STATE OF VERMONT

SUPERIOR COURT CHITTENDEN UNIT	TRAFFIC APPEALS DOCKET NO. 36-7-16 Cnta
City of Burlington, v. Nicholas Schieldrop, Defendant.	VERMONT SUPERIOR COURT FILED MAR 28 2017 CHITTENDEN UNIT

The City of Burlington ("the City") appeals the Judicial Bureau's order dismissing the citation issued against defendant Nicholas Schieldrop, upon finding invalid Burlington City Ordinance ("BCO") § 30-25. Mr. Schieldrop challenged BCO § 30-25 after he was cited in January 2016 for violating this ordinance by operating a vehicle for hire without a license. Because the court finds the ordinance constitutional and validly enacted, the court reverses and remands.

Background

The current charter for the City of Burlington ("the City") grants the City the power to "regulate and license the owners and drivers of taxicabs, jitneys, and motor vehicles for hire, receiving or discharging passengers . . . within the city." 24 V.S.A. App. § 3-48(27). The City has had this enumerated power in its charter since 1872. BCO § 30-25 was enacted pursuant to this authority and adopted by the procedures of 24 V.S.A. App. § 3-49, granting city council the power to "make, alter, amend or repeal any resolutions, by-laws, regulations and ordinances which it may deem necessary and proper for carrying into execution the foregoing powers[.]" The City of Burlington enacted the 1993 and 2011 taxicab ordinances—the ordinances relevant here—in this manner. Though not in evidence, presumably this process was followed for ordinances passed in 1953 and 1962 as well.

The City has not passed any taxicab ordinances by public referendum, which Mr. Schieldrop claims is required under 24 V.S.A. § 2032. Addressing the municipal regulation of taxicabs, 24 V.S.A. § 2031 grants the "legislative branch of a municipality" "the power to make, establish, alter, amend or repeal regulations for the operation, parking, soliciting, delivery or fares in the jitney and taxi business in general within the municipality and to establish penalties for the breach thereof[.]" However, the "right of a legislative branch of a municipality to make such regulations shall not take effect until they have been approved and accepted by a majority of the voters of the municipality attending a duly warned regular or special meeting called for that purpose[.]" 24 V.S.A. § 2032. The statutes, both enacted in 1953, are contained within a chapter entitled "Regulatory Provisions; Police Power of Municipalities."

Before the Judicial Bureau, Mr. Schieldrop claimed BCO § 30-25 was not validly enacted pursuant to 24 V.S.A. § 2032; the City disputed that it was required to follow the procedures in this statute. The Bureau's May 2016 Findings of Fact, Conclusions of Law, and Judgment ("Judgment") found the 1993 and 2011 ordinances were not lawfully enacted for failure to hold a public referendum. This appeal followed the Bureau denying the City's motion to alter or amend (or reconsider) the judgment.

Analysis and Conclusions of Law

The City asks the court to reverse and find that the citation was issued pursuant to a valid ordinance. Mr. Schieldrop persists in claiming the ordinance is invalid due to failure to hold a public referendum, while also asserting constitutional claims raised in opposing the City's motion for reconsideration, but not reached by the Bureau.

A. Constitutional Claims

Mr. Schieldrop's constitutional claims are easily dispensed with. "The regulation of motor vehicles used upon the public highways in order to conserve the safety and general welfare of the people is an attribute of the police power of the state[.]" *State v. Caplan*, 100 Vt. 140, 151 (1927). Motor vehicles used as common carriers are accordingly subject to the state's police powers. *State v. Gamelin*, 111 Vt. 245, 250 (1940). The legislature may delegate this police power by authorizing a city to pass ordinances requiring taxicab licenses. *Gamelin*, 111 Vt. at 250–52, 255. Similarly, whatever right of intrastate travel citizens likely have, one has "no 'vested'

or 'inherent' right" to travel upon the highways for commercial purposes. *Gamelin*, 111 Vt. at 250–51.

