

## Publications

### **Oil and Gas Alert: Supreme Court of Ohio Rejects Local Ordinances Regulating Oil and Gas Drilling**

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In a significant victory for the oil and gas industry, on February 17, 2015, the Supreme Court of Ohio, in *State ex rel. Morrison v. Beck Energy Corp.*, reaffirmed the State of Ohio's "sole and exclusive" authority over the regulation of oil and gas operations in the state. The Court struck down five municipal ordinances governing oil and gas drilling, concluding that the ordinances conflicted with Ohio's oil and gas regulatory scheme codified in Revised Code Chapter 1509. Vorys attorney John Keller argued the case before the Supreme Court of Ohio on behalf of the appellee Beck Energy Corporation.

#### **A. Background**

In 2011, Beck obtained a permit from Ohio's Division of Oil and Gas Resources Management to drill a conventional well on a property located within the city of Munroe Falls. The permit contained a total of 67 conditions, 38 of which addressed issues including site preparation, pit construction and waste disposal, while the other 29 conditions pertained to drilling wells in "urbanized areas."

Munroe Falls demanded Beck comply with certain city ordinances, five of which were at issue before the Supreme Court—a general zoning ordinance and four ordinances specifically relating to oil and gas drilling. The five ordinances required Beck to obtain a zoning certificate approved by the planning commission, the city council, and the city zoning inspector. The ordinances also instituted a one-year waiting period prior to drilling, mandated a public hearing scheduled with notice to all property owners and residents within 1,000 feet of the well head to be held at least three weeks prior to drilling, and required the payment of a fee and the posting of a performance bond. Claiming that Beck did not comply with these ordinances, the city issued a stop-work order and sought a permanent injunction.

Beck opposed the injunction on the grounds that the ordinances were unenforceable because they conflicted with Ohio's comprehensive oil and gas regulatory scheme set forth in R.C. Chapter 1509, including R.C. § 1509.02, which provides that the Division has "sole and exclusive

authority to regulate the permitting, location, and spacing of oil and gas wells and production operations within the state.”

The trial court ruled in favor of the city but the Ninth District Court of Appeals unanimously reversed and held that the city’s ordinances were preempted by state law. The city appealed to the Supreme Court of Ohio.

**B. The Decision**

The issue before the Court was whether the city’s ordinances were a valid exercise of its home-rule power under the Home Rule Amendment to the Ohio Constitution. The Home Rule Amendment gives municipalities the authority to exercise all powers of local self-government and to adopt police, sanitary and other similar regulations, so long as such regulations do not conflict with general state laws. Such a conflict exists if “the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa.”

The lead opinion, authored by Justice French and joined by Justices O’Connor and Kennedy, concluded that the ordinances conflicted with R.C. § 1509.02 in two respects and are therefore unenforceable.

First, the ordinances prohibited activities that R.C. § 1509.02 expressly permitted—namely oil and gas production within the city’s limits. The burdens created by the ordinances exceeded the requirements imposed on Beck by the state permit and resulted in a “classic licensing conflict” under the court’s longstanding view that a conflict exists where a “local ordinance restricts an activity which a state license permits.” The privileges afforded to Beck by the state permit—the Court concluded—could not be extinguished through the enforcement of the city’s ordinances.

The ordinances also conflicted with R.C. § 1509.02 in another respect, the lead opinion concluded. R.C. § 1509.02 goes beyond simply conferring ODNR with “sole and exclusive authority” over the regulation of oil and gas operations in Ohio. Rather, the statute “reserves for the state, to the exclusion of local governments, the right to regulate ‘all aspects’ of the location, drilling, and operation of oil and gas wells, including ‘permitting relating to those activities.’” The broad preemption language in R.C. § 1509.02 superseded the city’s attempt to regulate these aspects of oil and gas development through its own conflicting ordinances.

The lead opinion emphasized that the Court’s decision was limited to the five ordinances at issue in the case. The decision left open the possibility that other local ordinances could co-exist with the state’s regulatory scheme.

Writing separately in concurrence of judgment only, Justice O’Donnell stated that he felt that the scope of the Court’s decision was limited. Four of the ordinances at issue related to “the technical aspects of drilling,” and effectively created a “parallel municipal permitting process for oil and gas wells” in conflict with R.C. § 1509.02. The fifth ordinance, which established a general zoning code, specifically required oil and gas wells to comply with the city’s parallel permitting process. Therefore, it too conflicted with R.C. § 1509.02.

Justice O'Donnell noted, however, that the Court's decision did not involve the question of whether the state's regulatory scheme conflicts with local ordinances that address "only the traditional concerns of zoning laws, such as ensuring compatibility with local neighborhoods, preserving property values, or effectuating a municipality's long term plan for development, by limiting oil and gas wells to certain zoning districts without imposing a separate permitting regime applicable only to oil and gas drilling." As nothing in R.C. Chapter 1509 expressly addresses zoning or requires ODNR to ensure compatibility with traditional zoning concerns, Justice O'Donnell wrote, whether a municipality can enact zoning ordinances that affect oil and gas wells remains an open question in Ohio.

Justices Lanzinger, Pfeifer and O'Neill dissented. The dissent disagreed with the majority's conclusion that Munroe Falls' ordinances necessarily conflicted with the state's regulatory scheme. Local zoning is calculated "to promote the health, safety and general welfare of the public" while the purpose of R.C. Chapter 1509 is to "regulate methods of producing oil and gas statewide," Justice Lanzinger wrote. "These legislative purposes are distinct, and together they present dual conditions to the operation of the oil and gas industry." Rather than concluding that the city's ordinances supplanted R.C. Chapter 1509, the dissenting justices believed the court of appeals should have analyzed whether the ordinances can "stand separate and apart" as zoning regulations that supplement the state statute.

If you have any questions regarding this decision, please contact John Keller at 614.464.6389.