

Bond Case Briefs

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ZONING - FLORIDA

Foley v. Orange County

United States District Court, M.D. Florida - August 13, 2013 - Slip Copy - 2013 WL 4110414

Plaintiffs were residents of Orange County, Florida, who own and raise toucans. They brought several claims against Orange County based on their efforts to operate a commercial aviary out of their residence, which is located in a residential-only zoned area of the county, and another parcel of property that is located in rural-use zoned area of the county.

Plaintiffs contended that portions of Orange County's land use ordinances, which prohibit the operation of a commercial aviary at the residence altogether and at the second property absent a special use permit, conflict with a provision of the Florida Constitution that provides the Florida Fish and Wildlife Commission with all of the "regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life." Art. IV, § 9, Fla. Const. Plaintiffs had been issued a permit to possess and sell the birds from their residence by the commission.

The court found that Florida law provided that the state legislative power over captive wildlife was transferred to the Florida Fish and Wildlife Conservation Commission. Art. IV, § 9, Fla. Const. The effect of the transfer of that portion of the state's legislative power was to divest the state legislature of authority to regulate the possession and sale of captive wildlife and vest that power in the commission. The commission therefore assumed the regulatory authority that the legislature had prior to the transfer. As such, the rules adopted by the commission are tantamount to legislative acts and become the governing law of the state. Any and all laws in conflict with the commission's rules are consequently void.

Applying these principles, the court concluded that Orange County cannot use its land use ordinances to regulate the possession or sale of captive wildlife.