Comments of Joe Callanan and David Shapiro on analyzing public purpose issues

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[Submitted following today’s MMLA Weekly Conference Call]

Joe Callanan

Here are some of my recent notes (someone had a much better euphemism) on analyzing public purpose issues:

In a case with complex factual applicability, the court notes “The critical inquiry is whether the challenged statute can be said to have some legitimate public purpose that predominates over the benefit it otherwise confers on private parties and over any injury to another party.” Kienzler v. Dalkon Shield Claimants Tr., 426 Mass. 87, 90–91 (1997). That’s the classic application of the public benefit rule, but it is applied in many other areas of governing.


The most recent application was whether CPA funds could be used by a church, Caplan v. Acton, 479 Mass. 69 (2018). In that case, most of the discussion was applicability of the anti-aid amendment, which is a further restriction on this issue.

Here is another case about whether public funds can be used to build a stadium, Opinion of the Justices, 356 Mass. 775 (1969). In this case, the court said it was ok, but other times courts have said no. Springfield vs. Dreison Investments, Inc., 11 Mass.L.Rptr. 379 (Feb. 25, 2000) (city cannot take land by eminent domain for the purposes of a private sports stadium).
David Shapiro

Just to add to Joe’s great summary of key principles below, on the public purpose/private resource issue, which I have struggled with for years, here is a law review article that I found a few weeks ago on topic that cites cases from other states, but seems to have instructive arguments on topic.

http://www.law.harvard.edu/programs/olin_center/fellows_papers/pdf/Libgober_63.pdf

Also, Allydon Realty Corp. v. Holyoke Housing Authority, 304 Mass. 288 (1939) outlines a totality test to help determine whether the primary consequences, effects, and results of the legislation benefit the public. The Allydon Court set forth some of the following factors as appropriate to consider:

1. whether the benefit is available on equal terms to the entire public in the locality affected;
2. whether the service or commodity supplied is one needed by all or by a large number of the public;
3. whether the enterprise bears directly and immediately, or only remotely and circumstantially, upon the public welfare;
4. whether the need to be met in its nature requires united effort under unified control, or can be served as well by separate individual competition;
5. whether, insofar as benefits accrue to individuals, the whole society has an interest in having those individuals benefited;
6. whether a proposed extension of governmental activity is in line with the historical development of the Commonwealth and with the general purpose of its founders;
7. whether it will be necessary to use public ways or to invoke the power of eminent domain; and
8. whether a special emergency exists, such as may be brought about by war or public calamity

Just some additional thoughts on it that may give reasonable arguments on it.