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## 2002 Survey of Rhode Island Law: Cases: Municipal Law/Property

Dana John Gravina

*Roger Williams University School of Law*

Cassandra S. Shaffer

*Roger Williams University School of Law*

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**Municipal Law.** *Amico's Inc. v. Mattos*, 789 A.2d 899 (R.I. 2002). The state has delegated authority to municipalities to regulate, and attach reasonable conditions to, the privilege of license within the municipality, including restrictions regarding smoking in restaurants and bars.

#### FACTS AND TRAVEL

On April 25, 2000, the East Greenwich Town Council adopted Ordinance No. 686 requiring licensed restaurants and bars either to ban smoking completely or to provide a separate, enclosed smoking area.<sup>1</sup> The ordinance was adopted in response to a health alert issued in 1999 by the Rhode Island Department of Health.<sup>2</sup> The alert had stated that the allowance of smoking in a majority of restaurants in Rhode Island presented a great health risk to children vis-à-vis secondhand smoke.<sup>3</sup>

Seeking to prevent enforcement of the ordinance, "a group of twelve licensed eating and drinking establishments in the Town of East Greenwich and the Rhode Island Hospitality and Tourism Association" both filed complaints for declaratory judgment and injunctive relief in superior court.<sup>4</sup> Asserting that the ordinance virtually created a total smoking ban, plaintiffs claimed that the town lacked authority to enact the regulation and that the regulation was preempted by state law.<sup>5</sup> The defendants cross-moved for summary judgment, claiming that the home rule charter, as well as the town's authority to regulate victualing establishments and liquor establishments, gave the town authority to enact the ordinance.<sup>6</sup> The trial justice granted the defendant's motion for summary judgment.<sup>7</sup> Plaintiffs appealed.<sup>8</sup>

#### BACKGROUND

Section 5-24-1 of the Rhode Island General Laws states "The town council of every town and the city council of every city has the

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1. *Amico's Inc. v. Mattos*, 789 A.2d 899, 901-02 (R.I. 2002).
  2. *Id.* at 901.
  3. *Id.*
  4. *Id.* at 902.
  5. *Id.*
  6. *Id.*
  7. *Id.*
  8. *Id.* at 903.

power to regulate, including the setting of hours of operation, the keeping of taverns, victualing houses, cookshops, oyster houses, and oyster cellars in the town or city, by granting licenses for those activities . . . .”<sup>9</sup> Section 5-24-2 states that “every license issued pursuant to section 5-24-1 . . . shall continue and be in force until the first of December, unless revoked sooner for cause.”<sup>10</sup> Section 3-5-5 provides that “It is lawful in every town and city in this state, except in the town of Barrington, to issue licenses for the manufacture, keeping for sale, and sale of beverages in these cities and towns . . . .”<sup>11</sup> Section 3-5-21(a) states that “Every license is subject to revocation or suspension . . . for breach by the holder of the license of the conditions on which it was issued . . . .”<sup>12</sup> Section 23-20.6-2(e)(1) declares that “Eating facilities with a seating capacity of fifty or more persons shall have separate seating for non-smokers and smokers.”<sup>13</sup> Article 13, Section 1 of the Rhode Island Constitution states that “It is the intention of this article to grant and confirm to the people of every city and town in this state the right of self government in all local matters.”<sup>14</sup> Article 13, Section 2 provides “Every city and town shall have the power at any time to adopt a charter, enact and amend local laws relating to its property, affairs and government not inconsistent with this Constitution and laws enacted by the general assembly in conformity with the powers reserved to the general assembly.”<sup>15</sup>

#### ANALYSIS AND HOLDING

##### *Authority under Home Rule Charter*

Article 13 of the Rhode Island Constitution, the home rule, empowers cities and towns to legislate with regard to all local matters.<sup>16</sup> However, there are limits on a municipality’s authority under the home rule.<sup>17</sup> Municipalities do not have authority to legislate on matters of state concern.<sup>18</sup> As such, the general assembly

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9. R.I. GEN. LAWS § 5-24-1 (1999).

10. *Id.* § 5-24-2.

11. *Id.* § 3-5-5.

12. *Id.* § 3-5-21(a).

13. *Id.* § 23-20.6-2.

14. R.I. CONST. art. XIII § 1 (2001).

15. R.I. CONST. art. XIII § 2 (2001).

16. *Amico’s*, 789 A.2d at 903.

