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COUNTY OF ALLEN )

IN THE ALLEN CIRCUIT COURT

CASE NO. 02C01-0302-PL-12

SMDfund, INC., JOSEPH TOCCI )  
And SCOTT W. NOBLE, )  
Plaintiffs, )

VS. )

FORT WAYNE-ALLEN COUNTY )  
AIRPORT AUTHORITY, CITY OF )  
FORT WAYNE and ALLEN COUNTY, )  
Defendants. )

**ORDER OR JUDGMENT OF THE COURT**

The Court, having taken Defendants' Amended Motion for Summary Judgment (filed March 31, 2004) under advisement, now enters the following Order:

**ISSUES PRESENTED**

1. Whether the doctrine of the statute of limitations precludes citizens from contesting the constitutionality of a statute that provides a basis for the formation of an airport authority 17 years after the statute was enacted;
2. Whether the doctrine of laches precludes citizens from contesting the constitutionality of a statute that provides a basis for the formation of an airport authority that was created more than 17 years prior to this action; and
3. Whether the Public Lawsuit Act bars citizens from filing a claim contesting the constitutionality of a statute that provides a basis for the formation of an airport authority because a similar lawsuit filed in 1985 may have constituted a public lawsuit.

**STATEMENT OF FACTS**

In 1959, the General Assembly of the State of Indiana enacted what is now known as the Local Airport Authorities Act. This Act allows the fiscal body of one or more eligible entities (city, county, municipal corporation, etc.) that may be acting individually or jointly to adopt an ordinance in favor of the establishment of an airport authority. Ind. Code §8-22-3-1 (Burns 2004). The Act further stated that once such an authority has been established, the registered voters of the district in which the authority is located may remonstrate against the establishment of the authority if such petition is filed within 30 days of the adoption of the ordinance. Ind. Code §8-22-3-2 (Burns 2004).

In 1985, the General Assembly of the State of Indiana passed a bill that amended Ind. Code §8-22-3-1 establishing that a joint city-county airport authority may be created in a county having a population of more than 300,000 but less than 400,000. Ind. Code § 8-22-3-1.1 (Burns 2004) The amended statute repeals Ind. Code §8-22-3-2 and therefore prohibits registered voters living in the district of the authority the opportunity to remonstrate against the establishment of such authority. Ind. Code § 8-22-3-1.1(b) (Burns 2004).

The City of Fort Wayne has two airports - Fort Wayne International Airport and Smith Field. Prior to 1985, both Fort Wayne airports were owned and operated by the City of Fort Wayne and were managed by the Board of Aviation Commissioners. Prior to 1985, Fort Wayne had never established an airport authority pursuant to the general statutory scheme implemented by the Local Airport and Authorities Act. In compliance with the 1985 amendment made by the General Assembly and under the direction of the specifications stated in the amended statute, a joint airport authority was created between the City of Fort Wayne and Allen County. To this day, Allen County is the only county in Indiana that meets the requirements of the specific population bracket stated in the statute.

In June of 1985, the City of Fort Wayne and two Fort Wayne citizens filed a complaint for declaratory judgment in the Allen Superior Court against the Governor and the Attorney General of the State of Indiana. (Complaint for Declaratory Judgment, filed June 3, 1985). This lawsuit contested the validity of the 1985 legislation creating an airport authority in Allen County by declaring the statute unconstitutional. This allegation was founded upon the contention that the legislation constituted special legislation and therefore violated Article IV, Section 23 of the Indiana Constitution. Furthermore, the complaint alleged that such legislation was unconstitutional because it deprived the plaintiffs of their right to vote on the establishment of the authority. However, seven days after this suit was filed, the plaintiffs filed a motion to voluntarily dismiss their claim with prejudice. The Allen Superior Court granted the motion to dismiss on June 10, 1985.

