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ANNEXATION - MICHIGAN

Clam Lake Township v. Department of Licensing and Regulatory Affairs/State Boundary Commission

Supreme Court of Michigan - July 3, 2017 - N.W.2d - 2017 WL 2853480

Two townships sought review of decision by State Boundary Commission that found townships' agreement under Intergovernmental Conditional Transfer of Property by Contract Act invalid and that granted landowners' annexation petition.

The Circuit Court upheld Commission's decision. Townships appealed. As Commission proceedings were ongoing, landowners brought action against townships seeking declaration that townships' agreement was invalid or void as against public policy. The Circuit Court found agreement void. Townships appealed. The Court of Appeals affirmed. Townships appealed and appeals were consolidated.

The Supreme Court of Michigan held that:

- Agreement preempted landowners' annexation petition concerning same land;
- If a relevant agreement under the Act is "in effect," or operative, the Commission must find any annexation petition concerning the same property preempted, overruling *Casco Twp. v. State Boundary Comm.*, 243 Mich.App. 392, 622 N.W.2d 332; and
- Agreement was not void as against public policy.

Agreement between two townships to conditionally transfer landowners' undeveloped land under Intergovernmental Conditional Transfer of Property by Contract Act preempted landowners' annexation petition that was before State Boundary Commission concerning same land, since agreement was in effect at time Commission considered landowners' petition, in that townships' agreement was properly filed with county clerk and Secretary of State, Commission lacked power under Act to make any determination as to agreement's validity.

Townships' argument that State Boundary Commission had primary jurisdiction to review townships' agreement under Intergovernmental Conditional Transfer of Property by Contract Act, in landowners' action seeking declaration that agreement was invalid, did not judicially estop townships from arguing that Commission's review of agreement was limited by Act to determining whether agreement was in effect, or operative, in their action seeking review of Commission's decision finding agreement invalid, since there was nothing inconsistent in townships' arguments, in that both arguments concerned scope of Commission's examination.

If a relevant agreement under the Intergovernmental Conditional Transfer of Property by Contract Act is "in effect," or operative, the State Boundary Commission lacks the power to make any further determination of the agreement's validity and must find any annexation petition concerning the same property preempted; overruling *Casco Twp. v. State Boundary Comm.*, 243 Mich.App. 392, 622 N.W.2d 332.

Agreement between two townships to conditionally transfer landowners' undeveloped land under

Intergovernmental Conditional Transfer of Property by Contract Act was not void as against public policy for impermissibly contracting away acquiring township's zoning powers, since provision in Act stating that agreements could provide for "adoption of ordinances" did not expressly exclude zoning ordinances, it authorized townships to include zoning provisions in their agreement, including provisions governing content and substance of proposed zoning ordinances.

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