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Ted E. Grove, Circuit Court Judge
Steven B. Reed, Circuit Court Judge
Jenefer S. Grant, Circuit Court Judge

**CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF COLUMBIA**

April 13, 2009

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Re: In the Matter of the Petition of the Board of County Commissioners of Columbia County
Wendy Abbott, et al vs. Columbia County, et al
Columbia County Circuit Court Case Nos. 08-2843 and 08-2922

Dear Ms. Dozono, Ms. Hanson, Mr. Ming, Mr. Dale, Ms. Heaton, Mr. Goldberg, Mr. Jordan,
Mr. Lilly, Mr. Manning, Mr. Campbell, and Mr. DeHoog:

The above-noted cases, which have been consolidated, present a number of challenges to Columbia County Ordinance No. 2008-6 entitled the "Columbia County Employment of Unauthorized Aliens Ordinance" and Columbia County initiative Measure 5-190 which the former was ordained to implement. The subject matter of the ordinance and initiative is without question controversial and the margin of the initiative's passage indicates that the community is indeed frustrated by the lack of Federal attention. Neither of these issues, however, are appropriate for this Court to consider in determining the validity and enforceability of either.

Page 2
April 13, 2009

The ordinance by its terms is repealed if the initiative is determined unenforceable. The initiative contains a severability provision so that failure of certain provisions of the initiative do not necessarily invalidate the entire initiative.

Violation of the initiative and ordinance either intentionally or knowingly subjects the offender to a \$10,000 mandatory fine and a period of probation as well as suspension of all licenses and building permits. The Federal Immigration Reform and Control Act of 1983, 8 U.S.C. section 1324a (hereinafter, the "IRCA") states in part, "The provisions of this section preempt any state or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ or recruit or refer for a fee employment, unauthorized aliens" 8USC section 1324a(h)(2). While the petitioner may have started with Arizona's Legal Arizona Worker's Act, hereinafter referred to as "Arizona Act" as a model, significant modifications were made. This Court must determine if those modifications are such as to affect the legality of Columbia County's Ordinance and underlying initiative. As just stated, the Columbia County initiative is substantially different from the Arizona Act which was held enforceable. It was found to not violate the above-noted Federal preemption provision.

The provision requiring a mandatory fine clearly violates this preemption.

If the fines were the only difference between the Arizona Act and the Ordinance and Initiative, the fine could be severed from the ordinance and the remainder upheld. Petitioner, however, attempted to implement an enforcement procedure that ignored existing statutes and the autonomy of other political entities.

The initiative and ordinance proscribe the following concerning provisions:

- 1) That enforcement shall be through a proceeding filed before the Columbia County Commissioners and conducted per Chapter 183 of the Oregon Revised Statutes with appeals to the Justice Court. There is a clear conflict as Chapter 183 provides all appeals to be to the Oregon Court of Appeals.
- 2) There is a requirement for suspension of all licenses, including building permits which are issued for the purpose of operating a business in Columbia County. Further, the Board of Commissioners or Justice Court are required to order appropriate agencies to suspend licenses, building permits, and to issue stop work orders. Neither of these entities have the statutory authority to order other agencies to perform these suspensions. Columbia County does not issue business licenses and many building permits are issued by cities. These required actions are beyond the limited jurisdiction of Justice Court and except as to building permits issued by the county, are beyond the statutory authority of the County Commissioners.

Page 3
April 13, 2009

The actions required are more than mere conditions associated with issuance of licenses. They rise to the level of criminal or civil sanctions which also have been preempted by Federal Law. The essence of the initiative and the enabling ordinance is to sanction non-conforming employers with a fine and suspension of licenses beyond those issued by the county, thus rising to the level of civil or criminal sanctions. In addition, the initiative attempts to place the enforcement of these sanctions with entities and utilizes procedures that are in conflict with statutory authority.

The initiative and thus the ordinance are not able to survive a review under ORS 33.710(2)(e) and are declared illegal. While the Court recognizes the serious issue the initiative was seeking to address, existing Federal preemption and statutory provisions cannot be ignored. The Court having determined the initiative and ordinance unenforceable would dismiss as moot the consolidated action for Declaratory and Injunctive Relief.

Sincerely,



Ted E. Grove
Circuit Court Judge

TEG:cf