Since 1985, the Fort Wayne-Allen County Airport Authority (Authority) has owned and operated both airports located in Fort Wayne, Indiana. The Authority has managed the airports in accordance with the Local Airport Authorities Act with the only exception being that the public was never afforded the opportunity to remonstrate and vote against the Authority's establishment. The Authority has also issued general obligation bonds for the purpose of obtaining funds for operation costs. Ind. Code § 8-22-3-16 (Burns 2004). The value of these bonds currently total over 44 million dollars. Respondent's Motion for Summary Judgment pg. 4. The Authority has also initiated a total of 120 different lease agreements with 92 tenants. These lease agreements range from terms of month to month to 68 years.

On February 12, 2003, SMDfund, Inc., Joseph Tocci and Scott W. Noble filed a complaint with the Allen Circuit Court. This complaint states that the Fort Wayne-Allen County Airport Authority does not possess any legal control over Smith Field and the statute creating the Authority is unconstitutional as "special legislation". The complaint further seeks injunctive relief preventing the Authority from closing, altering or destroying Smith Field.

On April 1, 2003, Fort Wayne-Allen County Airport Authority filed a motion to dismiss due to mootness in response to SMDfund's complaint. The Court treated the Authority's motion to dismiss as two separate motions: a motion to dismiss for mootness and a motion to dismiss for a lack of standing. The Court denied the Authority's motion to dismiss for lack of standing but granted the Authority's motion on the grounds of mootness.

On October 10, 2003, the Plaintiffs filed an amended complaint seeking a declaration that Ind. Code § 8-22-3-1.1 is unconstitutional special legislation and that the Authority has no legal status pursuant to the statute. In addition, the amended complaint seeks injunctive relief preventing the Authority from exerting control over the airports based on the allegations that Ind. Code § 8-22-3-1.1 is unconstitutional.

On October 24, 2003, the Authority filed a motion to certify the cause as a public lawsuit. This motion sought an order to certify this lawsuit as a "public lawsuit" as defined by Ind. Code § 34-6-2-124. The Court granted the motion certifying this lawsuit as a public lawsuit thereby requiring it to be brought in compliance with the Indiana Lawsuit Act. Ind. Code § 34-13-5 (Burns 2004).

On March 30, 2004, the Authority filed a motion for summary judgment. On May 10, 2004, the Defendant, City of Fort Wayne, filed its motion for summary judgment, and, on May 14, 2004, Defendant, Allen County, filed its motion for summary judgment. Both motions for summary judgment adopt, in their entirety, the grounds and designation of evidence set out by the Defendant Authority in its motion for summary judgment and this Court Order shall be deemed dispositive regarding all three motions for summary judgment.

### DISCUSSION

Summary judgment allows a judgment to be granted on a claim about which there is no genuine issue of material fact and upon which the movant is entitled to prevail as a matter of law. A material fact is a fact that may affect the outcome of the suit under the governing law. Genuine means that the evidence is such that a reasonable jury could return a verdict for the nonmoving party.

In this case, the Authority has filed a motion requesting that summary judgment be granted upon three distinct grounds. First, the Authority believes that Plaintiffs' claims are barred by the applicable statute of limitations. Second, the Authority claims that Plaintiffs' cause is barred by the equitable doctrine of laches. Finally, the Authority alleges that the Court cannot properly exercise jurisdiction over Plaintiffs' lawsuit pursuant to the Public Lawsuit Act.

#### I. Statute of Limitations

The purpose of the statute of limitations is to establish a time limit for suing in a civil case based on the date when the event causing the injury transpired.

In the Authority's motion for summary judgment, the party's reasoning for why the statute of limitations precludes Plaintiffs' claims is based upon many factors. In its motion for summary judgment, the Authority recognizes the complexity of applying the statute of limitations to an issue challenging the constitutionality of a statute. In the past, courts have differentiated between facial challenges and as-applied challenges and have implemented this limitation analysis to statutes. *Kuhnle Brothers v. County of Geauga*, 103 F.3d 516, 521 (6<sup>th</sup> Cir. 1997); *National Advertising Co. v. City of Raleigh*, 947 F.2d 1158, 1166 (4<sup>th</sup> Cir. 1991). A facial challenge is a claim that the "mere enactment" of a statute is unconstitutional. *National Advertising Co.*, 947 F.2d at 1166. An as-applied challenge focuses on the effect of a statute's application to specific property and individuals. *Id.*

