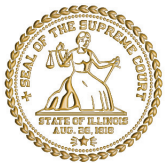
Illinois Official Reports

Appellate Court



***Blanchard v. Berrios*, 2015 IL App (1st) 142857**

Appellate Court Caption	PATRICK M. BLANCHARD, in His Official Capacity as Independent Inspector General of Cook County, Plaintiff-Appellee, v. JOSEPH BERRIOS, in His Official Capacity as Assessor of Cook County, Defendant-Appellant.
District & No.	First District, Second Division Docket No. 1-14-2857
Filed	December 8, 2015
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 13-CH-14300; the Hon. Franklin U. Valderrama, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	Anita M. Alvarez, State's Attorney, of Chicago (Daniel F. Gallagher, Paul Castiglione, Jeffrey S. McCutchan, Kent S. Ray, and Marie D. Spicuzza, Assistant State's Attorneys, of counsel), for appellant. Alexander Polikoff, Special State's Attorney, of Chicago, for appellee.

Panel JUSTICE NEVILLE delivered the judgment of the court, with opinion.
Justices Simon and Hyman concurred in the judgment and opinion.

OPINION

¶ 1 Cook County's independent inspector general filed a complaint to enforce a subpoena that the Office of the Independent Inspector General (OIIG) directed to the assessor of Cook County. The circuit court entered an order requiring the assessor to produce the subpoenaed documents. In this appeal, the assessor argues that the Cook County board of commissioners (Board) exceeded its constitutional authority when it enacted ordinances purportedly empowering the OIIG to issue subpoenas directed to elected county officials and requiring the officials to cooperate with the OIIG. We find the ordinances constitutional, and therefore we affirm the circuit court's order.

¶ 2 BACKGROUND

¶ 3 On November 4, 2013, the OIIG issued a subpoena addressed to the assessor, commanding the assessor to give the OIIG all documents relating to homeowners exemptions granted for two specific addresses for the years 2005 through 2012. The assessor promptly objected to the subpoena and refused to produce the requested documents. The OIIG filed the lawsuit now before this court, seeking a judgment declaring that the assessor must comply with the subpoena. Both parties filed motions for summary judgment. The trial court entered an order in favor of the OIIG. The assessor filed this appeal.

¶ 4 ANALYSIS

¶ 5 We review *de novo* the order granting a motion for summary judgment. *Standard Mutual Insurance Co. v. Lay*, 2013 IL 114617, ¶ 15. The assessor admits that the Board adopted an ordinance that purportedly gave the OIIG the power to issue subpoenas to elected county officials, including the assessor, and the Board also adopted an ordinance directing county officials to cooperate with the OIIG's investigations. The assessor contends that the ordinances violate the Illinois Constitution of 1970.

¶ 6 In 2007, the Board established the OIIG (Cook County Ordinance No. 07-O-52, § 2-281 (approved July 31, 2007)), and authorized the OIIG "[t]o investigate corruption, fraud, *** and misconduct in operations of *** the separately elected County officials" (Cook County Ordinance No. 07-O-52, § 2-284(2) (approved July 31, 2007); Cook County Ordinance No. 09-O-71, § 2-284(2) (approved Oct. 6, 2009)). The ordinance required the OIIG "[t]o notify the State's Attorney or other appropriate law enforcement authority if the Independent Inspector General determines or suspects that possible criminal conduct has occurred, and to promptly tender to such authorities any evidence or information which has been obtained by the [OIIG]." Cook County Ordinance No. 07-O-52, § 2-284(6) (approved July 31, 2007); Cook County Ordinance No. 09-O-71, § 2-284(6) (approved Oct. 6, 2009). The Board also said, "It shall be the duty of all County *** officials *** to cooperate with the OIIG in the conduct of investigations undertaken pursuant to this division." Cook County Ordinance No. 07-O-52,

§ 2-285(a) (approved July 31, 2007); Cook County Ordinance No. 12-O-44, § 2-285(a) (approved Oct. 2, 2012). The Board specifically gave the OIIG the power "to issue subpoenas to request documents or testimony related to an investigation authorized by this division." Cook County Ordinance No. 07-O-52, § 2-286 (approved July 31, 2007); Cook County Ordinance No. 13-O-42, § 2-286 (approved Sept. 11, 2013).

