

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

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SUPERIOR COURT DIVISION

COUNTY OF MECKLENBURG

MECKLENBURG COUNTY, C.S.C.

13-CRS-12678

CITY OF CHARLOTTE, a
municipal corporation,

Plaintiff,

Vs.

JUDGMENT

THE STATE OF NORTH CAROLINA
and CHARLOTTE DOUGLAS
INTERNATIONAL AIRPORT
COMMISSION,

Defendants.

This matter came on before Robert C. Ervin, Superior Court Judge, presiding over the October 6, 2014 session of Mixed Civil and Criminal Superior Court in Mecklenburg County on the defendant's Motion to Dismiss and Motion for Judgment on the Pleadings and the plaintiff's Motion for Summary Judgment. The Court, having reviewed the Court's file and the briefs and materials submitted by the parties and having heard arguments from counsel for the parties, determines that there are no genuine issues of material fact and concludes as follows:

1. The plaintiff filed this action to challenge the validity of certain actions taken by the General Assembly of North Carolina relating to the operation of Charlotte Douglas International Airport.
2. The General Assembly initially enacted Session Law 2013-272.
3. On July 26, 2013, the General Assembly enacted Session Law 2013-358 or the "Charlotte Douglas International Airport Commission Act" (hereinafter the "Commission Act").
4. The Commission Act was structured as an amendment to the Charter of the City of Charlotte and created the "Charlotte Douglas International Airport Commission."
5. The Commission Act indicated that the Commission "shall be an agency of the City, having powers, authority and jurisdiction set out in this Article."

6. The Commission consists of 13 members, including three appointed by the Mayor and four appointed by the City Council. The remaining six commissioners are appointed by the Board of Commissioners of six different counties located in the vicinity of the airport.

7. The Commission Act provided that “the Commission shall operate the airport in a proper, efficient and economical, and business-like manner.” In particular, the Commission was given the power to “operate the airport” and “operate, own, lease, sublease, control, regulate, and/or grant to others the right to operate on any airport premises owned, operated, or controlled by the Commission, general aviation terminal and fixed-base operations, aircraft deicing equipment and systems...and/or all other types of facilities, activities and enterprises as may be directly or indirectly related to the maintenance and/or furnishing of public commercial service and/or general aviation airport facilities.”

8. The Commission Act provided that “the Commission shall have control, on behalf of the City, of the Airport Property, Airport Facilities, and all other property held or owned by the City of Charlotte with respect to the Airport.”

9. The Commission Act provided that “this act is effective when it becomes law.” The Commission Act became law on July 26, 2013.

10. The General Assembly subsequently enacted Session Law 2014-10 which is known as the “Charlotte Douglas International Airport Commission Clarification Act” (hereinafter the “Clarification Act”).

11. The Clarification Act amended certain provisions of the Commission Act to indicate that the Commission exercised certain powers “on behalf of the City.”

12. The Clarification Act provided a new Power and Duty to the Commission. The Commission was granted the power and duty to:

Apply for and hold an airport operating certificate issued by the FAA. Should the FAA or a court of competent jurisdiction determine that the Commission lacks any necessary FAA authorizations, the Commission shall not exercise any rights, powers, or duties that require authorization from the FAA until the Commission either obtains such authorization or secures an appropriate determination from the FAA or a court of competent jurisdiction.

13. The Clarification Act provides that “this act is effective when it becomes law.” The Clarification Act became law on June 18, 2014.

14. After the Commission Act was enacted, the plaintiff amended its Complaint in this action to assert two claims for relief. This Court subsequently dismissed the first claim for relief.

15. In the second claim for relief, the plaintiff contends that the Commission Act was unconstitutional because it abridged the provisions of Section 5 of Article I of the Constitution of North Carolina.

16. The City does not assert any other basis in this action to contend that either the Commission Act or the Clarification Act is unconstitutional or in violation of North Carolina law.

17. This Court entered a preliminary injunction on or about August 13, 2013 enjoining the Commission from exercising certain powers under the Commission Act. The Court’s order did

not preclude certain provisions of the Commission Act from taking effect and the Act itself thereby became effective at least by August 13, 2013.

18. The Court has received and considered various affidavits and documents beyond the pleadings in this action. Rule 12(c) provides that when matters outside the pleadings are presented to and considered by the court, the motion is converted to one for summary judgment under Rule 56. *Conover v. Newton*, 297 N. C. 506, 256 S. E. 2d 216 (1979).

19. The initial issue for the court is whether certain provisions of the Commission Act are preempted by federal law.

20. 49 U. S. C. Section 44706(a) provides in pertinent part that “the Administrator of the Federal Aviation Administration shall issue an airport operating certificate to a person desiring to operate an airport...if the Administrator finds, after investigation, that the person properly and adequately is equipped and able to operate safely under this part.”