17. *Id.*

18. *Id.* (quoting R.I. CONST. art. XIII § 4 (2001)).

has unconditional power to legislate in local matters to which the power of home rule is subordinate.<sup>19</sup> Under East Greenwich's home rule charter the town council has the power to enact ordinances for the health, safety, comfort, and welfare of the town's citizens.<sup>20</sup> Therefore, the town has authority under its home rule charter to regulate smoking in public restaurants.<sup>21</sup> However, the ordinance also imposes a condition on the issuance of licenses.<sup>22</sup> The supreme court has clearly established that "the General Assembly retains exclusive power over the licensing of Rhode Island businesses."<sup>23</sup> "[S]ince the power to regulate businesses through licensing is an attribute of the state, the town cannot restrict smoking in licensed facilities unless the Legislature has delegated such authority to the municipality under [t]itle 3 and under chapter 24 of [t]itle 5."<sup>24</sup>

*Authority under sections 5-24-1 and 5-24-2*

Under sections 5-24-1 and 5-24-2, the legislature has "conferred broad powers to the cities and towns to ensure the health, safety, and welfare of restaurant patrons,"<sup>25</sup> which includes the air that they breathe.<sup>26</sup> "The language in section 5-24-1(a) permitting cities and towns to regulate [victualing houses] . . . , and the language in section 5-24-2 permitting revocation of victualing licenses 'for cause' contemplate a municipality's implicit authority to attach reasonable conditions to the privilege of licensure."<sup>27</sup> The legislative intent in enacting section 5-24-1 was to give town councils broad power to serve the public interest in health and welfare through the regulation of victualing houses.<sup>28</sup> Therefore, "[w]ithout expressly authorizing cities and towns to include smoking regulations as conditions of licensure, chapter 24 of title 5 does so by necessary implication."<sup>29</sup>

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19. *Id.*

20. *Id.* at 903-04.

21. *Id.* at 904.

22. *Id.*

23. *Id.* (citing *Newport Amusement Co. v. Maher*, 166 A.2d 216, 218 (R.I. 1960)).

24. *Id.* (quoting the trial justice (alteration in original)).

25. *Id.* at 905 (quoting the trial justice).

26. *Id.*

27. *Id.* at 905-06 (quoting R.I. GEN. LAWS §§ 5-24-1(a), 5-24-2 (1999)).

28. *Id.* at 905 (citing *Santos v. City Council*, 208 A.2d 387, 389-90 (R.I. 1965)).

29. *Id.* at 906.

*Authority under sections 3-5-5, 3-5-15, and 3-5-21*

Municipalities may place conditions on liquor licensure provided that such conditions further the purpose of title 3.<sup>30</sup> Section 3-1-5 states that the purpose of title 3 is “the promotion of temperance and for the reasonable control of traffic in alcoholic beverages.”<sup>31</sup> The supreme court has found that maintaining social order, promoting community welfare, and controlling conduct in drinking establishments are consistent with the purpose of title 3.<sup>32</sup> The supreme court also held that “regulating the harmful behavior created by second hand smoke, while promoting and preserving the wellbeing of patrons and staff” is consistent with the purpose of title 3.<sup>33</sup> Accordingly, the ordinance is a valid exercise of the Town of East Greenwich’s liquor licensing authority under sections 3-5-5 and 3-5-21, since it is consistent with the purpose of these statutes.<sup>34</sup>

*State Preemption*

Ordinance 686 is not preempted by section 23-20.6-2.<sup>35</sup> Section 23-20.6-2 neither conflicts with the ordinance nor occupies the field.<sup>36</sup>

*The Dissenting Opinion*

Although Justice Goldberg concurred in the court’s conclusion that the Town of East Greenwich had authority to enact the statute under title 3,<sup>37</sup> agreeing that the regulation of smoking is reasonable and falls within the power delegated by the legislature to

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30. *Id.*

31. *Id.* (quoting R.I. GEN. LAWS § 3-1-5 (1998)).

32. *Id.* at 906 (citing *El Marocco Club, Inc. v. Richardson*, 746 A.2d 1228, 1237 (R.I. 2000)).

33. *Id.* at 906.

34. *Id.*

35. *Id.* at 906-08.

36. *Id.* The court held that a local ordinance may be preempted in two ways. First, a local ordinance will be preempted if it conflicts with a state statute concerning the same subject. *Id.* at 906 (citing *Town of Warren v. Thornton-Whitehouse*, 740 A.2d. 1265, 1261 (R.I. 1999)). Second, a local ordinance will be preempted if the legislature intends that its statutory regulations completely occupy the field of regulation. *Id.* (citing *Thornton-Whitehouse*, 740 A.2d. at 1261).