¶ 7 The assessor claims that the ordinances exceed the Board's constitutional authority. The Illinois Constitution of 1970 provides that "County officers shall have those duties, powers and functions provided by law and those provided by county ordinance. County officers shall have the duties, powers or functions derived from common law or historical precedent unless altered by law or county ordinance." Ill. Const. 1970, art. VII, § 4(d). The assessor points out that section 4(d) does not give counties unlimited power to impose on county officers any added duties the county chooses. Instead, the county must add the duties in an ordinance that the county has the power to enact. See *Ampersand, Inc. v. Finley*, 61 Ill. 2d 537, 540-43 (1975). The OIIG argues that the county's broad home rule powers validate the ordinances at issue. See Ill. Const. 1970, art. VII, § 6.

¶ 8 In *City of Chicago v. StubHub, Inc.*, 2011 IL 111127, our supreme court explained the procedure for determining whether ordinances exceed a home rule unit's constitutional powers. The court adopted Professor David Baum's interpretation of the constitution, as the court said:

> " '[H]ome rule units are supposed to be free to carry on activities that relate to their communities even if the state is also interested and is active in the area. This idea is expressed in section 6(i), which provides that "[h]ome rule units may exercise and perform *concurrently with the State* any power or function of a home rule unit to the extent that the General Assembly by law does not *specifically* limit the concurrent exercise or *specifically* declare the State's exercise to be exclusive." ' [Ill. Const. 1970, Art. VII, § 6(i).] *** (Emphases in original.) [David Baum, *A Tentative Survey of Illinois Home Rule (Part I): Powers and Limitations*, 1972 U. Ill. L.F. 137, 154-55 (quoting Ill. Const. 1970, art. VII, § 6(i)).]
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> *** 'Certainly, the "pertaining to ..." language leaves some leeway for judicial intervention. But if the constitutional design is to be respected, the courts should step in to compensate for legislative inaction or oversight only in the clearest cases of oppression, injustice, or interference by local ordinances with vital state policies.' [David Baum, *A Tentative Survey of Illinois Home Rule (Part I): Powers and Limitations*, 1972 U. Ill. L.F. 137, 156-57.] That is, because the legislature can always vindicate state interests by express preemption, only vital state interests would allow a court to decide that an exercise of home rule power does not pertain to local government and affairs. [Citation.]
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> *** 'Whether a particular problem is of statewide rather than local dimension must be decided not on the basis of a specific formula or listing set forth in the Constitution but with regard for the nature and extent of the problem, the units of government which have the most vital interest in its solution, and the role traditionally played by local and statewide authorities in dealing with it.' [*Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483, 501 (1984).]

> This is not a 'free-wheeling preemption rule' resting upon the mere existence of comprehensive state regulation. [*Kalodimos*, 103 Ill. 2d at 502.] Rather, the rule limits our function under section 6(a) to a threshold one, in which we can declare a subject off-limits to local government control only where the state has a vital interest and a traditionally exclusive role." *StubHub*, 2011 IL 111127, ¶¶ 21-25.

¶ 9 In *Chicago Bar Ass'n v. County of Cook*, 102 Ill. 2d 438, 440-41 (1984), our supreme court held that "assessment, which requires a greater exercise of discretion than does the collection of taxes, does not pertain to the county's local government and affairs within the contemplation of article VII, section 6(a)." However, none of the ordinances at issue address assessment. Instead, the Board created the OIIG "[t]o investigate corruption, fraud, *** and misconduct in operations of *** the separately elected County officials," including the assessor. Cook County Ordinance No. 07-O-52, § 2-284(2) (approved July 31, 2007); Cook County Ordinance No. 09-O-71, § 2-284(2) (approved Oct. 6, 2009).

¶ 10 Chicago, another home rule unit, enacted ordinances very similar to the ordinances at issue, and Chicago similarly gave its inspector general the power to subpoena documents from city officials. *Ferguson v. Patton*, 2013 IL 112488, ¶ 3. In *Ferguson*, the city's inspector general issued a subpoena directing the city's law department to produce certain documents. The inspector general retained private attorneys to sue to enforce the subpoena. The *Ferguson* court held that the inspector general "had no right to retain private counsel to initiate proceedings in circuit court in furtherance of an official investigation undertaken by his department." *Ferguson*, 2013 IL 112488, ¶ 33. But in the course of the opinion, the *Ferguson* court noted that the inspector general had authority to issue subpoenas and to bring an action to enforce its subpoenas. *Ferguson*, 2013 IL 112488, ¶¶ 27-28.