21. An airport operating certificate issued under this section shall contain terms necessary to ensure safety in air transportation. 49 U. S. C. Section 44706(b).

22. 49 U. S. C. Section 44711(a)(8) provides that “a person may not operate an airport without an airport operating certificate required under section 44706 of this title or in violation of any term of the certificate.”

23. 14 C. F. R. Section 139.101 provides that “no person may operate an airport specified under 139.1 of this part without an Airport Operating Certificate...”

24. “An applicant for an Airport Operating Certificate is entitled to a certificate if—

* * *

(c) The Administrator, after investigation, finds the applicant is properly and adequately equipped and able to provide a safe airport operating environment...” 14 C. F. R. Section 139.107

25. Except as authorized by the Administrator, no person may operate an airport specified under Section 139.1 of this part without an Airport Operating Certificate or in violation of that certificate, the application provisions, or the approved Airport Certification Manual. 14 C. F. R. Section 139.101.

26. Section 5 of Article I of the Constitution of North Carolina provides that “every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of this State in contravention or subversion thereof can have any binding force.”

27. Similarly, Article VI(2) of the Constitution of the United States provides that “This constitution, and the laws of the United States which shall be made in pursuance thereof...shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.”

28. In the construction of the provisions of the State Constitution, the meaning given by the Supreme Court of the United States to even an identical term in the Constitution of the United

States is not binding, though highly persuasive. *Bulova Watch Co. v. Brand Distributors of North Wilkesboro, Inc.*, 285 N. C. 467, 206 S. E. 2d 141 (1974).

29. North Carolina's courts give great weight to decisions of the Supreme Court of the United States interpreting provisions of the Constitution of the United States which are parallel to provisions of the State constitution to be construed. *State v. Petersilie*, 334 N. C. 169, 432 S. E. 2d 832 (1993); *State v. Hicks*, 333 N. C. 467, 428 S. E. 2d 167 (1993).

30. In construing a provision of the State constitution, North Carolina's courts find highly persuasive the meaning given by the United States Supreme Court in construing a similar provision of the Federal Constitution. *State v. Huff*, 325 N. C. 1, 381 S. E. 2d 635 (1989).

31. In this instance, the Court will rely on federal case law concerning the Supremacy Clause to construe the meaning of Section 5 of Article I of the state constitution.

32. In the area of aviation regulation, federal concerns are preeminent. *Asheville Jet, Inc. v. City of Asheville*, 202 N. C. App. 1, 8, 689 S. E. 2d 162 (2010).

33. It is difficult to visualize a more comprehensive scheme of combined regulation, subsidization and operational participation than Congress has provided in the field of aviation. *Asheville Jet*, 202 N. C. App. at 8.

34. Preemption can arise when state authority conflicts with and thus has been displaced by the existence of federal government authority. *State ex. Rel. Utilities Commission v. Carolina Power and Light Co.*, 359 N. C. 516, 525, 614 S. E. 2d 281 (2005).

35. Conflict preemption exists when compliance with both state and federal requirements is impossible or where State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Guyton v. FM Lending Services, Inc.*, 199 N. C. App. 30, 681 S. E. 2d 465 (2009). See also *Davidson County Broadcasting, Inc. v. Rowan County Board of Commissioners*, 186 N. C. App. 81, 649 S. E. 2d 904 (2007).

36. The Supreme Court of the United States has found preemption where it is impossible for a private party to comply with both state and federal requirements or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *English v. General Electric*, 496 U. S. 72, 110 L. Ed. 2d 65 (1990).

37. A conflict is more likely to occur when a state provides that compliance with a federal standard is not mandated or when compliance with federal law actually results in a violation of local law. *Southern Blasting Services v. Wilkes County*, 288 F. 3d 584 (4th Cir. 2002).

38. The General Assembly in the Commission Act directs the Commission to operate Charlotte Douglas Airport.

39. The Commission Act provides that the Commission shall operate the airport and provides that the act is effective when it became law or immediately.

40. In essence, the General Assembly enacted a statute that purports to permit the Commission to begin operating Charlotte Douglas International Airport without the required federal operating certificate. This action, if followed by other states, would permit States to open airports across the country and circumvent the federal mandate.

