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Ohio Supreme Court's Preemption Analysis Limits Municipalities' Power to Regulate Oil and Gas Drilling

In an effort to end growing uncertainty surrounding municipalities' authority to pass ordinances limiting oil and gas drilling, the Ohio Supreme Court recently upheld existing case law and affirmed that state statutes preempt conflicting local ordinances. In *State ex rel. Morrison v. Beck Energy Corp.*, the court held that the municipality's ordinances conflicted with rights granted to the operator, and that the state statute's application prevailed despite the broad power granted to the municipality by the Ohio Constitution. Slip Opinion No. 2015-Ohio-485.

Plaintiff, the City of Munroe Falls ("the City"), filed for injunctive relief when Beck Energy Corporation ("Beck Energy") began operations under the authority of a state-issued permit to drill. Beck Energy obtained a permit to drill for oil and gas under O.R.C. § 1509, which empowers the Ohio Department of Natural Resources ("ODNR") to regulate drilling within the state of Ohio. However, Beck Energy had not complied with several City ordinances, requiring Beck Energy to obtain certificates from the City and wait a certain period before operating, provide notice to neighbors, and pay fees; the ordinance requirements were substantially similar to the requirements of the ODNR permit. Violation of any of the ordinances constituted a first-degree misdemeanor, with each day of the violation constituting a separate offense.

The trial court granted the City's request and ordered that Beck Energy comply with the ordinances. However, the Ninth District Court of Appeals reversed, holding that O.R.C. § 1509.02, and Beck Energy's rights thereunder, preempted the City's right to enforce the ordinances. The City appealed to the Ohio Supreme Court.

The Court followed a three-prong analysis, stating that the municipality is preempted from enforcing the ordinance if (1) the ordinance constitutes an exercise of police power, (2) if the statute is a general law, and (3) if the ordinance is in conflict with the statute. The Court's analysis focused primarily on whether a "conflict" existed between the City ordinance and the State statute and whether "the language of the statute [indicated] whether the General Assembly intended to preempt local regulation on the subject." *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 442 N.E.2d 1278 (1982); *Westlake v. Mascot Petroleum Co.*, 61 Ohio St.3d 161, 573 N.E.2d 1068 (1991). In ruling for Beck Energy, the Court held that as the plain language of O.R.C. § 1509.02 grants the ODNR exclusive jurisdiction over the regulation of oil and gas drilling, that the General Assembly clearly intended for the statute to preempt local ordinances.

The Court stated that any future determination of a conflict with O.R.C. § 1509 would depend on the particular municipal ordinance in dispute; but the Court warned that regardless of its powers under the Ohio Constitution, a municipality is not permitted to "discriminate against, unfairly impede, or obstruct" oil and gas drilling if a driller has already complied with state requirements under O.R.C. § 1509. *State ex rel. Morrison* provides a strong, clear answer as to the preemption of state law over local law and provides Ohio oil and gas operators with a valuable tool to reduce or eliminate the additional regulatory burdens.

For a full copy of the Morrison/City of Munroe Falls Slip Opinion, [click here](#).