¶ 11 Courts in other jurisdictions have more explicitly held that home rule units have the power to investigate allegations of corruption of officials of the home rule unit. *Dibb v. County of San Diego*, 884 P.2d 1003, 1008-14 (Cal. 1994); *Kiernan v. City of New York*, 315 N.Y.S.2d 74 (N.Y. Sup. Ct. 1970); *Ex Parte Holman*, 191 S.W. 1109, 1114-17 (Mo. Ct. App. 1917). We find that the Board has the power to investigate allegations that county officials have abused their powers or committed fraud in their official capacities, as the corruption of county officials pertains to the county's government and affairs within the meaning of the Illinois Constitution. See Ill. Const. 1970, art. VII, § 6(a). Moreover, as the trial court noted, the allegations that the assessor granted homeowners exemptions improperly affect the county's financial resources and efficient operation of county government. "It is undisputed that Cook County has an interest in the efficient operation of any and all of the offices that it funds. The county board is the manager of county funds and business and is ultimately responsible to the public for the total operation of county government." *Loop Mortgage Co. v. County of Cook*, 291 Ill. App. 3d 442, 447 (1997).

¶ 12 The assessor argues that the county lacks authority to oversee the assessor's operations, and the county cannot, by ordinance, eliminate the office of the assessor. Ill. Const. 1970, art. VII, § 4(c). But investigating allegations of corruption in the assessor's office neither eliminates the office nor makes the investigator a supervisor of the assessor's operations. The assessor compares this case to *Fairbank v. Stratton*, 14 Ill. 2d 307 (1958), in which taxpayers sought to enjoin the treasurer from purchasing a revenue bond because the purchase constituted speculation with public funds. The court held, "In the absence of fraud, corruption,

oppression or gross injustice, and none has been charged or shown in this case, the courts will not interfere to control the discretionary powers of the Treasurer." *Fairbank*, 14 Ill. 2d at 312.

¶ 13 Here, the OIIG sought to investigate allegations of corruption in the assessment of properties, specifically in the assessor's decision to grant homeowners exemptions to owners of the two specified properties. *Fairbank* does not deprive the county of authority to investigate allegations of corruption of county officials and the misuse of county funds. We hold that the Board validly exercised its home rule powers when it adopted the ordinance that gave the OIIG the power to investigate allegations that the assessor and other county officials acted corruptly.

¶ 14 Next, the assessor argues that the Board lacked authority to grant the OIIG the power to issue subpoenas. The assessor points first to the grand jury's subpoena power. See *In re May 1991 Will County Grand Jury*, 152 Ill. 2d 381, 389 (1992). But the constitution and the General Assembly have not prevented other bodies from having subpoena power. *Illinois Department of Public Aid v. Kessler*, 72 Ill. App. 3d 802, 804-05 (1979); 5 ILCS 430/20-20(3) (West 2012). The *Ferguson* court did not mention any problem with the subpoena power granted to Chicago's inspector general. *Ferguson*, 2013 IL 112488, ¶¶ 27-28. Other states have upheld the subpoena powers granted to similar bodies charged with investigating allegations of governmental corruption. *Dibb*, 884 P.2d at 1008-14; *Hanna v. Common Council*, 363 N.Y.S.2d 361, 362-64 (N.Y. App. Div. 1975); *In re Shain*, 457 A.2d 828 (N.J. 1983); *Holman*, 191 S.W. at 1114-17.

¶ 15 The assessor notes that no statute expressly confers on the county the power to issue subpoenas. But under *StubHub*, the county, as a home rule unit, has all powers of a sovereign unless the General Assembly has explicitly limited its powers. *StubHub*, 2011 IL 111127, ¶¶ 21-25; see *Johnson v. Halloran*, 194 Ill. 2d 493, 496-97 (2000). The assessor does not identify any statute in which the General Assembly has expressly limited the power of home rule units to issue subpoenas. Thus, just as the State has authority to delegate its subpoena power to its agencies (see *Kessler*, 72 Ill. App. 3d at 804-05; 5 ILCS 430/20-20(3) (West 2012)), the county may delegate its subpoena power to its OIIG.

¶ 16 Finally, the assessor argues that the ordinances unconstitutionally infringe on the State's Attorney's power to convene grand juries and prosecute crimes. The ordinances do not even purport to grant the OIIG concurrent power to convene a grand jury or prosecute crimes. The ordinances grant the OIIG power to "notify the State's Attorney or other appropriate law enforcement authority" if the OIIG finds evidence of crime. Cook County Ordinance No. 07-O-52, § 2-284(6) (approved July 31, 2007); Cook County Ordinance No. 09-O-71, § 2-284(6) (approved Oct. 6, 2009). We find no infringement on the State's Attorney's authority.

¶ 17 CONCLUSION

¶ 18 The Board validly exercised its home rule powers when it created the OIIG and gave it the power to issue subpoenas to aid in its investigation of allegations that county officers, including the assessor, have acted corruptly. Accordingly, we affirm the trial court's judgment directing the assessor to produce for the OIIG the materials listed in the subpoena.

¶ 19 Affirmed.