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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1180752

Jefferson County Board of Education

v.

City of Irondale

1180777

Martin Blankenship et al.

v.

City of Irondale

Appeals from Jefferson Circuit Court
(CV-18-904402)

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MITCHELL, Justice.

The Jefferson County Board of Education ("the Board") and several of its employees seek to avoid the application of an occupational tax imposed by the City of Irondale ("City"). The Board and its employees argue that public-school employees are exempt from the occupational tax because, they say, they provide an essential government service. But the importance of a state employee's role, even a role as important as a public-school employee, does not remove that employee's obligation to pay a duly owed occupational tax. Other arguments made by the Board and its employees are equally unavailing. We therefore affirm the trial court's judgment in favor of the City.

Facts and Procedural History

In 2018, the City enacted municipal ordinance no. 2018-10 ("the ordinance"), which imposed a 1% occupational tax on "any person ... [who] engage[s] in or follow[s] any trade, occupation or profession ... within the city ... without paying license fees for the privilege o[f] engaging in or following such trade, occupation or profession." Several months after the ordinance went into effect, the Board, which

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provides K-12 public-education services in four schools located in Irondale, sued the City in the Jefferson Circuit Court seeking injunctive relief and a judgment declaring that the City lacked authority to impose an occupational tax on the Board's employees who provide services in Irondale.

After the Board filed its complaint, eight Board employees who render services in Irondale filed a motion to intervene as additional plaintiffs ("the intervening employees"). The intervening employees are all teachers or support workers employed by the Board who provide services for students in schools located in Irondale. The trial court granted the motion to intervene.

The Board, the intervening employees, and the City each filed a motion for summary judgment. The trial court entered a summary judgment for the City and denied the summary-judgment motions of the other parties. The Board and the intervening employees then appealed.

Standard of Review

The standard of review applicable to a summary judgment is the same as the standard the trial court applied when granting the summary-judgment motion. McClendon v. Mountain

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Top Indoor Flea Mkt., Inc., 601 So. 2d 957, 958 (Ala. 1992). That is, we must determine whether there was a genuine issue of material fact and, if not, whether the moving party is entitled to a judgment as a matter of law. Id. at 958. If the only question presented is a question of law, such as the interpretation or validity of an ordinance, the summary judgment is reviewed de novo. See Alabama Republican Party v. McGinley, 893 So. 2d 337, 342 (Ala. 2004). An ordinance enacted by a local governing body "is presumed reasonable and valid, and ... the burden is on the one challenging the ordinance to clearly show its invalidity." Jefferson Cnty. v. Richards, 805 So. 2d 690, 706 (Ala. 2001).

Analysis

This Court must determine whether the ordinance may lawfully be applied to Board employees who provide services at schools located in Irondale. The Board and the intervening employees argue that the ordinance creates an unlawful burden on or interferes with essential government services because, they say, (1) Board employees perform essential functions for the operation of public schools in the State; (2) Board employees have State-agent immunity from occupational-tax

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liability to Irondale; and (3) the ordinance creates an arbitrary pay disparity among Board employees based on the location of where they work within Jefferson County. These arguments are unconvincing.

First, the Board and the intervening employees argue that Board employees are exempt from the occupational tax because, they say, the ordinance essentially conditions the provision of public education on the payment of an occupational tax by Board employees. A similar argument was made in McPheeter v. City of Auburn, 288 Ala. 286, 259 So. 2d 833 (1972), in which employees of Auburn University contested a 1% occupational tax imposed by the City of Auburn. The employees of Auburn University asserted that they were shielded from paying the occupational tax because, they said, they performed an essential government function of providing higher education for the State of Alabama. But this Court disagreed, observing:

"Imposing payment of the tax or license fee on the individual so engaged and employed, place[d] no tax burden on Auburn University, the State, or the federal government as such. The tax [was] not levied on the employer-employee relationship, but on the taxable event of rendering services or following a trade, business, or profession. The ordinance place[d] the tax on an employee's privilege of

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working in the city limits of Auburn regardless of the person's employer or the place of residence of the employee."

288 Ala. at 291, 259 So. 2d at 836. Thus, this Court held that "if there is no principle of law clothing government employees with immunity, because they are such, we can conceive of no reasonable cause why they should be excluded from a tax that others bear." 288 Ala. at 290, 259 So. 2d at 835.

Although the government employees in McPheeter provided services in an Alabama public university rather than an Alabama public K-12 school, the holding of McPheeter nonetheless applies here. As in McPheeter, the occupational tax imposed by the ordinance on Board employees providing services in Irondale places no tax burden on the Board or the State, nor does it interfere with the essential state function of providing K-12 education. The ordinance also applies to all employees working in the city limits of Irondale, regardless of the person's employer or place of residence. And the Irondale occupational tax does not create a new or additional requirement for gaining or maintaining employment by the Board. Thus, the nature of the services performed by

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Board employees is not an adequate basis for excluding them from having to pay the occupational tax.

Next, the Board and the intervening employees argue that Board employees are shielded by State-agent immunity from complying with the ordinance. But State-agent immunity does not apply here. The ordinance does not affect any government function of the Board, nor is payment of the occupational tax related to a Board employee's government responsibilities. See *Estes v. City of Gadsden*, 266 Ala. 166, 172-73, 94 So. 2d 744, 750 (1957) (upholding the City of Gadsden's occupational tax covering all types of work as valid so long as the imposition of the tax is not capricious or discriminatory). And if the Board is unwilling to withhold the occupational tax for its employees, the ordinance provides a procedure for employees to independently comply with the requirements of the ordinance. Therefore, State-agent immunity does not shield Board employees from the ordinance's requirements.

Finally, the Board and the intervening employees argue that the ordinance creates an unlawful pay disparity among Board employees. See § 16-13-231.1(b)(2), Ala. Code 1975 ("[E]ach local board of education shall adopt a salary

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schedule that shall pay each teacher employed at least 100 percent of the appropriate cell of the State Minimum Salary as determined by the Legislature."). The Board claims that a difference in net wages occurs based on where Board employees provide services within Jefferson County -- and that this disparity violates the statutorily mandated salary schedule and fails to ensure equitable pay for its employees. But nothing in the ordinance prohibits the Board from paying employees gross wages exactly as required under the mandated salary schedule. Nor does § 16-13-231.1 state that Board employees are otherwise exempt from local, state, or federal taxes. Thus, any difference in net wages for Board employees does not affect the validity of the ordinance or its application to Board employees.

Conclusion

The Board employees who provide services in Irondale are not exempt from the City's occupational tax. The Board and the intervening employees' argument that essential state employees are exempt from an occupational tax tracks the argument made in McPheeter. We rejected that argument in McPheeter, and we do so again here. The other arguments made

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by the Board and the intervening employees are likewise without merit.¹ Therefore, we hold that the ordinance applies to Board employees.

1180752 -- AFFIRMED.

1180777 -- AFFIRMED.

Parker, C.J., concurs.

Shaw, Sellers, and Mendheim, JJ., concur in the result.

¹The City moved to strike certain material below before the trial court ruled on its motion for summary judgment. In entering a summary judgment in favor of the City, the trial court did not rule on the City's motion to strike, other than to say that the motion had become moot. The intervening employees now argue that it is unclear whether the trial court considered the material that the City sought to strike. We need not consider this argument in detail. Because the trial court did not affirmatively strike the material, that material is properly before us and, in any event, would not create a genuine issue of material fact under the summary-judgment standard, such that reversal would be required.