

No. A08-0767

State of Minnesota
In Supreme Court

Eagan Economic Development Authority,

Appellant,

vs.

U-Haul Company of Minnesota
a/k/a U-Haul Co. of Minnesota, et al.;

Respondents.

BRIEF OF AMICUS CURIAE
LEAGUE OF MINNESOTA CITIES

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LEGAL ISSUE

Minnesota law provides that a city may limit the powers the Legislature has granted to an economic development authority (EDA) in an EDA's enabling resolution and that those powers can only be subsequently modified if a city adopts a resolution preceded with published notice and public hearing. Can an EDA's powers be modified by a resolution that has not complied with these procedural requirements and that does not express any intention to modify the EDA's powers?

The court of appeals held that a city must transfer city powers to an EDA on a project-by-project basis and that the City of Eagan limited the eminent domain power of the Eagan EDA by adopting Resolution 01-63 even though Resolution 01-63 does not express any intention to limit the EDA's powers and was not preceded with published notice and public hearing as required by Minn. Stat. §§ 469.092-469.093.

INTRODUCTION

The League of Minnesota Cities (League) has a voluntary membership of 830 out of 854 Minnesota cities including the City of Eagan. The League represents the common interests of Minnesota cities before judicial courts and other governmental bodies and provides a variety of services to its members including information, education, training, policy-development, risk-management and advocacy services. The League's mission is to promote excellence in local government through effective advocacy, expert analysis and trusted guidance for all Minnesota cities. The League has a public interest in this appeal as a representative of hundreds of cities and economic development authorities (EDAs) throughout the state that will be negatively affected by the court of appeals' published decision that erroneously interpreted state statutes regarding the powers of EDAs.¹

The court of appeals' decision will affect all Minnesota cities and EDAs because it construed state statutes regarding the origin and modification of an EDA's powers. The court of appeals simply got it wrong in this case. It erroneously construed state statutes regarding EDAs in a way that confuses the relationship between cities and EDAs. This confusion must be corrected because it could impair the certainty of significant actions taken by EDAs to promote development and redevelopment projects – significant actions including the issuance of bonds, execution of contracts, provision of financial assistance and the condemnation of property.

¹ Pursuant to Minn. R. Civ. App. P. 129.03, the League certifies that this brief was not authored in whole or in part by counsel for either party to this appeal and that no other person or entity made a monetary contribution to its preparation or submission.

In this case, the court of appeals held that a city must transfer city powers to an EDA on a project-by-project basis and that the powers of an EDA can be modified by a city resolution even though the resolution does not express any intention to modify an EDA's powers and the resolution is not preceded with published notice and public hearing as required by Minn. Stat. §§ 469.092-469.093. *Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, 765 N.W.2d 403, 407-409 (Minn. Ct App. 2009).

Allowing the powers of an EDA to be modified in such a casual and unintentional manner could negatively affect the certainty of a wide variety of significant actions taken by EDAs. This uncertainty could threaten the viability of important development and redevelopment projects undertaken by cities and EDAs throughout state for the benefit of the public.

As a result, the League urges this Court to clarify that the Legislature has granted EDAs independent powers in state statutes and that a city does not need to transfer city powers to an EDA on a project-by-project basis. The League also urges this Court to clarify that a city may only modify an EDA's enabling resolution by adopting a modifying resolution preceded with published notice and public hearing as required by Minn. Stat. §§ 469.092-469.093.

STATEMENT OF THE CASE AND FACTS

The League concurs with the Eagan EDA's statement of the case and facts.

STANDARD OF REVIEW

The League concurs with the Eagan EDA's statement of the standard of review.

LEGAL ARGUMENT

The powers the Legislature has granted to an EDA may be limited by a city in an EDA's enabling resolution, and those powers can only be subsequently modified if a city adopts a resolution preceded with published notice and public hearing as required by Minn. Stat. §§ 469.092-469.093.

The Eagan EDA's Brief demonstrates why the court of appeals' decision should be reversed. The League will not repeat the Eagan EDA's legal arguments here. Instead, this brief will focus on why it is important to cities, EDAs and the public to have this Court clarify the origin of the powers of EDAs and the process for modifying those powers.

In 1986, the Minnesota Legislature passed legislation authorizing cities to establish EDAs to create flexible business assistance and development programs. 1986 Minn. Laws, ch. 400, §§ 13-33 (S.F. No. 1725).² EDAs were authorized to exercise the powers of housing and redevelopment authorities and some of the powers of port authorities. *Id.* Because of their flexibility, EDAs quickly became a popular tool for economic development. In response to a survey conducted by the Senate Research Department just four years after the EDA legislation was adopted, there were already 193 cities reporting that they had established an EDA. *See* Patrick J. McCormack & Beverly Cadotte Owen, *Economic Development Authorities*, Minnesota Senate Research Report at 2, October 1990.

