

HAMILTON COUNTY COURT OF COMMON PLEAS
CIVIL DIVISION
HAMILTON COUNTY, OHIO



RUMPKE SANITARY LANDFILL,
INC.

Plaintiff

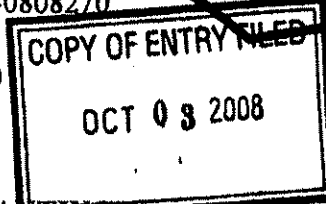
vs.

STATE OF OHIO

Defendant

CASE No: A-0808270

(Judge Nadel)



ORDER GRANTING
PERMANENT INJUNCTION

This matter came before the Court for a Consolidated Hearing on Plaintiff's Application for Preliminary Injunction with Trial on the Merits on Thursday, September 18, 2008. The Court having considered the legal memoranda submitted by the parties, the arguments of counsel and being fully advised in the premises, finds that Plaintiff Rumpke Sanitary landfill, Inc. ("Rumpke" or "Plaintiff") should be granted an Order permanently enjoining the revisions to R.C. Sections 303.211 and 519.211 from taking effect. Accordingly, the Court issues the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff Rumpke Sanitary Landfill, Inc. ("Rumpke" or "Plaintiff") and its subsidiaries and affiliates own and operate a sanitary landfill in Colerain Township, Ohio.
2. Rumpke also owns or controls approximately 350 acres located between Hughes Road, Interstate 1-275, and Buell Road, in Colerain Township, Hamilton County, Ohio (the "Property"), Rumpke is planning to use this Property for an expansion of the current landfill.
3. Plaintiff is currently engaged in litigation against Colerain Township, Ohio, Colerain Township Board of Trustees, Bernard Fiedeldey, Trustee, Keith N. Corman, Trustee, and Jeff Ritter, Trustee (in their official capacities as Trustees, not individually) (collectively

referred to as "Colerain Township") in the case styled *Rumpke Sanitary Landfill, Inc. v. Colerain Township, Ohio*, Hamilton County Common Pleas Case No. A0703073 (the "Public Utility Case").

4. The Public Utility Case, pending since April 2007, focuses on whether Rumpke is a public utility under R.C. 519.211, and whether the operation of Rumpke's existing landfill and its proposed expansion on the Property are subject to Colerain Township's zoning authority.

Rumpke has spent tens of thousands of dollars pursuing this claim, and 21 depositions have occurred in the Public Utility Case thus far. The case is scheduled for a trial to the Court on March 16, 2009.

5. On June 10, 2008, the 127th General Assembly passed Amended Substitute House Bill 562 (the "Capital Appropriations Bill").¹

6. On June 24, 2008, Governor Ted Strickland approved the Capital Appropriations Bill, with the exception of certain line-item vetoed provisions not relevant to this case.

7. The Capital Appropriations Bill established a \$1,312,362,848 Biennial Budget for the State of Ohio for Fiscal Years 2009 and 2010.

8. The stated purpose of the Capital Appropriations Bill was "to make capital and other appropriations and to provide authorization and conditions for the operation of state programs." (Capital Appropriations Bill, at 4).

9. In addition to funding the State's operations for the 2009-2010 Biennium, the 919-page Capital Appropriations Bill amended over 300 sections of the Revised Code and 6 previously passed bills. It also enacted 58 entirely new sections of the Revised Code, repealed 27 sections, and renumbered 10 others.

¹ The Capital Appropriations Bill was attached to the Verified Complaint.

10. Non-budgetary provisions in the Capital Appropriations Bill, included, but were not limited to, provisions addressing a) the membership of various State boards and commissions, b) the provision of notice of federal firearms prohibition to persons subject to protection orders or charged with a misdemeanor offense of violence, c) the administration of polygraph examinations for alleged victims of sex offenses, d) wind farm regulation, e) Voter military identification, f) the definition of "motorcycle" and the riding of motorcycles, g) the designation of a memorial highway, and h) the prohibition on strikes by specified county security personnel.

11. The Capital Appropriations Bill also added the following sentence to Revised Code Sections 303.211 and 519.211:

As used in this division, "public utility" does not include a person that owns or operates a solid waste facility or a solid waste transfer facility, other than a publicly owned solid waste facility or a publicly owned solid waste transfer facility, that has been issued a permit under Chapter 3734. of the Revised Code or a construction and demolition debris facility that has been issued a permit under Chapter 3714. of the Revised Code.

(Capital Appropriations Bill, at 77, 107).

12. Under Chapter 3734 of the Revised Code, Rumpke has been issued a permit for the operation of a solid waste facility in Colerain Township.

