flow into the state’s rivers and subsequently into the Narragansett Bay. Normally, the combination of sewer and storm water would be diverted into one of the state’s treatment facilities. However, during a severe rainstorm the systems in place allowed the water to flow out into the rivers.

The CSO’s took place in the towns of Providence, Central Falls, Pawtucket, and East Providence. These communities have older water systems, known as combined systems, that did not separate the flow of sewer water and storm water into the treatment facilities. These combined systems increased the flow into the treatment facilities and lead to the problem of CSO’s. Upstream from these communities were the towns of Johnston, North Providence, Smithfield, and Cumberland whose sewer waters flowed into the same treatment facilities, but did not have any CSO’s. In addition, the downstream town of Lincoln, as well as Cumberland and Smithfield, had a separate system, separating sewer and storm water and did not have any CSO’s. However, it was the combined sewer water of all the communities, both upstream and downstream, which ended up flowing into the river as a result of the CSO’s.

All of the above mentioned communities were to absorb the cost, through rate increases, of the multi-million dollar remediation project developed by the NBC to deal with CSO’s problem. The towns of Lincoln, Smithfield, Cumberland and East Providence, as well as a resident owner, claimed that they were unfairly charged with the cost of the remediation project that was the result of downstream, older, combined systems and sought relief from the superior court. Lincoln and Cumberland also alleged that they exclusively funded upgrades to their water systems and should not be responsible for any additional rate increases.

The superior court denied these claims, which were based on due process and equal protection violations, as well as asserting that the legislature acted within its authority. This court affirmed and held that no violation of due process or equal protection existed and that the legislature

was acting within its powers by delegating authority to the NBC to deal with the pollution problem.

The plaintiffs' first argument was that the state, through the NBC, violated the due process and equal protection provisions of both State and Federal Constitutions by forcing all the above mentioned towns to equally share in the remediation expenses instead of on a proportionate basis based on each towns CSO's. In dismissing the equal protection and due process claims, the court pointed out that the legislation was designed to improve the public health or welfare and did not involve suspect classifications of the towns in question. Therefore, the legislation only needed to pass the rational basis test. The court held that the legislature created a reasonable classification of ten communities with an urgent pollution problem, and designed a remediation solution that bore a rational relationship to the interest of the public health and welfare so the court dismissed these claims.

The plaintiffs' second argument centered on the Equal Burden Clause of the Rhode Island which stated that "the burdens of the state ought to be fairly distributed among its citizens." Plaintiffs claimed that the legislation violated this provision by only forcing the ten communities in question to pay for the remediation project instead of all the citizens of the state. The court determined that this provision was advisory and not mandatory, therefore, as long as the legislation passed the Equal Protection Clause, which it had, it was unnecessary for any additional analysis in regard to the Equal Burden Clause.

Next, the plaintiffs asserted that under the Home Rule Amendment of the Rhode Island Constitution, the control of a local sewer system lies within the auspices of the local municipality and no legislation in regard to the sewer systems could be passed without the consent of the local elected officials. The court determined that no question existed that remediating the pollution of Narragansett Bay represented a statewide concern; therefore, the state legislature properly addressed the problem and the Home Rule Amendment did not apply.

The plaintiffs' final claim asserted that the legislative delegation of power to the NBC was inappropriate and unreasonable. The court dismissed this claim as without merit by pointing out the obvious need for eliminating pollution in the Narragansett Bay, the specific guidelines set out by statute, defining the policies of the NBC, and the agencies special expertise in dealing with the problem. Thus, the delegation of power and authority to the NBC was entirely appropriate and reasonable.

*Spencer L. Sears*