37. *Id.* at 909-11 (Goldberg, J., concurring in part, dissenting in part, and concurring in the judgment).

the cities and towns,<sup>38</sup> she dissented as to the town's authority to enact the ordinance under title 5.<sup>39</sup> Justice Goldberg stated that since the case could be decided on non-constitutional grounds, the court should maintain its long policy of not deciding constitutional issues when it is not "indispensibly necessary for the disposition of the case."<sup>40</sup> Justice Goldberg also found that 23-20.6-2 preempted the regulation of eating establishments.<sup>41</sup>

#### CONCLUSION

The state legislature has given municipalities implied authority to require licensed bars and restaurants either to ban smoking entirely or to provide a separate, enclosed smoking area. State law does not preempt such an ordinance.

Dana John Gravina

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38. *Id.* at 910.

39. *Id.* at 911-12.

40. *Id.* at 909.

41. *Id.* at 912-14.

**Municipal Law/Property.** *Potter v. Crawford*, 797 A.2d 489 (R.I. 2002). The Rhode Island Supreme Court held that a municipality can only be bound by a public agent with actual authority. A municipality cannot be estopped from denying this authority unless the public agent does have actual authority. Additionally, the court held in order to show an interference with riparian rights the owner of those rights must prove there is an interference with the navigation of the waters in front of the property in question.

#### FACTS AND TRAVEL

In 1992, the Town of Jamestown (the town) planned to repair its West Ferry Wharf, which was adjacent to the plaintiff's (Spencer Potter) property.<sup>1</sup> The plaintiff contended the project would interfere with his riparian rights and he therefore opposed it.<sup>2</sup> The town requested permission from the Coastal Resources Management Council (CRMC) to undertake the necessary repairs, but the CRMC postponed its decision until a determination was made about the plaintiff's rights.<sup>3</sup>

The chairman of the Jamestown Harbor Commission, Donald Armington, met with the plaintiff twice in order to obtain the plaintiff's consent to the proposed project.<sup>4</sup> The plaintiff and Armington reached an oral agreement, which the plaintiff reduced to writing.<sup>5</sup> Armington told the plaintiff that the agreement was subject to the town's approval before it could become final.<sup>6</sup> In the meantime, CRMC granted the town's project application on the assurance that the conflict between the plaintiff and the town had been resolved.<sup>7</sup> Subsequently, the town refused to sign the agreement.<sup>8</sup> This prompted the plaintiff to sue the town claiming: the chairman had apparent authority to bind the town; the town was estopped from denying that the chairman had authority to enter into the agreement; and the project would interfere with his riparian rights.<sup>9</sup> The plaintiff did admit, though, in a deposition that

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1. *Potter v. Crawford*, 797 A.2d 489, 491 (R.I. 2002).
  2. *Id.*
  3. *Id.*
  4. *Id.*
  5. *Id.*
  6. *Id.*
  7. *Id.*
  8. *Id.*
  9. *Id.* at 491-92.

“his ability to navigate the waters in front of his property” was not affected by the wharf.<sup>10</sup> The superior court justice granted the town’s summary judgment motion.<sup>11</sup>

#### ANALYSIS AND HOLDING

On appeal, the Rhode Island Supreme Court summarily dismissed the plaintiff’s claims.<sup>12</sup> The court held that a municipality can only be bound by a public agent with actual authority.<sup>13</sup> In this case, Armington clearly did not have actual authority to bind the town, nor did he have apparent authority because he had told the plaintiff that the town had to approve the agreement.<sup>14</sup> Estoppel did not apply because Armington’s actions were outside the scope of his authority.<sup>15</sup> The court noted that a party dealing with a public agent bears the risk if that agent does not have actual authority.<sup>16</sup> The court dismissed the plaintiff’s claim that the wharf interfered with his riparian rights.<sup>17</sup> The court explained that even though the project encroached on the plaintiff’s riparian boundaries this did not correspond to an interference with riparian rights because there was no showing that he could not navigate the water in front of his property or build a dock or wharf on his own property.<sup>18</sup>

#### CONCLUSION

The Rhode Island Supreme Court summarily dismissed the plaintiff’s appeal. The court held that a municipality is not bound by its public agent unless the agent has actual authority. Estoppel does not apply when a public agent acts outside of the scope of his or her authority. In addition, the court held that riparian rights

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10. *Id.* at 492.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* at 493 (citing *Romano v. Ret. Bd. of the Employees’ Ret. Sys.*, 767 A.2d 35, 43 (R.I. 2001)).

17. *Id.*

18. *Id.*



are not infringed upon if the owner of those rights can navigate the water in front of the property in question.

Cassandra S. Shaffer