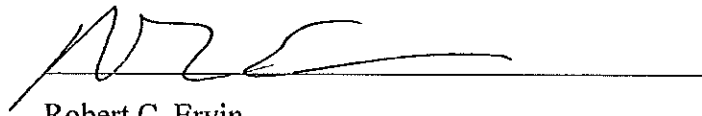
41. On or about August 14, 2013, the Charlotte Douglas International Airport Commission applied for an Airport Operating Certificate.
42. To date, the Commission has not received an Airport Operating Certificate from the Federal Aviation Administration.
43. The provisions of the Commission Act and the Clarification Act are preempted to the extent that they would permit the Commission to operate the airport prior to obtaining an operating certificate or a determination that the Commission can utilize the City's existing certificate.
44. The City contends that the unconstitutional provisions of the Commission Act and the Clarification Act invalidate both acts because they cannot be severed from the remainder of those acts.
45. When determining whether an unconstitutional portion of a statute may be severed and the remainder of the statute enforced, courts look to the intent of the General Assembly. In re Appeal of Springmoor, Inc., 348 N. C. 1, 13, 498 S. E. 2d 177 (1998).
46. The test for severability is whether the remaining portion of the legislation can stand on its own and whether the General Assembly would have enacted the remainder absent the offending portion. State v. Webb, 358 N. C. 92, 98, 591 S. E. 2d 505 (2004).
47. Courts may sever unconstitutional portions of statutes when consistent with the legislature's intended goal and when the remaining portions of the statute are sufficient to accomplish their proper purpose. Springmoor, 348 N. C. at 13.
48. Severance may be applied to save the remainder of the statute if it is apparent that the legislative body, had it known of the invalidity of the one portion, would have enacted the remainder alone. Springmoor, 348 N. C. at 13.
49. The inclusion of a severability clause within a statute will be interpreted as a clear statement of legislative intent to strike an unconstitutional provision and to allow the balance to be enforced independently. Springmoor, 348 N. C. at 13. See also State v. Webb, 358 N. C. at 98.
50. The Commission Act provides in Section 5 that "if any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable."
51. The inclusion of this severability clause is a clear statement of a legislative intent to strike an unconstitutional provision and allow the balance of the Commission Act to be enforced.
52. The Court also interprets the provisions of the Clarification Act quoted above in paragraph 12 of this order to indicate a similar intent on the part of the General Assembly.
53. The provisions of the Commission Act that make the Commission's operation of the airport effective immediately can be severed from the remainder of the act and the Court perceives that the General Assembly would have enacted the remainder of the act absent the offending portion.
54. The City urges the Court to declare the nature of the relationship between the Commission and the City presumably for the benefit of the Federal Aviation Administration.

55. The FAA is not a party to this litigation.
56. The State further contends that the FAA cannot be joined as a party to this litigation.
57. It is axiomatic that a judgment cannot be binding upon persons who were not party or privy to an action. *Miller v. Lemon Tree Inn, Inc.*, 32 N. C. App. 524, 233 S. E. 2d 69 (1977).
58. Nonparties are not bound by an adjudication. *Paschal v. Autry*, 256 N. C. 166, 123 S. E. 2d 569 (1962).
59. A judgment in a proceeding to which other parties are strangers with no opportunity to be heard is not binding upon them. *Peel v. Moore*, 244 N. C. 512, 94 S. E. 2d 491 (1956).
60. The Court has no power to declare or deny a right to one not seeking a determination of his rights. *Howard v. Boyce*, 255 N. C. 712, 122 S. E. 2d 601 (1961).
61. A court exceeds its jurisdiction by adjudging the rights of parties not before it and seeking its aid. *Howard*, 255 N. C. at 712.
62. Parties cannot be bound without an opportunity to be heard. No matter how laudable the purpose of the parties to the action, no judicial declaration should be made which could have no binding effect. *Britt v. Baptist Children's Homes, Inc.*, 249 N. C. 409, 106 S. E. 2d 479 (1959).
63. The Court cannot bind the Federal Aviation Administration to any interpretation of the Commission Act or the Clarification Act. Any determination by this court concerning the nature of the relationship between the City and the Commission would not be conclusive to the FAA.
64. Furthermore, the FAA's determination of issues of airport safety are not governed by the legal structure of the arrangement between the City and the Commission.
65. The FAA and not this Court should make appropriate decisions concerning airport safety that arise from the Commission Act and the Clarification Act.
66. Furthermore, the resolution of these issues is not necessary to a determination whether certain provisions of the Commission Act and the Clarification Act are preempted by federal law.

Based on the foregoing conclusions of law, it is hereby ordered that:

1. The City of Charlotte's Motion for Summary Judgment is allowed;
2. The Defendants' Motion to Dismiss is denied;
3. The Defendants' Motion for Judgment on the Pleadings is denied;
4. The Commission is permanently enjoined from operating the Charlotte Douglas International Airport until it obtains the necessary operating certificate from the Federal Aviation Administration or a declaration from the Federal Aviation Administration that the Commission is permitted to operate the airport in reliance on the City's operating certificate; and
5. The Defendants are taxed with the costs of this action.

This the ___ day of October, 2014.

A handwritten signature in black ink, appearing to read 'R. Ervin', is written over a solid horizontal line.

Robert C. Ervin

Superior Court Judge