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Presumptions

A presumption is a rule of law that says courts and judges shall draw a particular inference from a particular fact, or from particular evidence, unless and until the truth of such inference is disproved. *See*, *Black's Law Dictionary*, 1185 (Sixth Ed. 1990). This article points out certain presumptions that should prove helpful to municipal officials in their day-to-day dealings with constituents.

Citizens sometimes think that a certain practice or ordinance being followed or enforced at city hall is wrong and should be changed or repealed. Frequently, these condemned practices or ordinances have the presumptive color of legality and, in the absence of proof to the contrary, are entirely valid. In many instances, the official who realizes the presumptive validity of a city practice can avoid being defensive when complaints are made.

Presumption of Validity

Perhaps the presumption most helpful to city officials is the presumption that ordinances are constitutional. *Storer Cable Commc'ns v. City of Montgomery*, 806 F. Supp. 1518, 1549 (M.D. Ala. 1992). In *Burnham v. Mobile*, 174 So.2d 301 (Ala. 1965), the court stated: "Municipal ordinances are presumed to be validly and properly enacted and unless invalid on its face the burden is upon the person attacking one to show its invalidity." While certain types of ordinances are subject to heightened degrees of scrutiny in order to be ruled valid, ordinances are presumed valid and constitutional. The court held in *Rose v. Andalusia*, 31 So.2d 66 (Ala. 1947): "When a city passes an ordinance, the presumption applies that it did what was necessary to make that ordinance valid ..." A statute or ordinance is presumed to be constitutional, and the burden is on the party asserting its unconstitutionality to show that it is not constitutional. *Handley v. City of Montgomery,* 401 So.2d 171 (Ala.Cr.App.1981).

McQuillin, Municipal Corporations, section 19.06 states: "A municipal ordinance duly enacted under ample grant of power is presumably constitutional and binding, except an ordinance imposing a restraint on freedom of speech or press, which has been said to come into court bearing a heavy presumption against its constitutionality. Indeed, in accordance with the rule that the constitutionality of an ordinance is favored, every presumption is in favor of the constitutionality of an ordinance, if any rational consideration supports its enactment, and a party presenting a challenge to the ordinance bears the task of demonstrating beyond a reasonable doubt that the ordinance possesses no rational basis to any legitimate municipal objective. The presumption is that the local legislative body intended not to violate the constitution, but to enact a valid ordinance within the scope of its constitutional powers. ... It has been declared that the presumption attaches to a municipal ordinance as strongly as it does to a legislative enactment. ... No ordinance or law will be declared unconstitutional unless clearly so, and every reasonable intendment will be made to sustain it. …The presumption of the constitutionality of an ordinance continues unless and until it is judicially determined to be unconstitutional. If the constitutional questions raised are fairly debatable, the court must declare the ordinance constitutional, as the court cannot and must not substitute its judgment for that of the local legislative body." In view of this presumption, municipal officials need never be defensive about ordinances of the city. Further, they can take comfort in the knowledge that courts generally presume that the municipality is operating in a completely legal manner in enforcing its ordinances.

Despite the presumption of constitutionality in favor of ordinances, a municipality's authority is not absolute and is not to be exercised capriciously. *City of Mobile v. Madison*, 122 So. 2d 540, 541 (Ala. Ct. App. 1960); *Hurvich v. City of Birmingham*, 35 Ala.App. 341, 46 So.2d 577

Exercise of Authority

It is always presumed that a municipality exercises its authority in a proper and legal manner. *Chadwick v. Hammondville*, 120 So.2d 899 (Ala. 1960), stands for the proposition: "Presumptions are indulged in favor of the legal exercise of the authority

of municipal corporations." The court stated: "It has been determined that when a city passes an ordinance, the presumption applies that the city did what was necessary to make that ordinance valid and when a city ordinance is not invalid on its face, the burden of alleging and proving facts to support the claims of invalidity is on the party so asserting."

The court, in *Decatur v. Robinson*, 36 So.2d 673 (Ala. 1948), considered the validity of the city's parking meter ordinance and held: "The ordinance shows upon its face that it is to regulate traffic and keep the traffic as liquid as it is reasonably possible. True, the city may not use the exercise of the police power as a revenue measure. But the ordinance here in question discloses that whatever revenue is derived therefrom is to be devoted to the cost of necessary inspection, police surveillance and incidental expenses that are likely to be imposed upon the public in consequence of this parking privilege. Nor should the court seek to avoid an ordinance by nice calculation of the expense of enforcing police regulation."

Wisdom or Propriety of Ordinance

Closely akin to a citizen's reasons for questioning ordinances is the assertion that the council acted unwisely in enacting a particular ordinance. The courts do not inquire into the propriety or wisdom of the council's actions. In *Estes v. Gadsden*, 94 So.2d 744 (Ala. 1957), the court said: "It should be clearly understood at the outset that the wisdom, propriety or expedience of the ordinance is not a matter for review by this court. That is the province of the lawmaking body of the city. The court's duty is to consider the constitutionality and the validity of the ordinance under the constitution and laws of the state of Alabama."

