

Bond Case Briefs

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MUNICIPAL ORDINANCE - KANSAS

City of Lincoln Center v. Farmway Co-Op, Inc.

Supreme Court of Kansas - December 20, 2013 - P.3d - 2013 WL 6714132

After it was convicted, in municipal court, of violating municipal noise and nuisance ordinances, owner and operator of grain elevator facility within city limits appealed and filed motion to dismiss charges, arguing that ordinances were void for vagueness.

The Supreme Court of Kansas held that:

- Noise ordinance was unconstitutionally vague, under due process principles, as applied to owner-operator, but
- Nuisance ordinance was not unconstitutionally vague, under due process principles, as applied to owner-operator.

City's noise ordinance lacked sufficiently objective standards to prevent its arbitrary enforcement, in making it unlawful for one to make, continue, maintain, or cause to be made or continue any excessive, unnecessary, unreasonable, or unusually loud noise that annoyed, disrupted, injured, or endangered comfort, repose, health, peace, or safety of others within city, and thus was unconstitutionally vague, under due process principles, as applied to owner and operator of grain elevator facility. Lack of objective standards for determining whether noise was excessive, unnecessary, or unusually loud and disrupted or annoyed others in city readily promoted varying and somewhat unpredictable bases for enforcement.

City's nuisance ordinance, which proscribed maintaining public nuisance by intentionally causing or permitting condition to exist that injured or endangered public health, safety, or welfare, and proscribed permitting public nuisance by knowingly permitting property under offender's control to be used to maintain public nuisance, was not unconstitutionally vague, under due process principles, as applied to owner and operator of grain elevator facility, notwithstanding contention that ascertainable standards concerning prohibited dust and noise levels were required. Words "injure" and "endanger" were widely understood in legal context, as were meaning of "public health," "public safety," and "public welfare."