



Natural Gas Case Law Brief

Range Res.-Appalachia, LLC v. Salem Twp.

No. 29 WAP 2008; 964 A.2d 869 (Pa. Feb. 19, 2009)

Summary prepared by Michael Magee on June 15, 2010

This case was decided in conjunction with *Huntley & Huntley v. Borough Council of Oakmont*, 964 A.2d 855 (Pa. 2009), and it concerned the preemptive power of the Oil and Gas Act. Specifically in question was the ordinance created by Salem Township (Salem) pursuant to the Municipalities Planning Code (MPC). This ordinance placed substantive restrictions on oil and gas drilling activities, and it also established a fee for permit applications and created criminal penalties for failing to comply with the ordinance, among other things. Range Resources (Range) brought suit against Salem alleging that the ordinance violated the Oil and Gas Act, which states in relevant part the following:

Except with respect to ordinances adopted pursuant to the...Municipalities Planning Code, and the...Flood Plain Management Act, all local ordinances and enactments purporting to regulate oil and gas well operations regulated by this act are hereby superseded. No ordinances or enactments adopted pursuant to the aforementioned acts shall contain provisions which impose conditions, requirements or limitations on the same features of oil and gas well operations regulated by this act or that accomplish the same purposes as set forth in this act. 58 PA. STAT. § 601.602.

The trial court agreed with Range, finding that the language of the Oil and Gas Act superseded Salem's ordinance. The Commonwealth Court affirmed. *See Great Lakes Energy Ptnrs. V. Salem Twp.*, 931 A.2d 101 (2007).

The issue was whether or not Salem's ordinance was void due to being superseded by the Oil and Gas Act. In *Huntley*, the Court determined that the Oil and Gas Act did not preempt municipalities from enacting zoning regulations identifying which uses are permitted in which areas of the municipality, so long as the features regulated were not the same features addressed in the Oil and Gas Act, and so long as the ordinance did not share the same purposes as the Oil and Gas Act. The ordinance in *Huntley* addressed the well's location, and the Court determined that the location was not a "feature" of the well. Salem's ordinance, on the other hand, "reflects an attempt by the Township to enact a comprehensive regulatory scheme relative to oil and gas

development within the municipality.” In many ways, its provisions overlap with the Oil and Gas Act, and the ordinance also substantially shares the Oil and Gas Act’s purposes. As such, *the ordinance was superseded.*

In conjunction with *Huntley*, the Court emphasized that its holding should not be construed to preclude local regulations which are duly enacted under other state laws with incidental effects on oil and gas development. Salem’s ordinance was not superseded for its incidental effects on oil and gas drilling, but rather for its provisions that related directly to those matters covered by the Oil and Gas Act.



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