

MUNICIPAL CASE LAW UPDATE

SEPTEMBER 2020 – SEPTEMBER 2021

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Overview

- I. Federal Decisions
- II. State Decisions
- III. *Bonus Decision*
- IV. Questions

FEDERAL DECISIONS

I. Federal Decisions

International Outdoor, Inc v City of Troy, 974 F3d 690 (Sept 4, 2020)

- The Sixth Circuit Court of Appeals addressed whether a city's sign ordinance imposed an impermissible prior restraint on speech and a content-based restriction subject to strict scrutiny.

I. Federal Decisions

Bennett v Metro Gov't of Nashville & Davidson Cty, Tennessee, **977 F3d 530 (October 6, 2020)**

- The Sixth Circuit Court of Appeals addressed whether a public employer had sufficient interest to justify firing an employee discussing politics on a social media website.

I. Federal Decisions

***City of Eugene, Oregon v Fed Commc'ns Comm'n*, 998 F3d 701 (May 26, 2021)**

- The Sixth Circuit Court of Appeals addressed petitions by various local governments alleging that the Federal Communications Commission misinterpreted the Communications Act, 47 U.S.C. § 521 *et seq.*, and violated the Administrative Procedure Act when setting forth rules regarding cable providers.

I. Federal Decisions

***Daunt v Benson*, 999 F 3d 299 (May 27, 2021)**

- The Sixth Circuit Court of Appeals addressed a lawsuit challenging the eligibility requirements for Michigan's Independent Redistricting Commission under the First and Fourteenth Amendment.

I. Federal Decisions

***Cedar Point Nursery v Hassid*, 141 S Ct 2063 (June 23, 2021)**

- The United States Supreme Court addressed a regulation that required property owners to allow union organizers onto their property, and opined that the regulation constituted a per se taking because it appropriated, without just compensation, an easement to enter private property.

I. Federal Decisions

***Taylor v City of Saginaw*, 11 F 4th 483 (August 25, 2021)**

- The Sixth Circuit Court of Appeals addressed a 18 U.S.C. § 1983 claim arising out of a city's suspicionless chalking of car tires to enforce its parking regulations.

STATE DECISIONS

II. State Decisions

***Twp of Fraser v Haney*, 331 Mich App 96, app gtd 506 Mich 964 (January 21, 2020)**

- The Michigan Court of Appeals granted interlocutory appeal from a trial court's decision that a statute of limitations does not apply against local governments bringing zoning enforcement violations, and opined that the trial court erred by denying summary disposition under MCR 2.116(C)(7).
- On November 25, 2020, the Michigan Supreme Court granted leave to appeal, to address whether MCL 600.5813 applies to municipalities seeking to enjoin zoning ordinance violations. Oral argument was held on October 6, 2021.

II. State Decisions

***Mays v Governor of Michigan*, 506 Mich 157 (July 29, 2020)**

- The Michigan Supreme Court ruled that the plaintiffs had adequately pled claims of inverse condemnation and for violations of the right to bodily integrity, a due-process violation under Michigan's Constitution, to overcome defendants' motions for summary disposition.

II. State Decisions

In re Certified Questions From United States Dist. Court, W. Dist. of Michigan, S. Div., No. 161492, 2020 WL 5877599 (October 2, 2020)

- The Michigan Supreme Court answered questions certified by the United States District Court for the Western District of Michigan, holding that the Governor: (1) did not possess the authority under the Emergency Management Act of 1976, MCL 30.401 *et seq.*, to declare a “state of emergency” or “state of disaster” based on the COVID-19 pandemic after April 30, 2020; and (2) does not possess the authority to exercise emergency powers under the Emergency Powers of the Governor Act of 1945, MCL 10.31 *et seq.*, because that act is an unlawful delegation of legislative power to the executive branch.

II. State Decisions

***Youmans v Charter Twp of Bloomfield*, 2021 WL 67885 (January 7, 2021)**

- The Michigan Court of Appeals addressed a putative class action challenging a township's water and sewer rates and related ratemaking methodology for alleged violations of the Headlee Amendment and assumpsit, and opined, among other things, that the township's rates were not disproportional to underlying costs, and that ratepayers were not entitled to refund of funds paid for utilities, in the absence of evidence that the township would be unjustly enriched by retaining the funds.

II. State Decisions

***Buhl v City of Oak Park*, 2021 WL 2350031 (June 9, 2021)**

- The Michigan Supreme Court addressed a negligence action against a city under the “sidewalk exception” to governmental immunity, and opined that an amended statute granting municipalities the right to raise the open and obvious danger doctrine as defense in premises-liability cases, could not be applied retroactively to pedestrian’s claim.

II. State Decisions

Oakland Cares Coaln v Turner, 2021 WL 3921419 (Sept 1, 2021)

- The Michigan Court of Appeals addressed a ballot question committee's appeal from a denial of a declaratory judgment and mandamus complaint to compel the township clerk to certify its initiative petition regarding the decriminalization of the use of marijuana for adults over the age of 21 and legal production and sale of marijuana, and opined that certification under MCL 168.646a does not give the clerk discretion to assess the substance of the petition.

III. Bonus Decision

***Bisio v City of Clarkston*, 506 Mich 37 (July 24, 2020)**

- The Michigan Supreme Court held that non-privileged documents and communications involving a city attorney may be subject to disclosure under the Freedom of Information Act, MCL 15.231 *et seq.*

IV. Questions?
