STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0993

Rainbow Taxi Corporation, et al.,
Relators,

vs.

City of Minneapolis,
Respondent.

Filed May 26, 2009
Affirmed
Schellhas, Judge

Minneapolis Department of Regulatory Services
Agency Citation No. 08-0611602

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Considered and decided by Schellhas, Presiding Judge; Lansing, Judge; and Crippen, Judge.*

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

By petition for writ of certiorari, relator challenges a Minneapolis ordinance requiring five percent of a taxicab service company's "operational fleet" to be wheelchair

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

accessible and five percent to be fuel efficient. Relator asserts that the ordinance (1) is a regulatory taking, (2) violates the equal protection clauses of the United States and Minnesota Constitutions, (3) is unconstitutionally vague because it does not define fuel efficiency or operational fleet, and (4) violates the uniformity provision of the Minnesota Constitution. We reject relator's challenges to the constitutionality of the ordinance, and we affirm.

FACTS

Relator Rainbow Taxi Corporation is a Minneapolis taxicab service company owned by relator Samuel Z. Williams (collectively "relator"). Relator owns 12 of the 46 taxicabs operating under its license, and the other 34 are independently owned. In 2006 respondent City of Minneapolis (the city) amended one of its ordinances governing taxicab service companies, requiring each company to document to the city that five percent of its "operational fleet" is wheelchair accessible and that five percent is fuel efficient. In January 2008 the city served relator with a notice of violation and administrative citation for failure to meet the city's wheelchair-accessibility and fuel-efficiency requirements and fined relator $200. Relator appealed the citation and an administrative hearing was held.

The hearing officer noted that relator largely conceded that its fleet did not comply with the wheelchair-accessibility or fuel-efficiency requirements of the amended ordinance. The hearing officer noted that while relator challenged the constitutionality of the ordinance, the scope of the hearing was limited to whether a violation had occurred. The hearing officer concluded that relator violated the ordinance. This appeal follows.

D E C I S I O N

Minneapolis Ordinance, section 341.300, which pertains to taxicab licenses, was amended in 2006 to require that "[b]y December 31, 2007 all licensed service companies in operation in the city on or before November 1, 2006 shall provide documentation to the city that five (5) percent of their operational fleets are wheelchair accessible and an additional five (5) percent are fuel efficient, as determined by the city." Minneapolis, Minn., Code of Ordinances § 341.300 (2009). On December 22, 2006, the city adopted a committee recommendation pertaining to taxicab service companies that defined "fuel efficient vehicle" as "a passenger vehicle that has an Environmental Protection Agency (EPA) fuel consumption rating of 23 miles per gallon (city driving)." Relator challenges only the constitutionality of the ordinance.

This court reviews de novo questions of law regarding its interpretation of an ordinance and its application to undisputed facts. *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 307 (Minn. App. 2007). Deciding constitutional issues is within the exclusive province of the judicial branch, and therefore a constitutional question that could not have been properly raised before an administrative hearing officer may be addressed for the first time on appeal if it has been properly briefed and argued on a complete record. *Holmberg v. Holmberg*, 578 N.W.2d 817, 820 (Minn. App. 1998). Where there is no fundamental right or suspect class involved, an ordinance is presumed to be constitutional and the burden is on the party challenging the ordinance to prove a constitutional violation beyond a reasonable doubt. *Rio Vista Non-Profit Hous. Corp. v. County of Ramsey*, 335 N.W.2d 242, 245 (Minn. 1983).

Relator first argues that the fuel-efficiency and wheelchair-accessibility requirements of the ordinance constitute a regulatory taking. The Fifth Amendment to the United States Constitution states that private property shall not be "taken for public use, without just compensation." U.S. Const. amend. V. "[I]f regulation goes too far it will be recognized as a taking." *Penn. Coal Co. v. Mahon*, 260 U.S. 393, 415, 43 S. Ct. 158, 160 (1922). The United States Supreme Court has recognized two distinct classes of regulatory takings: (1) categorical takings, in which the regulation "denies all economically beneficial or productive use" of land, *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015, 112 S. Ct. 2886, 2893 (1992); and (2) case-specific takings, which involve consideration of the economic impact of the regulation, the interference with reasonable investment-backed expectations, and the character of the regulation, *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124, 98 S. Ct. 2646, 2659 (1978).

Relator identifies the property interest at issue in this case as the "protected property interest" in the right of taxicab service companies "to conduct business pursuant to their licenses." Whether this property interest is sufficient to form the basis of a taking claim is similar to the question we addressed in *Hay v. City of Andover*, when analyzing a takings claim brought by a holder of a special use permit. 436 N.W.2d 800, 804 (Minn. App. 1989). In *Hay*, we determined that a special use permit is a property interest and thus a federally protected right subject to the constitutional restraints of due process and equal protection of the law. *Id.* But we concluded that "such a government benefit or grant does not constitute private property" subject to the Takings Clause of the Fifth Amendment. *Id.* Like the appellant in *Hay*, relator presents no authority that supports

elevating the property interest in a license or permit to "private property" subject to a takings claim, *id.*, and we therefore conclude that no regulatory taking has occurred here.