The dormant Commerce Clause doctrine does not change this outcome. Mr. Schieldrop concedes the statute does not facially discriminate in favor of in-state commerce, leaving the deferential *Pike* test, which upholds the statute "unless the burden imposed on interstate commerce is clearly excessive in relation to the putative local benefits." *United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 346 (2007) (internal brackets omitted). Mr. Schieldrop makes no comprehensible argument regarding this balance; other taxi regulations have withstood stronger challenges. *Exec. Transp Sys. LLC v. Louisville Reg'l Airport Auth.*, 678 F. Supp. 2d 498, 509–10 (W.D. Ky. 2010); *see also People v. Jabaar*, 163 Misc. 2d 1045, 1048, 623 N.Y.S.2d 500, 502 (Just. Ct. 1994) (rejecting defendant's argument Commerce clause argument "that no state or municipality can make laws to regulate interstate commerce."); *cf. Janes v. Triborough Bridge & Tunnel Auth.*, 774 F.3d 1052, 1054–55 (2d Cir. 2014) (toll policies distinguishing between residents of municipality and nonresidents did not violate right to travel or dormant Commerce Clause). Because regulating taxicabs is well within the state's police powers and any effects on interstate or intrastate commerce are nominal compared to local benefits acknowledged by a number of courts, this court believes that Mr. Schieldrop's constitutional arguments are all either misplaced or several decades too late.

B. Applicability of Referendum Requirement

Remaining is the question whether 24 V.S.A. § 2032 requires the City to hold a public referendum to enact taxicab ordinances. Municipalities without legislative charters derive their powers and functions from the general statutory scheme for municipalities, 24 V.S.A. §§ 801-5200. *L'Esperance v. Town of Charlotte*, 167 Vt. 162, 169 (1997). The City's legislative charter however is "a special local law enacted by the Legislature to have effect only within the borders of the municipality it governs." *City of Burlington v. Fairpoint Commc'ns, Inc.*, 2009 VT 59, ¶ 10, 186 Vt. 332. "Whether the legislatively-adopted town charter or the statute is controlling is a matter of statutory construction." *Town of Brattleboro v. Garfield*, 2006 VT 56, ¶ 10, 180 Vt. 90. The construction of a statute presents a question of law which the court reviews de novo. *Chayer v. Ethan Allen, Inc.*, 2008 VT 45, ¶ 9, 183 Vt. 439.

"Where two statutes cover the same subject and one is more specific than the other," the court harmonizes "them by giving effect to the more specific provision according to its terms." *Fairpoint*, 2009 VT 59, ¶ 11 (internal brackets omitted). The statute and charter grant the respective powers:

24 V.S.A. § 2031	**24 V.S.A. App. § 3-48(27)**
"The legislative branch of a municipality shall have the power to make, establish, alter, amend or repeal regulations for the *operation, parking, soliciting, delivery or fares* in the jitney and taxi business in general within the municipality[.]" (emphasis added).	Grants the City of Burlington the authority, "To *regulate and license* the owners and drivers of taxicabs, jitneys, and motor vehicles for hire, receiving or discharging passengers . . . within the city . . . " (emphasis added).

The court finds no conflict between 24 V.S.A. § 2031 and 24 V.S.A. App. § 3-48(27) relevant to the taxicab licensing ordinance before the court. Mr. Schieldrop challenges the licensing requirement, but only 24 V.S.A. App. § 3-48(27) grants the City power to license taxicabs. The statutes can be harmonized by reading 24 V.S.A. § 2031 as granting municipalities "power to make, establish, alter, amend or repeal regulations for the operation, parking, soliciting, delivery or fares" for taxicabs, while 24 V.S.A. App. § 3-48(27) grants Burlington the greater power to license taxicabs. Absent such power, Burlington would lack the power to license taxicabs, but have the power that any town has to regulate where and how taxicabs may operate, park, solicit rides, deliver passengers, and charge fares within the municipality. Synchronizing the provisions, a municipality can therefore establish a cab stand within its borders, but all 200-plus Vermont municipalities do not have the power to license cabs.

Even where the statutes conflict, the court finds that 24 V.S.A. App. § 3-48(27) governs, for two distinct, yet related, reasons.