The purpose of an EDA is to promote economic development within a city. In order to achieve this purpose, the Legislature has given EDAs many significant powers

² The legislation for economic development authorities was originally codified at Minn. Stat. ch. 458C.

including the power to buy and sell property, make loans and grants to businesses, provide guarantees or other credit enhancements, sell bonds, and acquire property by condemnation. Minn. Stat. § 469.101. EDAs use these powers to work closely with cities to promote development and redevelopment projects that benefit the public.

In this case, for example, the Eagan EDA and City of Eagan are attempting to redevelop Eagan's blighted downtown to create a new, walkable downtown with shops, offices and housing. Likewise, for example, the Mounds View EDA and the City of Mounds View began cooperating in 2004 in a redevelopment project that resulted in the sale of an indebted city golf course and the construction of a new Medtronic campus on an 85-acre site. Eric M. Hanson, *Medtronic moves into Mounds View*, Star Tribune, Oct. 2, 2007 (visited Sept. 25, 2009) <http://www.startribune.com/local/north/11547601.html>. The Medtronic construction was completed in 2007 and resulted in the construction of three eight-story office towers and a five-level parking ramp and brought approximately 3000 Medtronic employees into the City of Mounds View. *Id.* And in another example of an EDA redevelopment project that has benefitted the public, the St. Louis Park EDA and the City of St. Louis Park cooperated with other governmental entities in a redevelopment project involving a contaminated site near Highway 7. This redevelopment project involved the cleanup of a 10-acre brownfield site placed on the federal and state Superfund lists in 1983. *Success Stories*, Region 5 Brownfields, U.S. EPA (visited Sept. 25, 2009) http://www.epa.gov/R5Brownfields/html/s_stories/index.html. This redevelopment project resulted in the construction of the Highway 7 Business

Center, a modern office showroom incorporating green design elements that was completed in June 2007 and that helped generate jobs and add to the local tax base. *Id.*

Cities and EDAs throughout Minnesota engage in projects like these that provide great public benefit. Projects like these depend on the certainty of a variety of actions taken by EDAs. As a result, it is vitally important to cities, EDAs and the public to be able to depend on the certainty of actions taken by EDAs.

Indeed, this certainty was so important that the Legislature decided that a city council's determination that an EDA has complied with city-imposed limitations on an EDA's powers is to be considered conclusive. Minn. Stat. § 469.092, subd. 4 (providing that "[t]he city council's determination that the authority has complied with the limitations imposed under this section is conclusive"). But in this case, instead of respecting the Eagan City Council's conclusive determination that the EDA has not exceeded its powers, the court of appeals has engaged in impermissible second-guessing of the legislative determinations made by the city council in Resolution 01-63. *See, e.g., Lundell v. Cooperative Power Ass'n*, 707 N.W.2d 376, 380-381 (Minn. 2006) (citations omitted) (discussing the required deference for legislative determinations).

By failing to recognize that an EDA has powers that are independent from the powers of cities and by allowing the powers of an EDA to be unintentionally limited without prior public notice and public hearing, the court of appeals' decision threatens the certainty and legal validity of the actions of EDAs throughout the state. The court of appeals' decision is inconsistent with state law, and it is bad public policy. Therefore, the League urges this Court to reverse the court of appeals' decision to clarify that the

Legislature has granted EDAs independent powers in state statutes and that a city does not need to transfer city powers to an EDA on a project-by-project basis. The League also urges this Court to clarify that a city may only modify an EDA's enabling resolution by adopting a modifying resolution preceded with published notice and public hearing as required by Minn. Stat. §§ 469.092-469.093.

CONCLUSION

This Court's holding will affect cities and EDAs throughout Minnesota. The court of appeals' decision erroneously construed state statutes regarding the origin and the modification of an EDA's powers. The confusion created by the court of appeals' decision must be corrected because it could impair the certainty and legal validity of significant actions taken by EDAs to promote development and redevelopment projects throughout the state.

The League urges this Court to clarify that the Legislature has granted EDAs independent powers in state statute and that a city does not need to transfer city powers to an EDA on a project-by-project basis. The League also urges this Court to clarify that a city may only modify an EDA's enabling resolution by adopting a modifying resolution preceded with published notice and public hearing as required by Minn. Stat. §§ 469.092-469.093.

For all of these reasons, the League respectfully requests that this Court reverse the court of appeals' decision.

Dated: October 1, 2009

Respectfully submitted,

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