



Aiple v. Okolona Fire Protection District

2004 | Cited 0 times | Court of Appeals of Kentucky | November 19, 2004

NOT TO BE PUBLISHED

OPINION

AFFIRMING

Appellants challenge as error a summary determination of the Jefferson Circuit Court that the powers granted fire protection districts in KRS² Chapter 75 do not include authority to create a private pension plan for volunteer firefighters using public funds. Appellants argue that the authority to establish such a plan is both expressly permitted and necessarily implied in the statutes authorizing fire protections districts to operate and maintain the district and to recruit, train and compensate firefighters. We disagree and affirm the decision of the circuit court.

The facts are not in dispute. In September 1985, the Board of Trustees of appellee Okolona Fire Protection District adopted a private pension plan for all trustees and volunteer members of the force who met certain eligibility requirements as to length of service. According to deposition testimony filed in the circuit court, the trustees intended to utilize the pension benefit as an incentive to keep volunteers working with the district for a longer period of time. The plan was initially funded with payments from tax revenues collected by OFPD totaling \$65,000. However, the trustees subsequently began to question OFPD's authority to operate the plan and they began an inquiry into the availability of the County Employees' Retirement System for its members. In March 1990, the trustees adopted a resolution suspending its participation in the private pension plan and its assets were subsequently frozen. However, no steps to formally terminate the plan were undertaken until December 7, 2000; therefore, the plan assets continued to grow to the sum of \$177,246.45.

In October 2001, OFPD initiated a declaratory judgment action to resolve the issue of the district's authority to establish the private pension plan and to determine proper ownership of the funds that had by then been placed in escrow. Eighteen former volunteer firefighters and trustees with a potential interest in the funds were named as defendants. OFPD filed a summary judgment motion alleging that its Board of Trustees lacked statutory authority to establish the fund and thus the plan was void ab initio. Seven of the named defendants responded to that motion and filed a cross-motion for summary judgment. The trial court ultimately concluded that there was no express statutory authority for the creation of the pension plan, that creation of such a plan utilizing tax revenues was not indispensable to OFPD's duty of maintaining and operating the fire department, and that OFPD was not equitably estopped from claiming the plan was void or that appellants were not entitled to



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the plan proceeds. This appeal followed.

Appellants first argue that volunteer fire departments like OFPD possess both express and implied power to carry out its declared objectives. KRS 75.040(1) gives the district authority to operate a fire department by levying a tax upon property in the district "for the purpose of defraying the expenses of the establishment, maintenance, and operation of the fire department or to make contracts for fire protection for the district. . . ." Subsection (2) of that statute further refines the district's authority as follows:

(2) The establishment, maintenance, and operation of a fire protection district or volunteer fire department district shall include, but not be limited to, the following activities:

- a. Acquisition and maintenance of adequate fire protection facilities;
- b. Acquisition and maintenance of adequate firefighting equipment;
- c. Recruitment, training and supervision of firefighters;
- d. Control and extinguishment of fires;
- e. Prevention of fires;
- f. Conducting fire safety activities;
- g. Payment of compensation to firefighters and providing the necessary support and supervisory personnel.

Appellants argue that in concluding that the district lacked statutory authority to create a private pension plan, the trial court ignored sections (c) and (g), which they contend are sufficiently expansive to empower the action taken by the trustees. Appellants also cite KRS 75.120 as conferring a broad grant of authority to fix and provide for the payment of salaries for district employees, alleging that the creation and funding of the private pension plan is compatible with and implicitly authorized by either or both of these statutes. We cannot agree.

A fire protection district such as OFPD organized by the authority of KRS 75.010 is a type of municipal corporation.³ As such, it falls within the general rule that "a city possesses only those powers expressly granted by the Constitution and statutes plus such powers as are necessarily implied or incident to the expressly granted powers and which are indispensable to enable it to carry out its declared objects, purposes and expressed powers."⁴ (Emphasis added.) This reference to implied or incidental power does not confer upon entities such as OFPD authority to undertake any and everything which they may consider laudable, but expressly limits those entities to functions that



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are indispensable to the accomplishment of their stated purposes. This principle would seem to be of particular significance where the expenditure of public funds is implicated. In applying the rule that a city enjoys only those powers expressly and impliedly conferred upon it by the General Assembly, the court in *City of Horse Cave v. Pierce*,⁵ emphasized that any doubt concerning a particular municipal power is to be resolved against its existence.

Thus, in order to succeed in their claim that the establishment of the private pension constituted a legitimate exercise of the authority conferred on OFPD by the Legislature, appellants were required to cite express statutory authority regarding creation of a private pension plan or demonstrate that such a plan is indispensable to the accomplishment of OFPD's stated purposes. We fully agree with the analysis utilized by the trial court in concluding that nothing in KRS Chapter 75 expressly authorized OFPD to set up a pension plan for its trustees and volunteer members using tax revenues and that nothing in the district's responsibility to maintain and operate its volunteer fire department implies or requires establishment of a pension plan.

Appellants also assert that OFPD is equitably estopped from claiming that the plan was void ab initio because they continued with the district in reliance upon the existence of the pension plan. As recently acknowledged by the Supreme Court of Kentucky in *Weiland v. Board of Trustees of Kentucky Retirement Systems*,⁶ the doctrine of equitable estoppel may be invoked against governmental entities only where the trial court finds "exceptional and extraordinary" equities are involved. Here, the trial court concluded that such exceptional and extraordinary equities did not exist and based his decision upon the following specific factual findings:

According to Defendants' Exhibit A, at least three of the seven Defendants left OFPD before the private pension fund was adopted in 1985 (Grant, Akridge, and Bale). Three other Defendants (Marzian, Aiple, and Deacon) joined OFPD in the 1960's as volunteer firefighters and left in 1988 after serving as trustees. Moreover, the private pension fund was funded exclusively with revenue raised by taxation, and an invalid expenditure of such monies would be against public policy. Consequently, the Court finds the equities involved in this case are not so exceptional and extraordinary as to warrant the use of equitable estoppel against OFPD.

As was the case in *Weiland*, a review of the trial court's findings convinced us that we cannot label as clearly erroneous its ultimate conclusion that equitable estoppel could not be invoked against OFPD. Appellants have failed to demonstrate that the ill-fated plan was anything more than a gratuitous benefit or that they invested any of their own funds into the plan. They also failed to demonstrate that the trustees, knowing that the plan was illegal, proceeded to use the plan to induce action on the part of appellants. The trial court did not err in rejecting the claim of estoppel.

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.



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1. Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.
2. Kentucky Revised Statutes.
3. Kelly v. Dailey, Ky., 366 S.W.2d 181 (1963).
4. City of Bowling Green v. T & E Electrical Contractors, Inc., Ky., 602 S.W.2d 434, 435 (1980).
5. Ky., 437 S.W.2d 185, 186 (1969).
6. Ky., 25 S.W.3d 88 (2000).

