

Bond Case Briefs

Municipal Finance Law Since 1971

ZONING & PLANNING - MAINE

Portland Pipe Line Corporation v. City of South Portland

United States Court of Appeals, First Circuit - January 10, 2020 - F.3d - 2020 WL 113390

Pipeline operator and trade association brought action against city and city's code enforcement officer, challenging validity of city zoning ordinance that prohibited bulk loading of crude oil onto tankers in city harbor and building new structures for that purpose.

The United States District Court for the District of Maine granted in part and denied in part defendants' motion for summary judgment and denied plaintiffs' cross-motion for summary judgment, and, after bench trial, dismissed plaintiffs' sole remaining claim. Plaintiffs appealed.

The Court of Appeals held that:

- Certification of question whether renewal of operator's existing oil terminal facility license by Maine's Department of Environmental Protection (MDEP) was an order with preemptive effect was warranted, and
- Certification of question whether Maine's Coastal Conveyance Act (CCA) expressly or by implication preempted ordinance was warranted.

Certification of question whether renewal of pipeline operator's existing oil terminal facility license by Maine's Department of Environmental Protection (MDEP) was an order with preemptive effect was warranted, since operator's action alleging that city zoning ordinance that prohibited bulk loading of crude oil onto tankers in city harbor was preempted by Maine's Coastal Conveyance Act (CCA) lacked controlling precedent and presented close and difficult legal issue of state law.

Certification of question whether Maine's Coastal Conveyance Act (CCA) expressly or by implication preempted city zoning ordinance that prohibited bulk loading of crude oil onto tankers in city harbor was warranted, in pipeline operator's action challenging validity of ordinance, since there was no controlling precedent that resolved the state law preemption issue.