A statement of similar import is found in *Prichard v. Moulton*, 168 So.2d 602 (Ala. 1964), to-wit: "This being so, a valid enforceable agreement between the appellee and the city of Prichard existed. Counsel for the appellant argues the wisdom and advisability of the contract. This is a matter committed by law to the governing body of the city. The courts cannot and will not interfere with this discretion vested in the governing body of a municipality but deal only with the question of the legality of the acts of the governing body."

Records

Although a municipal record may be incomplete in certain respects, if it appears that the proceedings were regular and in substantial compliance with statutory requirements, presumptions will be indulged in favor of its sufficiency and validity. *McQuillin*, Section 14.03. *See also*, *Jones & Co. v. McAlpine*, 64 Ala. 511, 1879 WL 1136 (Ala. 1879).

Minutes of a municipality impart veracity, and records made by proper officers are presumptively conclusive on the facts stated therein. *See* Section 11-43-52, Code of Alabama 1975. If the records are in existence and can be produced, they are the only competent evidence of the acts of the municipal corporation. *See State ex rel. v. Mobile*, 28 So.2d 177 (Ala. 1946).

In *Penton v. Brown-Crummer Investment Co.*, 131 So.14 (Ala. 1930), the court stated: "And such record (clerk's record of council meeting) is the only evidence of the acts of council ... So long as the minutes of the meeting remain as the minutes of the council, they cannot be impeached or varied in a collateral proceeding by parol testimony." This case cites, with approval, McQuillin: "Records imperatively required by law, made by the proper officers, are conclusive of the facts therein stated, not only upon the corporation, but upon all the world as long as they stand as records."

For records, the presumption of correctness is very strong. If, however, the record does not speak the truth, it should be made to do so. The council may correct the record at a subsequent meeting. In connection with the minutes of a municipality, see the decision in *Estes v. Gadsden*, 94 So.2d 744 (Ala. 1957).

Licenses and Permits

Ordinances requiring a license or permit are presumptively valid. Further, a license tax or permit is presumed to be reasonable in amount. In *Albertville v. Scott*, 104 So.2d 921 (Ala. 1958), the city appealed an adverse decision of the trial court holding that a gasoline tax ordinance was invalid. The court pointed out "...our cases hold that when the question as to the reasonableness of a municipal ordinance is raised and the ordinance has reference to a subject matter within the corporate jurisdiction, it will be presumed to be reasonable unless the contrary appears on the face of the law itself or it is established by proper evidence."

In *State Departmen*t of Revenue v. Reynolds Metals Co*mpany*, 541 So.2d. 524 (Ala. 1988) the court held that license fee ordinances shall be presumed to be reasonable, and the burden shall be upon the business challenging the license fee charged to it to prove that such license fee is unreasonable or that the ordinance was illegally adopted or is violative of the statutory or fundamental law of the United States or of the State of Alabama..

In *Ex parte Berryville Central, Inc.*, 526 So.2d 21 (Ala. 1988), the court stated "It is important to note here that when the unreasonableness vel non of an ordinance or by-law is asserted or urged, the question thus made is to be decided by the court, and not by the jury." In *Al Means, Inc. v. Montgomery*, 104 So.2d 816 (Ala. 1958), a case involving Montgomery's sales tax, the Court held: "This court will presume in favor of the constitutionality of a law until the contrary appears, and the burden

is upon one asserting unconstitutionality ... Appellant's next serious attack upon the ordinance is that it is confiscatory ... But the appellants have not set out any facts as to the confiscatory nature of the tax." These cases show that the presumption of validity applies strongly to ordinances levying taxes on permit fees.

Appeals

In view of the authority noted above, a municipality may assume that it will receive the benefit of any enumerated presumptions in the appellate courts. *McQuillin*, Section 37.267, in discussing appeals on assessments for public improvements, cites several cases to support the following: "The usual presumptions of regularity and legality are indulged on appeal." Alabama courts recognize the presumption of validity. In *Stovall v. Jasper*, 118 So.467 (Ala. 1928), a sentence of the decision reads: "That is to say, the prima facie presumption of correctness inherent in the final assessment and apportionment of such cost of street pavement may be controverted by the evidence on the appeal, under the statutes and constitution ... On appeal to the circuit court, the owner has the burden of overcoming by his evidence the presumption of verity and correctness that the statute places upon him."

Appeals involving municipalities as parties are governed by the general law and the established rules relating to appeals. Among these rules are the presumptions indulged on appeal.

Specific Cases

A number of specific types of appeals carry the presumption in favor of the judgment, order or decrees of court. The usual presumptions in favor of such judgments are indulged in an eminent domain appeal. The validity of changes in municipal boundaries is presumed and this is particularly true after acquiescence for a considerable period of time. *McQuillin*, section 7.44.

