

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

THE CITY OF TRAVERSE CITY,

Appellant,

-v-

THOMAS CRANDELL,

Appellee.

District Court
File No. 94-APC1276-1- CM

CIRCUIT COURT
File No. 95-13293-AV

HON. PHILIP E. RODGERS, JR.

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Defendant In Pro Per

DECISION ON APPEAL

Appellant seeks this Court's reversal of the District Court's dismissal of Appellant's Complaint that Appellee violated Traverse City Code of Ordinances Chapter 863. The parties appeared in this Court and made their oral arguments on April 27, 1995. This Court has reviewed the Motion for Preemptory Reversal, Appellant's brief, the District Court's Decision and Order Dismissing Complaint, and the Court file. For the following reasons, the appeal is granted and the order of the District Court reversed.

I

The Plaintiff, in its motion set forth the undisputed facts of this appeal, as follows:

The matter before this Court arises from appellee Thomas Crandell's ("Crandell") violation of Traverse City Code of Ordinances Chapter 863, which regulates peddling in the city limits. Crandell was ticketed for peddling from a location other than the one authorized by the terms of the license issued to him by the City. The District Court held that the ordinance was not binding on Crandell because he held a veteran's license to vend his wares and so could not be subjected even to reasonable licensing requirements.

The Supreme Court set forth the standard of review applicable to this controversy as follows:

Absent a showing that state law expressly provides that the state's authority to regulate is exclusive, that the nature of the subject matter regulated calls for a uniform state regulatory scheme, or that the ordinance permits what the statute prohibits or prohibits what the state permits,

The mere fact that the state, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements. . . . The fact that an ordinance enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict therewith unless the statute limits the requirement for all cases to its own prescription. Thus, where both an ordinance and a statute are prohibitory, and the only difference between them is that the ordinance goes further in its prohibition but not counter to the prohibition under the statute, and the municipality does not attempt to authorize by the ordinance what the legislature has expressly licensed, authorized, or required, there is nothing contradictory between the provisions of the statute and the ordinance because of which they cannot coexist and be effective. [56 Am Jur 2d, Municipal Corporations, § 374, pp 408-409.] (Emphasis added.)

City of Detroit v Qualls, 434 Mich 340, 361-362; 454 NW2d 374 (1990). Further, in Michigan, municipal ordinances are presumed to be valid; the person challenging the ordinance has the burden to rebut the presumption. City of Detroit, supra at p 364.

II

At issue here is whether Plaintiff can enforce its requirements for local licensure on peddlers who are veterans of the armed services who otherwise comply with state licensure requirements.¹ The trial court set forth the facts and the

¹ This case has implications broader than the City's dispute with Mr. Crandell. Plaintiff described the impact of the District Court's decision:

As summer approaches and the weather warms, Traverse City receives many peddlers' applications by people holding veterans licenses. The District Court's decision

question as follows:

Defendant was ticketed on December 22, 1994 for "Vending in improper location in violation of the conditions of his permit." His city permit, obtained under protest, limited him to vending at one particular location. The violation is that he was vending from a nearby commercial site (with permission of the property owner). Section 863.13 provides that "No peddler shall: . . . (j) Fail to follow all . . . conditions of the peddlers license."

Therein lies the violation, if Defendant be subject to the requirement of local licensure. Defendant, relying on Public Act 1921, No. 359, as amended most recently in 1989, MCL 35. 441 et seq, contends that he is not subject to the municipal license requirement and, accordingly, is not subject to the conditions of the peddlers license." P.A. 1921, No. 359 provides that every honorably discharged military veteran "has the right to sell his or her own goods within this state if the proceeds from the sale of the goods are to be used for the direct personal benefit or gain of that former member, by procuring a license for that purpose issued as provided in this act" (sec. 1) As of December 22, 1994, Defendant had a valid state-wide veterans license. He sells his pre-packaged frozen seafood from stationary, leased locations in municipalities all over Michigan, and claims Traverse City is the only city to insist on his getting a local license or face prosecution.

86th District Court's Decision and Order Dismissing Complaint, February 24, 1995, pp 1-2.