The statutory chapter housing 24 V.S.A. §§ 2031–32, entitled "Regulatory Provisions; Police Power of Municipalities," delegates the state's police power to the municipalities. The City's charter is a separate, more specific—and in this case more expansive—delegation of the state's police powers. Were the Legislature to narrow previously delegated power,

this court should expect that it would do so explicitly, as it does elsewhere in Title 24, expressly stating when a charter is superseded. *See* 24 V.S.A. § 2295, ("The provisions of this section shall supersede any inconsistent provisions of a municipal charter."), 24 V.S.A. § 1934 ("Notwithstanding any contrary provisions in any municipal charter, the provisions of sections 1931-1933 of this title shall control"). Because Burlington's charter delegates certain powers to the City, the court will not read generally applicable statutes as narrowing these powers absent clear language indicating such. Reading §§ 2031–32, within the statutory scheme as this court must, *Fairpoint*, 2009 VT 59, ¶ 7, these statutes constitute a catchall delegation to municipalities of previously-lacking-power to regulate taxicabs, rather than a superseding statute limiting previously delegated authority.

The court further finds that 24 V.S.A. App. § 3-48(27) is the more specific power. In *Fairpoint*, the provisions of the city charter were found to be more specific than 30 V.S.A. § 2502 and 19 V.S.A. §§ 1601–1606, all relating to the location of utility facilities. 2009 VT 59, ¶ 12; *see also Garfield*, 2006 VT 56, ¶ 10, (town charter governing filling a single vacancy on the town selectboard controlled because it was "more specific to the Town of Brattleboro" than the generally applicable state statute, 24 V.S.A. § 963). There is no reason why 24 V.S.A. §§ 2031–32 should be the more specific power, or the outcome any different here. While this holding conflicts with *In re: Appeal of Francois Nsibienakou*, No. 0007-12 CnC, (Vt. Super. Ct. Apr. 3, 2012), where the court found the 2011 taxicab licensing ordinance was not lawfully enacted due to failure to hold a referendum, this outcome is consistent with our controlling case law. Given the longstanding and expansive delegation to the City to regulate taxicabs, the court is "unconvinced by the [defendant's] argument that § [2032] is more specific than the charter." *Fairpoint*, 2009 VT 59, ¶ 14.

Although neither party cites the Vermont Supreme Court opinion in *Downtown Rutland Special Tax Challengers v. City of Rutland*, 159 Vt. 218 (1992) the decision must be considered by this court. Although at first reading the case appears to suggest a different result from that outlined above, read in conjunction with those Vermont Supreme Court cases cited above, the decision offers further support. In *Downtown Rutland* the Supreme Court held that while the City of Rutland had granted, through its charter, the Rutland Redevelopment Authority the power to assess impact fees and special benefit assessments, the Redevelopment Authority was

required to follow the procedures of 24 V.S.A. § 3254 (including majority vote of qualified voters of the municipality) when levying a special assessment. *Id.* at 220. The Supreme Court held that the disputed provisions of the city charter and Title 24, Chapter 87 could be readily harmonized: "the city charter authorizes the Redevelopment Authority to make special assessments and Chapter 87 instructs it how to make them." *Id.* at 221.

Downtown Rutland and the present case are similar yet distinguishable. As a preliminary matter, the Supreme Court noted that the authority delegated by the legislature to a municipality to levy special assessments is strictly construed and reasonable doubts regarding such authority would be resolved in favor of the taxpayer. *Id.* at 220. In determining if a conflict existed between the city charter and Title 24, the court found that the charter did not set forth any procedures for how the authority to make special assessments was to be carried out, while Title 24 established the purposes for special assessments and the procedures for their levy. Furthermore, the Rutland City charter expressly stated, "unless provided for to the contrary the Redevelopment Authority... shall be subject to and have the benefit of all general laws of the state of Vermont relating to municipal corporations...." *Id.* at 221.

These facts distinguish *Downtown Rutland* from the present case. Title 24 provides no guidance or establishes any procedures for establishing requirements for licenses—it simply requires approval by the electorate in certain municipalities. The City's charter does not contain a similar limiting provision.

ORDER

The decision of the Judicial Bureau is reversed. This court finds BCO § 30-25 constitutional and validly enacted pursuant to 24 V.S.A. App. § 3-49. The court remands to the Judicial Bureau.

Dated at Burlington, Vermont this 23rd day of March, 2017.

James R. Crucitti
Superior Court Judge