

Bond Case Briefs

Municipal Finance Law Since 1971

MUNICIPAL ORDINANCE - GEORGIA

Wilbros, LLC v. State

Supreme Court of Georgia - February 24, 2014 - S.E.2d - 2014 WL 695212

State charged LLC that operated a solid waste, recycling, composting, and waste water processing facility with violating county nuisance ordinance based on ongoing odor nuisance after the state and LLC had entered into a consent order regarding similar state law claims. The LLC filed a plea in bar of prosecution. The trial court denied the plea. LLC appealed.

Upon transfer, the Supreme Court of Georgia held that:

- In a matter of apparent first impression, double jeopardy was an available, potential defense to LLC;
- Sanctions imposed on LLC via consent order with the state for violating Comprehensive Solid Waste Management Act were civil in nature, such that charge against LLC for violating county nuisance ordinance was not barred by double jeopardy;
- County nuisance ordinance fell within constitutional exception to preemption; and
- County nuisance ordinance was not impermissibly vague, in violation of due process.

Double jeopardy was an available, potential defense under both the Federal and State Constitution, as Double Jeopardy Clause of the Fifth Amendment applied to the states through the Fourteenth Amendment, and a corporation was entitled to double jeopardy protection afforded by the State Constitution.

However, state sanctions imposed on LLC were civil in nature, and, thus, criminal action against LLC concerning the same nuisance conduct, in violation of county nuisance ordinance, was not barred by double jeopardy.

County nuisance ordinance fell within constitutional exception to preemption, as the ordinance was, by its terms, aimed at abating certain nuisances, and it did not set forth regulations that were in conflict with the Comprehensive Solid Waste Management Act.

County nuisance ordinance was not impermissibly vague, in violation of due process, as the ordinance did not give unfettered discretion to a health official to determine what constitutes a violation, but required the opinion of a health officer that the prohibited pollution was sufficient to be disagreeable or discomforting to a person of ordinary sensibilities or detrimental to health or well-being.