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MUNICIPAL ORDINANCE - NEBRASKA

D-CO, Inc. v. City of La Vista

Supreme Court of Nebraska - April 12, 2013 - N.W.2d - 285 Neb. 676

Court upholds constitutionality of city ordinance requiring landlords to obtain a license to lease residential property and submit to periodic building code inspections, while exempting other residential property from those requirements.

Rental property owners brought action against city, seeking declaratory and injunctive relief and alleging that city ordinance establishing rental housing licensing and inspection program violated state constitution.

Under the ordinance, owners of rental property must obtain a license to lease the property to others and submit to periodic building code inspections of their rental property. The owners claimed that the ordinance's application to only rental property residences – and not to owner-occupied residences – was an arbitrary and unreasonable classification that violates Nebraska's constitutional prohibition against special legislation.

For purposes of state constitution's prohibition against special legislation, a legislative act constitutes "special legislation" if 1) it creates an arbitrary and unreasonable method of classification, or 2) it creates a permanently closed class. To be valid under state constitution's clause prohibiting special legislation, a legislative classification must be based upon some reason of public policy, some substantial difference in circumstances, that would naturally suggest the justice or expediency of diverse legislation regarding the objects to be classified.

The court concluded that the record showed that the city based its classification of rental property residences on a real distinction from other residential properties and that its distinctive treatment was reasonably related to legitimate goals. Protecting tenants' safety within the context of the landlord/tenant relationship creates a unique public policy concern that distinguishes rental properties from other residential properties.

Furthermore, because the renting of residential housing is a business, a city can reasonably require the owners of such housing to pay fees to offset the cost of regulating that business.