

Bond Case Briefs

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Evans v. Avon

Court of Appeals of Ohio, Ninth District, Lorain County - August 22, 2016 - N.E.3d - 2016 WL 4426407 - 2016 -Ohio- 5460

Hotel patron brought action against city and its finance director, asserting additional 3% lodging tax in ordinance was illegal, and seeking to enjoin city or its agents from collecting the tax.

The Court of Common Pleas entered judgment declaring ordinance illegal, and granting patron injunctive relief. Defendants appealed.

The Court of Appeals held that:

- City ordinance that imposed an additional 3% excise tax to fund a newly established visitors bureau was illegal, and could not be collected by the city or its finance director, and
- City ordinance was not a lawful exercise of city's home rule authority.

Statutory provision that only allowed the levying of an additional 3% excise tax on all hotel and motel lodging when the county had not yet enacted its own lodging tax applied to both corporate municipalities and townships located within the county, and thus, city ordinance that imposed an additional 3% excise tax to fund a newly established visitors bureau was illegal, and could not be collected by the city or its finance director, where county had already enacted its own lodging tax.

Statute governing which subdivisions may levy an excise tax on lodging of transient guests preempted city ordinance that purported to impose an additional 3% lodging tax, and thus, city ordinance was not a lawful exercise of city's home rule authority. The statute specifically stated that a municipal corporation or township could only levy a lodging tax if it was not located in a county that had in effect a resolution that already levied an excise tax.

State constitution's grant of authority to exercise all powers of local government includes the power of taxation. However, while municipal governments have plenary taxing power, the General Assembly has the authority to impose specific limits on that power.