

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY, ILLINOIS

JULIE CROWE,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF BLOOMINGTON, a)
 municipal corporation,)
)
 Defendant)

Case No. 12 MR 45

McLEAN COUNTY
FILED
MAY 06 2013
CIRCUIT CLERK

**RESPONSE BY DEFENDANT CITY OF BLOOMINGTON
TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Defendant City of Bloomington, by its attorney, J. Todd Greenburg, requests that the Motion for Summary Judgment filed by the Plaintiff in this cause be denied for the following reasons:

**Plaintiff has Failed to Sustain the Burden for
A Ruling in Her Favor**

The parties are in agreement that the standard for summary judgment is set forth in Section 2-1005(c) of the Code of Civil Procedure: "...The judgment sought shall be rendered without delay if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005.

As the nonmoving party, the City incorporates by reference its own Motion for Summary Judgment, filed on April 12, 2013, to satisfy its burden of "presenting a factual case arguably

entitling that party to a judgment.” *Horwitz v. Holabird & Root* (2004), 212 Ill.2d 1 at 8, 816 N.E.2d 272 at 276.

The facts set forth in the City’s Motion for Summary Judgment show that the Plaintiff was permitted to submit virtually any facts which she thought might assist the Deputy City Manager in granting her request for a Certificate of Convenience and Necessity. Section 1002B (b) requires an applicant to submit a statement showing the financial status of the applicant; she obviously has more knowledge regarding her financial affairs. It is not the fault of the Deputy City Manager nor is it a fatal deficiency of the ordinance that the Plaintiff did not submit adequate financial information.

As pointed out in the City’s Motion for Summary Judgment, the Plaintiff has not preserved for appeal her complaint that she did not cross-examine the witnesses who spoke against her application and that she did not present rebuttal evidence. She did not request to do so. Plaintiff has not shown why Illinois law, as a matter of statutory or constitutional law, requires a pre-hearing discovery process in administrative proceedings, nor has counsel for the Defendant discovered any such law.

The Plaintiff’s allegations that the City’s licensing provisions protect existing vehicle for hire businesses in an unconstitutional manner are untrue. A reading of the plain language of the City’s regulations shows that the City retains the ability to issue additional licenses regardless of the desires of the owners of existing businesses. The Illinois Supreme Court, upholding Decatur’s taxicab licensing ordinance, noted that “[u]nder the ordinance in question, the city has reserved the right to issue additional licenses, without the consent of any licensee, when public convenience and necessity demands. It has not surrendered the right to grant licenses to other applicants and the ordinance does not tend to create a monopoly. *Yellow Cab Co. v. City of*

Chicago, 396 Ill. 388, 399, 71 N.E.2d 652; *Capitol Taxicab Co. v. Cermak*, D.C.N.D.Ill.E.D., 60 F.2d 608.” *City of Decatur v. Chasteen*, 19 Ill.2d 204 at 214, 166 N.E.2d 29 at 35. The cases cited by Plaintiff in which licensing attempts have been struck down are distinguishable because they do not involve the type of occupation here, which involves the use of the public streets and the transportation of the public. The more specific cases relating to municipal authority to license taxicabs and other types of vehicles for hire, which are still the law of Illinois, must prevail over the less applicable cases cited by Plaintiff.

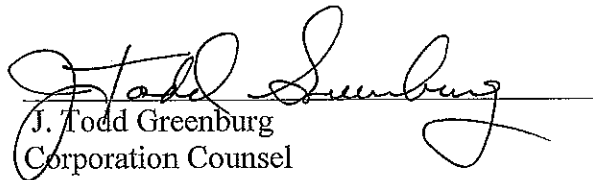
Plaintiff seeks to overturn Illinois law with the opinion of an economist. Plaintiff’s tendered expert witness (who was not disclosed until Plaintiff’s Motion for Summary Judgment and was not therefore not available for deposition by the City), is entitled to his opinion, but it does not change the clearly established Illinois law previously cited by the City.

For all the reasons cited above, and in the City’s Motion for Summary Judgment, the Plaintiff’s Motion for Summary Judgment must be denied.

Respectfully submitted,

CITY OF BLOOMINGTON,
Defendant

By:


J. Todd Greenburg
Corporation Counsel

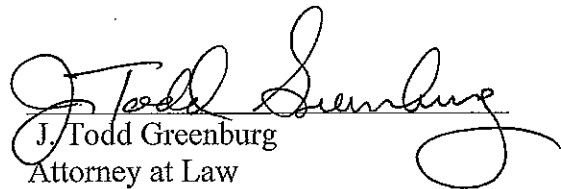
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STATE OF ILLINOIS)
) ss.
COUNTY OF MCLEAN)

PROOF OF SERVICE

I, the undersigned certify that I served a copy of the foregoing Defendant's Response to Plaintiff's Motion for Summary Judgment by placing a copy of the same in an envelope, properly addressed and with postage fully prepaid; depositing said envelope in the United States Post Office at Bloomington, Illinois at or about 5:00 O'Clock P.M. on Monday, May 6, 2013. Said copy was sent to the following:

Diane Cohen
Attorney for Plaintiff
Liberty Justice Center
190 S. LaSalle Street, Suite 1630
Chicago, Illinois 60603


J. Todd Greenburg
Attorney at Law