

COMMONWEALTH OF KENTUCKY

JUDGE AUDRA J. ECKERLE

JEFFERSON CIRCUIT COURT

NO. 21-CI-002393

DIVISION SEVEN (7)

LOUISVILLE HISTORICAL LEAGUE, INC.

PETITIONER

vs.

OPINION AND ORDER

OMNI LOUISVILLE L.L.C.;
and
LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT;
and LEGISLATIVE BODY OF THE
LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT A/K/A METRO COUNCIL
and
HISTORIC LANDMARKS AND PRESERVATION
DISTRICTS COMMISSION

RESPONDENTS

*** **

This matter stands submitted upon the motion for summary judgment brought by Petitioner, Louisville Historical League, Inc. (hereinafter, "Historical League"). After carefully considering and thoroughly reviewing the record, parties' arguments, and applicable law, the Court will grant the motion.

OPINION

This case is an administrative appeal. Respondent, Historic Landmarks and Preservation Districts Commission (hereinafter, "Landmarks Commission"), had designated as a historic landmark the Odd Fellows Building, also known as Liberty Hall, a building at 211-215 West Muhammed Ali Boulevard, Louisville, Jefferson County, Kentucky.

Respondent, Legislative Body of the Louisville/Jefferson County Metro Government a/k/a Metro Council (hereinafter, "Metro Council"), overruled the landmark status by reversing the decision of the Landmark Commission. The Historical League filed suit to reverse Metro Council's decision under the theory that LMC had violated due process in its decision and acted arbitrarily and capriciously. It noted that as part of its contract with Respondent, Omni Louisville L.L.C. (hereinafter, "Omni"), Louisville Metro had agreed to demolish Liberty Hall. Metro Council members specifically referenced this contract when considering whether to overrule the Historical League's designation.

Summary judgment should be granted where it appears that it would be impossible for the respondent to produce evidence warranting a favorable judgment against the movant. Palmer v. International Ass'n of Machinists and Aerospace Workers, AFL-CIO, 882 S.W.2d 117 (Ky. 1994). In determining whether to grant a motion for summary judgment, a Court must view the record "in a light most favorable to the party opposing the motion . . . and all doubts are to be resolved in [its] favor." Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476, 480 (Ky. 1991).

Judicial review of administrative action is concerned with the question of arbitrariness. American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission, 379 S.W.2d 450, 456 (Ky. 1964). A tripartite test for arbitrariness is applicable in all cases of judicial review of an administrative agency's actions, where the Court determines whether the agency exceeded its statutory powers, whether it employed proper procedures to provide adequate due process, and whether there is substantial evidence to support the agency's decision. Id. at 456-57. The parties' arguments in this case center around the last two prongs of the test.

Substantial evidence is defined as evidence, taken alone or in its totality, which has sufficient probative value to induce conviction in the minds of reasonable people. Thompson v. Kentucky Unemployment Ins. Comm'n, 85 S.W.3d 621, 624 (Ky. App. 2002). So long as an administrative agency's decision is supported by any substantial evidence, it is binding on the reviewing Court, even if there is conflicting evidence in the record. Id.; see also Parrish v. Kentucky Bd. of Medical Licensure, 145 S.W.3d 401, 408 (Ky. App. 2004).

The Historical League argued that Metro Council did not act impartially during its hearing process, thus violating the prohibition against arbitrary actions on the part of administrative bodies in Kentucky. See Hilltop Basic Resources, Inc. v. County of Boone, 180 S.W.3d 464 (Ky. 2005). It homed in on the requirement of procedural due process in an administrative proceeding, arguing that the bias on the part of some Metro Council members fell afoul of this standard.

Metro Council responded that no improper bias existed, but even if there were, Metro Council members are not required to exhibit complete impartiality in an administrative or legislative context, as compared with a judicial proceeding. Id. The Historical League replied that even though complete neutrality was not mandated, Metro Council nonetheless still had to avoid blatant favoritism and conflicts of interest to clear the bar of a procedural due process challenge.

The restated standard, taken from Hilltop, for a legislative or executive administrative action to clear an "arbitrary or capricious" challenge, is that it must satisfy the following three prongs: (1) refrain from actions taken in excess of granted powers; (2) afford procedural due process; and (3) support its decisions with substantial evidence.

The Supreme Court added that procedural due process could be violated by bias that evinces malice, fraud, or corruption, or the decisions are tainted by conflicts of interest or blatant favoritism. Id.

Metro Council's written agreement with Omni to eliminate any possible restrictions, historical or otherwise, on demolition of buildings in the plot where Liberty Hall is located was executed in 2014. In 2019, when reviewing the historic status, Metro Council discussed this contract pointedly. Thus, the outcome of this particular hearing was prejudged and predetermined several years in advance, with no real question as to how it would ultimately end. Multiple Council members stated that they were for removing the landmark restrictions because of the prior agreement with Omni. It is one thing for an executive adjudicator, or a legislator in this case, to state a vague preference for a particular policy direction, such as what occurred in Hilltop. It is quite another for the decision-maker to set the outcome literally years in advance in a written agreement. This doesn't even begin to clear the bar of proper procedural due process. It is a clear conflict of interest.

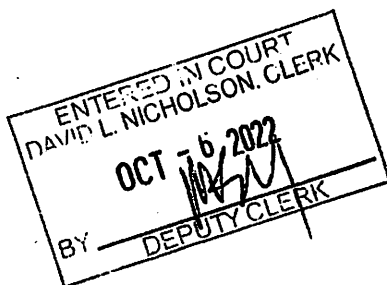
Metro Council argued that it would not be considered in breach of the agreement with Omni, and thus the contract should not be considered a binding obligation. However, Omni has not endorsed this viewpoint in its joinder brief. And, even if the Court reasoned that a conflict of interest was required to be a personal one, localized to a particular Council member, having a written agreement with a particular party regarding the outcome of a hearing is a clear example of blatant favoritism. The written promise to remove any impediments to the demolition of Liberty Hall leaves no question as to how the hearing on removing the landmark status would be decided.

Finally, the repeated, blunt, statements by some Council members that Liberty Hall should not be designated as a landmark provide additional evidence that this decision was tainted by blatant favoritism. The Hilltop case specifically stated that substantial evidence is not a shield against a procedural due process challenge. Rather, even a decision supported by substantial evidence cannot stand if it is made with malice, fraud, corruption, conflict of interest, or blatant favoritism.

In Hilltop, the Supreme Court stated that procedural due process requires parties to have "the opportunity to be heard at a meaningful time, and in a meaningful manner." There is no chance that a decision that has been predetermined, by a written contract no less, can be considered meaningful. Such a proceeding is mere pretext, and it does not clear the bar of procedural due process. Moreover, Metro Council conceded that its members reviewed evidence outside the record, thereby additionally violating due process.

ORDER

Wherefore, IT IS HEREBY ORDERED, that the motion for summary judgment brought by Petitioner, Louisville Historical League, Inc., is granted. The Louisville Metro Council's Resolution No. 021, Series 2021, is reversed. There being no just cause for delay, this Order is final and appealable.




AUDRA J. ECKERLE, JUDGE
Jefferson Circuit Court
10.4.22
Date

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