13. The Legislative Services Commission prepared a Fiscal Analysis discussing the fiscal provisions of the Capital Appropriations Bill. (Fiscal Analysis attached hereto as Exhibit 3).

14. The Revisions to R.C. Sections 303.211 and 519.211 were not addressed in the Fiscal Analysis.

15. The Legislative Services Commission also prepared a Fiscal Note discussing the fiscal impact of the non-fiscal provisions of the Capital Appropriations Bill. (Fiscal Note attached hereto as Exhibit 4).

16. Regarding the revisions to Revised Code Sections 303.211 and 519.211, the Fiscal Note concluded, "The fiscal impact of this provision is uncertain, but would likely mean that such facilities not zoned currently may be in the future." (Fiscal Note, at 20).²

17. The revisions to Revised Code Sections 303.211 and 519.211 are not budgetary provisions.

18. The revisions to Revised Code Sections 303.211 and 519.211 do not make capital or other appropriations nor do they provide authorization or conditions for the operation of state programs.

19. The revisions to Revised Code Sections 303.211 and 519.211 comprise merely two sentences in a 919-page bill, which are totally unrelated to the subject of the Capital Appropriations Bill- the state budget- and are legislative riders attached to the Capital Appropriations Bill.

CONCLUSIONS OF LAW

1. The Single-Subject Rule found in Section 15(D), Article II of the Ohio Constitution states: "No bill shall contain more than one subject, which shall be clearly expressed in its title." Section 15(D), Article II of Ohio Constitution

² The Fiscal Note misstates the current state of the law. Under Ohio Supreme Court precedent, a privately owned solid waste facility can be a public utility and exempt from township and county zoning regulations depending on the specific facts and circumstances of the solid waste facility at issue. See, *A&B Refuse Disposers, Inc. v. Bd. of Ravenna Twp. Trustees* (1992), 64 Ohio St.3d 385.

2. In order to be part of an appropriations bill, a Revised Code amendment must “clarify or alter the appropriation of state funds.” *State ex rel. Ohio Civ. Serv. Emp’es. Assn., AFMSCME, Local 11, AFL-CIO v. State Emp. Relations Bd.*, 104 Ohio St.3d 122, 2004-Ohio-6363, ¶34.

3. A mere tenuous connection to the state budget is not sufficient to withstand the Single-Subject Rule. Such an argument is “meaningless.” *Id.* at ¶33.

4. The Capital Appropriations Bill’s primary purpose was to enact a \$1.3 billion budget for capital improvements. However, the revisions to Sections 303.211 and 519.211 have no connection to capital appropriations or expenditures.

5. Altering the definition of “public utility” does nothing to “clarify or alter the appropriation of state funds;” thus, it has no relation to the Capital Appropriations Bill. *Id.* at ¶34.

6. Under the Ohio Constitution, the inclusion of the revisions to Sections 303.211 and 519.211 violates the Single-Subject Rule found in Section 15(D), Article II.

7. Because appropriations are the primary purpose of the Capital Appropriations Bill, the non-budgetary revisions to Sections 303.211 and 519.211 can be severed from the Bill without affecting the remainder of the Capital Appropriations Bill. *Akron Metro. Hous. Auth. Bd. of Trs. v. State of Ohio*, 2008-Ohio-2836, 26 (Ohio Ct. App., Franklin County June 12, 2008).

Based on the foregoing, the Court finds that the primary purpose of the Capital Appropriations Bill was budgetary; specifically “to make capital and other appropriations and to provide authorization and conditions for the operation of state programs.” (Capital Appropriations Bill, at 4). The Court further finds that the revisions to Revised Code Sections 303.211 and 519.211, which alter the definition of “public utility,” are totally unrelated to the

subject of the Capital Appropriations Bill. The revisions to Sections 303.211 and 519.211 do not make capital or other appropriations nor do they provide authorization or conditions for the operation of state programs.

THEREFORE, IT IS HEREBY ORDERED that the inclusion of the revisions to R.C. Sections 303.211 and 519.211 within the Capital Appropriations Bill is unconstitutional, violating the Single-Subject Rule contained in Section 15(D), Article II of the Ohio Constitution.

IT IS FURTHER ORDERED that the amendments to Revised Code Sections 303.211 and 519.211 contained in the Capital Appropriations Bill are permanently enjoined from taking effect.

IT IS FURTHER ORDERED that all other pending motions are hereby denied.

****IT IS FURTHER ORDERED** that this constitutes a final order on Rumpke Sanitary Landfill, Inc.'s claims for declaratory and injunctive relief.


Norbert A. Nadel, Judge

Date: 10/3/08

****Due to the importance of this issue to the parties and the public, this Court urges the parties to seek Appellate Review of this decision.**

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