Under an as-applied challenge, the statute of limitations does not commence until after the unconstitutional act ceased to exist. This type of constitutional violation is often referred to as a "continuing violation". *Kuhnle Brothers*, 103 F.3d at 520. In a facial challenge, the statute of limitations begins to run on the date the statute was enacted. *De Anza Properties X, Ltd. v. County of Santa Cruz*, 936 F.2d 1084, 1087 (9<sup>th</sup> Cir. 1991). Although it is ultimately the Court's discretion to determine whether a constitutional violation is a continuing violation, Plaintiffs' complaint seems to constitute a facial challenge.

Plaintiffs brought a claim challenging the constitutionality of the creation of the statute establishing the Fort Wayne-Allen County Airport Authority. The Plaintiffs allege that the statute is invalid because it constitutes special legislation and therefore violates Article IV, Section 23 of the Indiana Constitution. Since its inception in 1985, the actions of the Authority have been in compliance with the Local Airport Authorities Act and therefore cannot be considered a continuing violation. The only harm that may be complained of is due to the method in which the Authority was created. The Plaintiffs allege that the enactment of Ind. Code § 8-22-3-1.1 never afforded the registered voters the opportunity to remonstrate against the creation of the statute. Since Plaintiffs only challenge the creation of the statute and not the operation thereof it should be determined that Plaintiffs have filed a facial challenge.

Although it may be determined that the Plaintiffs' claims fall within a facial challenge, the applicable statute of limitations period still remains unanswered. The Authority states that because the only injury involved is the public's loss of opportunity to remonstrate against the statute's creations (a right that is limited to 30 days), the applicable statute of limitations should be 30 days from the establishment of the Authority. Although this is a creative argument, it does not apply to this case because the period of 30 days in which the public can remonstrate against an act does not apply to the contested statute. Ind. Code § 8-22-3-1.1(b) (Burns 2004). A much stronger argument made by the Authority is that the applicable statute of limitations should be the 10 year period that applies to all causes of action for which a statute of limitations is not specifically stated elsewhere. Ind. Code § 34-11-1-2(a) (Burns 2004). Since Indiana Does not have a statute of limitations that applies specifically to a constitutional challenge premises on special legislation, the general statute of limitations would apply to this case and bar Plaintiffs' claim

The Plaintiffs argue that the statute of limitations does not apply to this lawsuit because the statute should be considered special legislation therefore allowing Plaintiffs to bring a claim at anytime. The Plaintiffs base this reasoning from a case in which property owners filed a remonstrance and presented a petition in opposition to annexation by the defendant city. *Municipal City of South Bend, IN v. Kimsey*, 781 N.E.2d 683 (Ind. 2003). In order for Plaintiffs' argument to proceed, it must be determined whether the statute creating the Authority is unconstitutional on the premise of special legislation.

According to *Kimsey*, in 1993, the Indiana General Assembly added a subsection to Ind. Code § 36-4-3-13. This new subsection granted the right to challenge and defeat annexation if a majority of landowners in the affected area opposed it. *Kimsey*, 781 N.E.2d at 684. The subsection further stated:

(g) This Subsection applies only to cities in a county having a population of more Than two hundred thousand (200,000) but less than three hundred thousand (300,000)...

Ind. Code § 34-4-3-13(g) (West's 2002). At the time this amendment was enacted and ever since then, this provision has only applied to St. Joseph County. In all other counties, the current statutory requirement for opposition to annexation is 65% of the affected landowners. *Id.* at 685.

In 1996, residents in St. Joseph County filed a remonstrance and presented a petition in opposition to an annexation. Subsequently, the City of South Bend filed a counterclaim seeking a declaratory judgment that subsection (g) was unconstitutional special legislation in violation of Article IV, Section 23 of the Indiana Constitution. *Kimsey*, 781 N.E.2d at 685. The trial court denied the motion ruling that subsection (g) was general legislation. *Id.* Upon review, the Supreme Court of Indiana reversed the lower courts' rulings stating that subsection (g) was special legislation that was specifically created to apply to St. Joseph County and was therefore unconstitutional.

