



CASE REPORT

MUNICIPAL REGULATIONS — GAMBLING — APPLICATION OF CARDROOM PROHIBITION TO CURRENTLY-LICENSED CASINOS. Municipal gambling bans adopted pursuant to Chapter 9.46 RCW apply fully to existing, currently-licensed gaming operations. Edmonds Shopping Center Associates v. City of Edmonds, No. 50815-6-I, (June 23, 2003).

I. Facts. Edmonds Shopping Center Associates (ESCA) held an E-5 cardroom license from the Washington Gambling Commission, and submitted a building permit application to the City of Edmonds for the purpose of physically improving its cardroom. The City subsequently adopted an initiative-sponsored ordinance prohibiting cardrooms, but allowing the continuation of existing cardroom operations at their current levels for a five year amortization period. ESCA challenged the City's ordinance in superior court under various legal theories; in turn, the City asked the court to selectively invalidate the amortization schedule for existing cardrooms, arguing that state law preempted any municipal gaming regulation other than a categorical ban. (Because the ordinance had originated as an citizen initiative, the Edmonds City Council had been legally constrained to adopt the proposed regulation in its entirety and without revision.)

The superior court granted summary judgment to the City upholding the validity of the general cardroom prohibition under the challenged ordinance. But the court upheld the amortization schedule, effectively permitting ESCA to continue its gaming operation for an additional five years. Both parties appealed the superior court's ruling.

II. Applicable Law and Analysis. On appeal, Division One of the Washington Court of Appeals sided with the City, affirming the trial court's validation of the general cardroom ban, and reversing the portion of the lower court's ruling that had allowed ESCA to continue its cardroom operation. The Court of Appeals concluded that the state gambling act (Chapter 9.46 RCW) expressly authorized flat prohibitions on gaming activity, but preempted any selective ban distinguishing between future and existing gambling operations; the court accordingly invalidated the amortization schedule established under the challenged ordinance. In light of both the explicit statutory option for municipalities to prohibit gaming under RCW 9.46.295 and the traditional recognition of gambling regulation as inherent in the City's authority, the *ESCA* court likewise upheld the Edmonds ordinance as a valid exercise of the City's police power. Significantly, the Court of Appeals in this regard rejected ESCA's contention that the City was required to justify its cardroom ban with evidence of the perceived community threat posed by gambling.

The appellate court also rejected ESCA's takings and substantive due process claims, reasoning that the City's cardroom ban furthered a legitimate government interest and was not "unduly

oppressive” to affected business owners. And the court rebuffed ESCA’s procedural due process argument, concluding that the cardroom prohibition was a legislative enactment for which the City was required to provide only general — rather than individualized — notice.

Finally, and most significantly, the Court of Appeals dismissed ESCA’s “vested rights” argument, rejecting the contention that ESCA’s state gambling license and/or building permit application insulated that business from the City’s subsequent cardroom ban. As the court explained, “municipalities can regulate or even extinguish vested rights by exercising the police power reasonably and in furtherance of a legitimate public goal.” Accordingly, “the vested rights doctrine does not allow a business to operate exempt from later-enacted police power regulations[.]”

III. Conclusion. The *ESCA* case reinforces the municipal discretion under Chapter 9.46 RCW to flatly prohibit a particular form of gambling, and clarifies that any such ban will apply fully to existing, currently-licensed gaming operations. The import of the court’s opinion, however, extends beyond the specific context of gambling regulation in at least two significant ways. First, the decision reinforces that a valid exercise of a City’s police power may effectively extinguish a party’s vested rights. Second, the opinion indicates that municipalities need not justify a particular enactment with specific supporting evidence, and that courts will largely defer to city and county councils in determining the need for local legislation. The case should facilitate municipal regulatory efforts across a broad spectrum of subjects.