Municipal corporations are created for the public good, and after long continued use of corporate powers and public acquiescence the courts will indulge in presumptions in favor of legal existence. This rule was stated in *State v. Gadsden*, 113 So. 6 (Ala. 1927): "Municipal corporations are important instrumentalities of government, and some presumptions are due to be indulged in favor of their legal existence." *See also*, *State v. Pell City*, 47 So. 246 (Ala. 1908).

In mandamus actions, it is presumed that municipal authorities acted legally and were influenced by proper motives. Therefore, as a general rule, the burden is on the applicant to show that the writ should issue. *See*, *McQuillin*, Section 51.69, and authorities cited. In the absence of proof to the contrary, actions taken by the council in its legislative capacity will be presumed to have been in conformity with its own rules or parliamentary usage.

The presumptions of reasonableness, validity and constitutionality are fully applicable to measures enacted under the police powers. In *Allinder v. Homewood*, 49 So.2d 108 (Ala. 1950), the plaintiff attacked an ordinance relating to the operation of tourist courts, and the court stated "The city authorities are responsible for determining the propriety of such regulations within the scope of the police power and the courts cannot invade such field ... The attack made on the various features of the ordinance in question ... is that each such aspect is unreasonably arbitrary and oppressive ... To justify annulling it or some features of it on such ground, it must be demonstratively shown that it is unreasonable."

Rates established by a municipality are presumed to be reasonable in the absence of any showing to the contrary and the burden of proof is on the party asserting unreasonableness. *See*, *Knoxville v. Knoxville Water Co.*, 212 U.S. 1 (1909); *Railroad Commission of Louisiana v. Cumberland Telephone & Telegraph Co.*, 212 U.S. 414 (1909).

Methods

Governing bodies of municipal corporations must exercise powers conferred upon them in a reasonable, lawful and constitutional manner. They may select from alternative methods of execution of powers if more than one method is available.

Where the law confers a power but is silent as to the mode of exercising it, the authorities may determine the manner of execution. When a method has been selected, the general presumption obtains that what was done was proper and valid. In other words, the general rule is that unless restrained by law a municipal corporation may, in its discretion, determine for itself the means and methods of exercising its powers, subject of course, to the test of reasonableness. *See*, *McQuillin*, Section 10.29.

Conclusion

The acts of the governing bodies of towns and cities are presumptively valid. This presumption attends acts under attack in trial courts, before administrative agencies and on appeals. It is presumed that the exercise of authority was done in a proper and legal manner and, further, it is presumed that the method and manner selected in exercising powers was likewise proper. Claims of invalidity must be alleged and proved by those attacking acts of municipalities.

Attorney General's Opinions on Presumptions

- The Attorney General has no authority to rule on the constitutionality of any ordinance or statute but merely to give advisory opinions. All statutes and ordinances are presumed valid until overturned by a court of competent jurisdiction. AGO to Hon. J.C. Davis, Jr., January 9, 1967.
- Municipal court costs are set by ordinance and presumed valid. AGO to Hon. David M. Enslen, July 13, 1970.
- Garbage ordinance of the Town of Eclectic establishing a garbage service and requiring all water customers within the corporate limits and police jurisdiction to use the service and prescribing penalties for failure to use the service, are presumed valid. AGO 1986-331.
- A person registering to vote in Alabama creates a rebuttable presumption of domicile in Alabama. AGO 1989-247. Various local constitutional amendments which have previously been ratified under Amendment 425 are presumed to be valid. 94-00128.
- It is only when two laws are so repugnant to or in conflict with each other, that it must be presumed that the legislative body intended that the latter should repeal the former. AGO 2009-019
- Legislative acts are presumed valid and constitutional unless declared otherwise by a court of law. AGO 96-00299.
- A local act is presumed to be valid and constitutional unless determined otherwise by a court of competent jurisdiction. See, generally, AGO. 2002-042.
- Resolutions are presumed by the courts to be valid and enforceable, unless they are found to be unreasonable, arbitrary, or capricious. AGO. 2014-071(citing. *Wheat v. Ramsey*, 284 Ala. 295 (Ala. 1969))
- Municipal ordinances are presumed to be valid unless or until they are declared invalid by a court of law. *Storer Cable Commc'ns v. City of Montgomery*, 806 F. Supp. 1518, 1549 (M.D. Ala. 1992); *Hurvich v. City of Birmingham*, 35 Ala. App. 341, 343, 46 So. 2d 577, 579 (1950). The municipal governing body of the city may amend or repeal the ordinance, but members of the council may not ignore an ordinance that is presumed to be valid. AGO 2014-069
- Validly enacted acts of the Legislature are presumed constitutional until they are determined to be otherwise by a court of competent jurisdiction. *State Bd. of Health v. Greater Birmingham Ass'n of Homebuilders, Inc*., 384 So. 2d 1058, 1061 (Ala. 1980).

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