

Ohio Appellate Court Rules that State's Oil & Gas Drilling Statutes Preempt "Home Rule" Power

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[Full text of the court's decision](#)

On February 6, 2013, in *State of Ohio ex rel. Jack Morrison, Jr. v. Beck Energy Corp.*, 9th Dist. Case No. 25953 (February 6, 2013), the Ninth District Court of Appeals confirmed the sole and exclusive authority of the Ohio Department of Natural Resources (ODNR) over the regulation of oil and gas well production statewide.

The court held that a city's "home rule" ordinances attempting to regulate well permitting could not be enforced because they conflict with the ODNR's authority under Ohio Revised Code (R.C.) Chapter 1509.

Background Facts

Joseph Willingham owned several acres of property in Munroe Falls, a city located northeast of Akron in Summit County, Ohio (the City). After entering into an oil and gas lease with Beck Energy Corporation (Beck), the ODNR granted Beck an oil and gas drilling permit in February 2011.

When Beck started excavation and drilling work on Willingham's land, however, the City issued a stop work order and filed a complaint in the Summit County Court of Common Pleas. The City alleged that Beck violated 11 local ordinances and failed to obtain mandatory permits from the City.

The trial court agreed with the City, issuing an order ceasing Beck's operations on the property until Beck complied with all of the local ordinances. Beck appealed the order.

Appellate Court Decision: State Drilling Statutes Trump the City's Ordinances

The Ninth District Court of Appeals reversed the trial court's decision, holding that the City cannot enforce its "home rule" drilling ordinances because they directly conflict with the state's drilling statutes, which are general laws of uniform application. Under Ohio law, a state statute takes precedence over a local ordinance when (i) the two conflict, (ii) the ordinance is an exercise of the police power rather than local self-government and (iii) the statute is a general law. *Canton v. State*, 95 Ohio St.3d 149, 151 (2002). Thus, a city's home rule authority is limited by state general laws to the extent that the two conflict.

In this case, the court observed that R.C. Chapter 1509 "provides a comprehensive regulatory scheme" for oil and gas well operations. The City's ordinances — which required a permit, application fees and performance bond prior to the commencement of drilling activities — directly conflicted with Ohio laws. In fact, the court noted that the City's ordinances prohibited exactly what the state statutes permitted. Because the City's "home rule" ordinances conflicted with R.C. Chapter 1509 — which are general laws — the ordinances were "therefore preempted by this state law."

It is also worth noting that the Beck Energy case was heard and decided by three Eleventh District judges sitting by designation, as all of the judges from the Ninth District recused themselves. Indeed, we may see Ohio judges recusing themselves from oil- and gas-related decisions more frequently, as many have a personal or business interest in oil and gas production in the area.

Conclusion

Beck Energy further confirms ODNR's status as the "sole and exclusive authority to regulate" oil and gas well permitting and related activities in Ohio, pursuant to R.C. 1509.02. Although municipalities will have difficulty enforcing ordinances that conflict with the ODNR's express regulatory authority under R.C. 1509.02 after Beck Energy, the debate likely will continue based on the divisive nature of shale development in eastern Ohio.

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