In *Kimsey*, the Indiana Supreme Court distinguished between general and special legislation. A statute is general legislation if it applies to all persons or places of a specified class throughout the state. *Kimsey*, 781 N.E.2d at 689. A statute is special legislation if it pertains to and affects a particular person, place or thing (as opposed to the general public). *Id.* at 690. In order to determine whether a statute is unconstitutional under Indiana Constitution Article IV, Section 23, it must first be determined whether the law is general or special. *Id.* If the law is general, it must then be determined whether it is applied generally throughout the state. *Id.* If the statute is considered special legislation, then it must be decided whether it is constitutionally permissible. *Id.*

The Indiana Supreme Court determined that a statute with a population category is a special law if it is designed to operate upon or benefit only particular municipalities. *Kimsey*, 781 N.E.2d at 691. In addition, if a statute contains language specifying locality then the statute is special legislation and is unconstitutional under Article IV, Section 23. *Id.* at 691. However, a general statute may also be unconstitutional if the population classifications are unrelated to the characteristics that define the class. *Id.* at 692.

Like *Kimsey*, this case challenges whether an Indiana statute may be declared constitutional pursuant to Article IV, Section 23. This section of the Indiana Constitution states,

...all cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.

*Kimsey*, 781 N.E.2d at 687. However, unlike the statute being challenged in *Kimsey*, there is no evidence that the population category contained in Ind. Code § 8-22-3-1.1 is designed to operate upon or benefit only particular municipalities and thus may not constitute special legislation.

The Plaintiffs also state that the Court's ruling in *Kimsey* is a landmark decision, "unarguably establishing new legal frontiers...in analyzing statutes". (Plaintiffs' Reply Brief pg. 2). Plaintiffs further state that *Kimsey* reverses previous cases and provides a clear solution that "bracketed" population figures in a statute is special legislation. *Id.* Although Plaintiffs' interpretation is beneficial to their argument, it is erroneous. The Indiana Supreme Court explicitly states that *Kimsey* adds no new doctrine to the analysis of previous cases pertaining to special legislation. *Kimsey*, 781 N.E.2d at 696. *Kimsey* also provides no

analysis that reverses the Court's decisions in past cases nor establishes any new legal frontier in analyzing whether a statute may be considered unconstitutional on the premise of special legislation. *Id.*

In the Authority's motion for summary judgment, it specifically states that its summary judgment motion does not address the issue challenging the validity of the statute. The Authority's motion for summary judgment requests that Plaintiffs' claim be barred because the statute of limitations precludes any challenge to the constitutionality of the statute.

Plaintiffs' claim was filed more than 17 years after the enactment of the challenged statute. Because the challenged statute may be considered constitutional and Plaintiffs filed a facial challenge, the general statute of limitations of ten years bars Plaintiffs from filing such a claim. In addition, Plaintiffs failed to provide evidence that a genuine issue of material fact existed regarding the time limit for challenging whether a statute was unconstitutional providing grounds for the Authority's motion for summary judgment.

II. Doctrine of Laches and III. Subject Matter Jurisdiction

Since the Court has determined the Authority's motion for summary judgment shall be granted on the basis of the statute of limitations, further discussion on the issues of doctrine of laches and subject matter jurisdiction are moot.

ORDER

The Fort Wayne-Allen County Airport Authority's Amended Motion for Summary Judgment (filed March 31, 2004) is granted. As set forth above, the City of Fort Wayne's Motion for Summary Judgment (filed May 10, 2004) is granted. Allen County, Indiana's Motion for Summary Judgment (filed May 14, 2004) is granted. Fort Wayne-Allen County Airport Authority's Motion to Dismiss (filed April 22, 2004) is ordered withdrawn.

DATED: June 28, 2004

  
Thomas J. Felts, Judge  
Allen Circuit Court

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