Relator also argues that the ordinance violates the Equal Protection Clause because it does not apply to limousine companies, bus companies, or other transportation companies "using the streets and roads of the City of Minneapolis to make a profit." "Equal protection requires that persons similarly situated be treated similarly." *Lidberg v. Steffen*, 514 N.W.2d 779, 784 (Minn. 1994). "An essential element of an equal protection claim is that the persons claiming disparate treatment must be similarly situated to those to whom they compare themselves." *St. Cloud Police Relief Ass'n v. City of St. Cloud*, 555 N.W.2d 318, 320 (Minn. App. 1996) (citation and quotation omitted), *review denied* (Minn. Jan. 7, 1997). "Similarly situated groups must be alike in all relevant respects." *Id*. (quotation omitted).

Of the entities that relator describes as "similarly-situated" enterprises—limousine companies, buses, companies that transport handicapped persons, private school bus companies, and hotel shuttles—only limousine companies are similar in that they do not operate on a fixed route or schedule, carry individual customers for hire, and serve the general population. But unlike taxicabs and taxicab service companies, limousines are regulated by the commissioner of transportation. Minn. Stat. § 221.84, subd. 2 (2008). Rather than being like other transportation companies in "all relevant respects," *St. Cloud Police Relief Ass'n*, 555 N.W.2d at 320, taxicab service companies are unique in that they are the sole transportation providers of their kind that are not already regulated by other

entities. We therefore conclude that relator is not similarly situated to other transportation companies and that relator's equal protection claim fails.

Relator further argues that the ordinance is impermissibly vague. An ordinance is not void for vagueness unless it "is so uncertain and indefinite that after exhausting all rules of construction it is impossible to ascertain legislative intent." *Contos v. Herbst*, 278 N.W.2d 732, 746 (Minn. 1979). "Many statutes . . . require administrative and judicial construction to clarify specific language. Such statutes are not unconstitutionally vague." *State by Alexander v. Block*, 660 F.2d 1240, 1255 n.35 (8th Cir. 1981). "In attacking a rule on due process grounds, including a vagueness challenge, the challenger bears a heavy burden." *Minn. Chamber of Commerce v. Minn. Pollution Control Agency*, 469 N.W.2d 100, 107 (Minn. App. 1991), *review denied* (Minn. July 24, 1991).

Section 341.300 requires taxicab service companies to demonstrate that five percent of their operational fleets are "fuel efficient, as determined by the city." Minneapolis, Minn., Code of Ordinances § 341.300. Relator argues that this section is impermissibly vague because it does not define "fuel efficient." But section 341.300 explicitly states that fuel efficiency for purposes of this section is to be "determined by the city." *Id.* In December 2006, approximately one year before the fuel-efficiency requirement of the amended ordinance was scheduled to go into effect, the city council adopted a committee recommendation defining a "fuel efficient vehicle" as "a passenger vehicle that has an [EPA] fuel consumption rating of 23 miles per gallon (city driving)." We determine this definition of "fuel efficient vehicle" to be sufficiently precise, and we reject relator's argument that the ordinance is unconstitutional because a city council

resolution, and not the ordinance itself, defined the term "fuel efficient." *See Paal v. Village of Wells*, 305 Minn. 252, 254, 232 N.W.2d 808, 809 (1975) (stating that an ordinance may incorporate more comprehensive regulations by reference).

Relator also argues that the ordinance is ambiguous with respect to the phrase "operational fleet," which it argues could pertain either to all vehicles operating under relator's license or only to those vehicles actually owned by relator. Words and phrases in statutes are to be interpreted "according to rules of grammar and according to their common and approved usage." Minn. Stat. § 645.08(1) (2008). "Fleet" is defined as "[a] group of . . . vehicles, such as taxicabs . . . owned *or operated* as a unit." *The American Heritage Dictionary* 694 (3d ed. 1992) (emphasis added). The plain meaning of "operational fleet," therefore, includes all vehicles operating as a unit, or in this case, under relator's license. Furthermore, other sections of the ordinance indicate that the intent of the ordinance is to hold taxicab service companies responsible for ensuring that all vehicles they license comply with the terms of the ordinance. For example, section 341.960 of the ordinance states that "[e]very licensed service company shall . . . [t]ake affirmative measures to insure that all of its taxicab owners and drivers comply with the terms of this chapter." Minneapolis, Minn., Code of Ordinances § 341.960 (2009). And, the term "fleet" is used in other ordinances pertaining to taxicab service companies to refer to all vehicles licensed by a service company. *See* Minneapolis, Minn., Code of Ordinances § 341.605(c) (2009) ("No licensee or service company may apply for taxicab stand permits in excess of fifty (50) percent of that licensee's or service company's total

Minneapolis-licensed fleet."). We conclude that the phrases "fuel-efficient" and "operational fleet," as used in the ordinance, are not unconstitutionally vague.

Finally, relator argues that the ordinance violates the Uniformity Clause of the Minnesota Constitution, which provides that "[t]axes shall be uniform upon the same class of subjects." Minn. Const. art. X, § 1. "The requisite initial determination in any analysis under the uniformity clause is that the challenged provision is, indeed, a tax." *AFSCME Councils 6, 14, 65 & 96, AFL-CIO v. Sundquist*, 338 N.W.2d 560, 573 (Minn. 1983) (concluding that an increased employee pension contribution does not implicate the Uniformity Clause because it is not a tax). Relator cites no authority for the proposition that where an ordinance might impose costs on those required to comply with it, that ordinance should be considered a tax for Uniformity Clause purposes. We reject relator's Uniformity Clause argument on the grounds that the ordinance is not a tax.

Affirmed.