

Municipal Law

Introduction

Up to the mid 20th century, citizens could not generally sue towns when they were injured or refused to carry out contracts. Now, such municipal immunity has largely disappeared as to contract and tort claims against municipal entities. So the law covering these kinds today of cases resembles the case law set forth in the sections on torts and contracts.

But some subjects remain unique to local government. What is the origin of home rule? Where do our towns get their right to pass ordinances that regulate people and businesses? When is local initiative barred by uniform state law? Case law also enforces statutes governing citizens' rights to attend public meetings and gain access to public records. And case law also governs the fairness of property tax assessments and the integrity of local officials.

The general trend in the law has been to give local governments more authority to undertake initiatives on behalf of their citizens. When in doubt, the Supreme Court has given the go ahead to local regulations, unless they violate some specific constitutional right, like the right to free speech or equality before the law or interfere with the requirements of a state statute. For example, over the past decades, the Court has authorized local rent control, requirements for soil removal or regulation of firearms discharge. In this way our Court has been quite supportive of local home rule.

N.J. Supreme Court Decisions on Local Government Powers

What follows is a sampling of key cases addressing the powers of local government.

Inganamort v. Bor. of Ft. Lee, 62 N.J. 521 (1973) and *Fred v. Mayor and Council of Old Tappan*, 10 N.J.515 (1952). Both of these cases support broad municipal power to regulate in the public interest under the state Constitution and state legislation. In *Inganamort*, the Supreme Court overruled prior case law

and held that local government could establish rent controls; Fred held that local governments could regulate soil removal. Both cases relied on state statutes and the NJ Constitution of 1947. Article IV, Sec.7, Para. 11 of which says that municipal power to act should be construed broadly. It should be noted that there is no similar right to local home rule under the U.S. Constitution.

Chester Township v. Panicucci, 62 N.J. 94 (1973) and *Overlook Terrace Management Corp. v. Rent Control Bd. of West New York*, 71 N.J. 451 (1976). These decisions among many others deal with a key local government issue, namely, preemption, that is when is local initiative permitted in the face of state regulation. Key factors are whether there is a need for uniformity or whether local regulation would be an obstacle to the achievement of state policies. *Chester Township* had banned all possession of loaded firearms within 300 feet of a residence on safety grounds. State law only banned such possession for the purpose of hunting. The Court said that stricter local regulation to achieve greater safety would not undermine state objectives in regulating hunting. Yet in *Overlook Terrace*, which involved an apartment complex financed by a state agency, the Supreme Court held that stricter local rent controls could not be applied to the state financed projects whose rents were set by the state. The bondholders who loaned money for these projects had a right to rely on uniform state rent level setting. The analysis in these decisions provides guidance about when state law does or does not trump local regulation.

FMC Stores v. Bor. of Morris Plains, 100 N.J. 418 (1985). This case contains the famous statement the government must “turn square corners” in dealing with the public. It must comport itself with compunction and integrity and not seek unfair bargaining or litigation advantage. This statement tells New Jerseyans that our courts will expect the government to treat its citizens fairly.

Jantausch v. Bor. of Verona, 24 N.J. 326 (1957), affirming 41 N.J. Super. 89 (Law Div. 1956) (Weintraub, J.S.C.). When is it fair for a municipality to change its mind after granting a permit? Or when is it not allowed, or to use the

legal term, estopped, from doing so. This case says that if the permit has been relied on, and if were legally granted, or based on a reasonable interpretation of an ordinance, it cannot be revoked, but if it were granted by mistake, it can be.

Switz v. Middletown Tp., 23 N.J. 580 (1957), held that local assessors had to value property at full value. They could not favor one type of property over another. Further, the court could order revaluations to achieve equal assessments. This case provides the state constitutional foundation for the frequently controversial requirement that property assessments must be revalued to stay in accordance with actual full value. In some places, assessors had tended to value industrial or commercial property more strictly than homes. This distinction is not lawful under *Switz*.

Thompson v. City of Atlantic City, 190 N.J. 359 (2007) and *Driscoll v. Burlington Bristol Bridge Co.*, 8 N.J. 433 (1952). In *Driscoll*, the Court said that “the foundation of a republic is the virtue of its citizens” when it found fraud in the financing of the public’s purchase of the Tacony Palmyra and Burlington Bristol bridges. In *Thompson*, the court voided a settlement agreement between the mayor and the city he led on the ground that the mayor should not have pursued his lawsuit against his city and the officials who approved the settlement with him were tainted by conflicts of interest when they agreed to have the city pay him a lot of money, \$850,000, to settle. These two spectacular cases on the integrity of municipal officials enforce the mandate the public officials must remain independent guardians of the public interest.

Polillo v. Deane, 74 N.J. 562 (1977). One of the early and basic cases on the Sunshine Law, N.J.S.A. 10:4-6. It affirms the power of the court to invalidate a local decision if the public is not given access to all the phases of the decision making process. In the case, most of the the meetings of the commission charged with recommending changes in the Atlantic City Charter had not been properly noticed. Therefore, the Court voided the charter change.

State v. Caoli, 135 N.J. 252 (1994) In evaluating the worth of a piece of property in a condemnation case, the Court must look at the highest and best use of the property in determining how much the property owner should receive from the government in damages for the taking of the property. The uses considered shall include not only what is now allowed on the property, but also probable zoning changes or subdivision.

Irval Realty, Inc. v. Bd. Of Public Utilities Commissioners, 61 N.J. 366 (1972). The Open Public Records Act, N.J.S.A. 47:1A-1, is not the only way a citizen can obtain access to governmental records. Instead, a person who has a particular interest in a record may get it from the government even if it is exempt from disclosure under OPRA. In North Jersey Media Group v. Township of Lyndhurst, 229 N.J. 541 (2017), the Court found that the media had such a common law right of access to police dash cam videos of a fatal confrontation between the police and a fleeing driver even though it held that these videos were criminal investigatory records not subject to disclosure under OPRA. Under the common law, the public media's interest in reporting on these videos outweighed the local police department's interest in keep them sealed.