Chapter 863 of Plaintiff's Ordinances, entitled Peddlers, sets forth the City's requirements for street vendors. § 863.03 provides that all peddlers must obtain a license from the City Clerk. § 8.06 states that "[e]very person desiring to peddle is required to make a written application for a license from the City

renders the City's Peddler's Ordinance and its control over the location of peddlers unenforceable. Peddlers with veteran's licenses are free to ignore the ordinance and peddle their wares at any time and at any place within the city limits, without regard to valid City concerns as to reasonable regulation of time, place and manner under the District Court's ruling.

Clerk. Further, the applicant must be explicit as to the locations in which the peddling will be conducted and, in some cases, furnish signed permission slip from the property owner. § 863.07(b) sets forth the waiver of any fee for peddlers who are honorably discharged veterans who are residents of the State of Michigan and who have obtained a Veteran's License from a County Clerk within the State of Michigan. § 863.13(j) requires that "No peddler shall . . . [f]ail to follow all provisions of State laws and regulations, City ordinances and conditions of the peddlers license."

The controversy involves the interplay amongst three statutes related to city ordinances and the control of transient merchants and peddlers. MCL 91.1; MSA 19.691, entitled General powers of city, ordinances; ordinances and regulations consistent with state laws and constitution, provides, in pertinent part:

§ (1) A city incorporated under the provisions of this act has, and the council may pass ordinances relating to, the following general powers:

(k) To license, regulate, or prohibit hawking and peddling and to license pawnbroking.

§ (2) The council may enact ordinances and make regulations, consistent with the laws and constitution of the state as they may consider necessary for the safety, order, and good government of the city and the general welfare of the inhabitants of the city, but exclusive rights, privileges, or permits shall not be granted by the council.

MCL 35.441; MSA 4.1241, entitled Peddler's License; veterans, term, qualification, states the following:

§ (1) Every honorably discharged member of the armed forces of the United States who served at least 180 days of active duty service in the armed forces or has a service connected disability as a result of that service and is a resident of this state has the right to sell his or her own goods within this state if the proceeds from the sale of the goods are to be used for the direct personal benefit or gain of that former member, by procuring a license for that purpose issued as provided in this act, which shall be valid for a period of 1 year.

Regarding the construction of the Peddler's License provisions, MCL 35.443; MSA 4.1243, provides that "[n]othing in this act shall be

construed as contravening the provisions of Act No. 51 of the Public Acts of 1925, being sections 445.371 to 445.378 of the Michigan Compiled Laws". In MCL 445.371; MSA 19.691, transient merchants are defined as:

[A]ny person, firm, association, or corporation engaging temporarily in a retail sale of goods, wares, or merchandise, in any place in this state and who, for the purpose of conducting business, occupies any lot, building, room, or structure of any kind. ...

Plaintiff, in its brief, and the District Court, in its Decision and Order Dismissing Complaint, analyzed related OAG opinions of 1984, 1947, 1934 and 1924. Having reviewed the opinions, copies of which were attachments to Plaintiff's brief, and cognizant that the OAG opinions have no precedential value in this Court's consideration, this Court nonetheless finds merit in Plaintiff's conclusion that:

The Court should give great weight to the longstanding 1947 and 1984 Attorneys General opinions, which harmonized the Transient Merchant Act, city ordinances enacted thereunder and the Peddler's License Act. The Traverse City ordinance validly fits within the statutory scheme.

Plaintiff's Brief, p 8.

It is the opinion of this Court that the provisions of the statutes discussed above and the City's peddling ordinances are not contradictory and can coexist. City of Detroit, supra. Plaintiff City may insist that it be informed as to who is selling what merchandise and reasonably regulate where and when the sales are made. The City Ordinances relating to peddling are reasonable and necessary in the interest of public health, safety and welfare. MCL 91.1(2). The City waives the licensing fees for veterans. City Ordinance § 863.07(b). It is reasonable for the City to require full compliance with all other provisions of its Chapter 863. MCL 445.371.

There has been no showing that the State of Michigan's authority to regulate peddlers who are veterans is exclusive. MCL 35.441 et seq. Nor does the record in this case demonstrate that the nature of peddling within municipalities calls for a uniform

state regulatory scheme or that the City's ordinance prohibits what the state permits. City of Detroit, supra.

Neither the City's ordinance nor its ability to regulate within this area is preempted by State law. The District Court's ruling is reversed, and the case is remanded to the District Court for proceedings to be conducted in compliance with this ruling.

IT IS SO ORDERED.



HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: 6/29/95