

# **Bond Case Briefs**

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## **MUNICIPAL ORDINANCE - NEW JERSEY**

### **Redd v. Bowman**

**Supreme Court of New Jersey - August 11, 2015 - A.3d - 2015 WL 4726557**

Mayor and city council president brought action to declare invalid a petition submitted by city voters for adoption of proposed ordinance that would prohibit city from disbanding its municipal police department and joining newly-formed county police force.

The Superior Court ruled that proposed ordinance created undue restraint on future exercise of municipal legislative power. Voters appealed. The Superior Court, Appellate Division, reversed and remanded. Mayor and council president filed petition for certification, and voters filed cross-petition for certification, which were granted.

The Supreme Court of New Jersey held that:

- Appeal was not moot;
- Proposed ordinance did not constitute improper divestment of municipal governing body's legislative power;
- Proposed ordinance was not invalid by virtue of preemption; and
- Proposed ordinance was prohibited from being submitted to voters.

Appeal from determination that city voters' petition-initiated proposed ordinance that would have prohibited city from disbanding its municipal police department and joining newly-formed county police force did not constitute improper divestment of municipal governing body's legislative power was not moot in action brought by mayor and city council president to declare petition invalid, even though city had already disbanded its police force and contracted to receive its police services from county. Action was not direct action seeking to enjoin dissolution of municipal department and creation of county-wide police force, but rather question raised by parties was whether proposed ordinance was valid, which was justiciable issue to be resolved by court, and it was still possible to grant or deny remedy sought by mayor and council president.

City voters' petition-initiated proposed ordinance to prohibit city from disbanding its municipal police department and joining newly-formed county police force did not constitute improper divestment of municipal governing body's legislative power. Legislature authorized divestment, for prescribed period, of one aspect of succeeding governing body's authority when ordinance was enacted by initiative in accordance with statute governing petitions for proposed ordinances.

Local Budget Law (LBL), which required local municipalities to enact balanced budget every fiscal year, did not preempt properly-framed petition-initiated proposed ordinance under Faulkner Act to prohibit city from disbanding its municipal police department and joining newly-formed county police force. LBL imposed on municipalities detailed requirements with respect to process of enacting a municipal budget, but contained no evidence that legislature intended to preempt proposed ordinance at issue.

Special Municipal Aid Act (SMAA) and Transitional Aid to Localities program (TAL), pursuant to

which city's transition from municipal to county police services were in part conducted, did not preempt properly-framed petition-initiated proposed ordinance under Faulkner Act to prohibit city from disbanding its municipal police department and joining newly-formed county police force. Although there was potential for dire fiscal consequences to result from municipality's failure to comply with state directives authorized by legislature under SMAA and TAL, neither statute barred municipality from enacting ordinances by initiative or referendum that contravened condition imposed by state.

Municipal Rehabilitation and Economic Recovery Act (MRERA), pursuant to which city's transition from municipal to county police services was in part conducted, did not preempt proposed ordinance, initiated by city voters under Faulkner Act, to prohibit city from disbanding its municipal police department and joining newly-formed county police force. Although it was possible that ordinance, however enacted, that undermined agreement reached by city pursuant to MRERA would prompt state to withhold municipal aid under MRERA, there was nothing in MRERA that expressed legislative intent to preempt Faulkner Act process, but instead, MRERA reaffirmed city's status as Faulkner Act municipality, and by inference, initiative and referendum procedure at Faulkner Act's core.

Police force statute did not preempt petition for proposed ordinance, initiated under Faulkner Act, to prohibit city from disbanding its municipal police department and joining newly-formed county police force, since there was no legislative intent in statute to preempt police reorganization and there was nothing in statute that precluded voter initiative and referendum procedures set forth in Act.

Proposed ordinance, initiated by city voters under Faulkner Act, to prohibit city from disbanding its municipal police department and joining newly-formed county police force was prohibited from being submitted to voters, since ordinance was out of date, inaccurate, and misleading. City had already disbanded its police force and contracted to receive its police services from county, voters who signed petition did so at time when police reorganization was in planning stage, and nothing suggested that those voters would have supported petition after city police force was disbanded, such that submission of ordinance to voters would have undermined objectives of Act.