STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

September 25, 2017

Opinion No. 17-43

Municipal Award of Exclusive Contract or Franchise for Roll-Off Dumpster Services

Question 1

Do roll-off dumpster services constitute “public services” under Tenn. Code Ann. §§ 6-2-201(12) and (13) or similar statutory provisions?

Opinion 1

Yes.

Question 2

Does an exclusive contract or franchise for roll-off dumpster services under Tenn. Code Ann. §§ 6-2-201(12) and (13) or similar statutory provisions violate federal antitrust law?

Opinion 2

No.

Question 3

Does an exclusive contract or franchise for roll-off dumpster services under Tenn. Code Ann. §§ 6-2-201(12) and (13) or similar statutory provisions violate article I, section 22 of the Tennessee Constitution?

Opinion 3

A municipality may award an exclusive contract or franchise for roll-off dumpster services without violating article I, section 22 of the Tennessee Constitution.

Question 4

Do Tenn. Code Ann. §§ 6-2-201(12) and (13) or similar statutory provisions authorize a municipality to execute an exclusive contract or franchise agreement that requires residents of the municipality to pay a fee directly to the contractor or franchisee for roll-off dumpster services when the municipality receives a sum certain from the contractor or franchisee for each roll-off dumpster rental?

Opinion 4

The legality of any such agreement would depend on the facts and circumstances surrounding the execution of the particular agreement, as well as the specific terms and conditions of the agreement.

Question 5

Does House Bill 1293 of the 110th General Assembly, as amended, violate any provision of the United States Constitution or Tennessee Constitution?

Opinion 5

House Bill 1293, as amended, could be vulnerable to a challenge that it violates Article I, Section 10 of the United States Constitution and article I, section 20 of the Tennessee Constitution.

ANALYSIS

A roll-off dumpster is an open-top waste container on wheels. Roll-off dumpsters are typically used for temporary waste removal projects, such as waste removal from residential renovations. Whereas traditional trash services are provided to residents and businesses of a municipality on a regular basis, roll-off dumpster services are used only intermittently on an as-needed basis and only by some residents and businesses.

1. Roll-off Dumpster Services as "Public Services"

Municipalities incorporated under mayor-aldermanic charters have the power to grant exclusive franchises and contracts for "public utilities and public services." *See* Tenn. Code Ann. §§ 6-2-201(12) and (13). Municipalities incorporated under city manager-commission charters and modified city manager-council charters have this power, too.[1] *See* Tenn. Code Ann. §§ 6-19-101(12) and (13); § 6-33-101(a). Thus, if roll-off dumpster services are "public services" within the meaning of Tenn. Code Ann. §§ 6-2-201(12) and (13), then a municipality may grant an exclusive contract or franchise for the provision of those services.

While no Tennessee court has examined the scope of the phrase "public services," the Tennessee Supreme Court has addressed the meaning of "public purpose" on several occasions since municipal expenditures of public money must be for a public purpose. *See*, *e.g.*, *Metropolitan Dev. and Hous. Agency v. Leech*, 591 S.W.2d 427 (Tenn. 1979); *McConnell v. City of Lebanon*, 203 Tenn. 498, 314 S.W.2d 12 (1958); *Imboden v. City of Bristol*, 132 Tenn. 562, 179 S.W. 147 (1915). Generally, a "public purpose" is anything that promotes the public health, safety, morals, general welfare, security, prosperity, and contentment of the residents of a municipal corporation. 15 McQuillin, *Law of Municipal Corporations* § 39:24 (2017). *See Knoxville Hous. Auth. v. City of Knoxville*, 174 Tenn. 76, 83, 123 S.W.2d 1085, 1087 (1939); *Shelby Cnty. v. Exposition Co.*, 96 Tenn. 653, 660-61, 36 S.W. 694, 695 (1896); *Nichol v. Mayor of Nashville*, 28

[1] Many municipalities governed by Private Acts also have this power. Accordingly, the analysis in this opinion would apply to such a municipality unless a specific provision of a private act dictated otherwise.

Tenn. 252, 268-69 (1848). *Accord Ragsdale v. City of Memphis*, 70 S.W.3d 56, 73-74 (Tenn. Ct. App. 2001).

In determining whether the expenditure of public funds is for a public purpose, courts look to the "end or total result" of the expenditure. *Pack v. Southern Bell Tel. & Tel. Co.*, 215 Tenn. 503, 516, 387 S.W.2d 789, 795 (1965). "It does not matter whether the agency through which [the expenditure] is dispensed is public or is not; . . . the test is in the end, not in the means." *Id.* (quoting *Bedford Cnty. Hosp. v. Browning*, 189 Tenn. 227, 236, 225 S.W.2d 41, 45 (1949)) (emphasis omitted). Moreover, the mere fact that some individuals may derive only an incidental benefit from the municipal undertaking does not deprive the undertaking of its public function if its primary function is public. *Pack*, 215 Tenn. at 515-16, 387 S.W.2d at 794 (citation omitted). *Cf. Knoxville Hous. Auth.*, 174 Tenn. at 84, 123 S.W.2d at 1088 (quoting *Tennessee Coal, Iron & R. Co. v. Paint Rock Flume & Transp. Co.*, 128 Tenn. 277, 285, 160 S.W. 522, 524 (1913)) ("An enterprise does not lose the character of a public use because of the fact that its service may be limited by circumstances to a comparatively small part of the public.").

Based on this body of analogous case law, a Tennessee court would most likely employ a similar analysis in construing "public service" as that term is used in Tenn. Code Ann. § 6-2-201 and would find roll-off dumpster services to be "public services" because the proper collection and removal of waste promotes the public health and general welfare of a municipality's residents. Not all municipal residents have to use roll-off dumpster services for these services to be "public" ones. *See Pack*, 215 Tenn. at 515-16, 387 S.W.2d at 794; *Knox. Hous. Auth.*, 174 Tenn. at 84, 123 S.W.2d at 1088. Residents who do not use roll-off dumpster services still receive public health benefits from the responsible removal of waste of others.

2. Federal Antitrust Implications of Exclusive Contracts for Roll-off Dumpster Services

Exclusive contracts such as the ones contemplated by the statute can raise antitrust concerns because they exclude competitors from the marketplace or materially limit their ability to compete. Exclusive dealing arrangements are subject to challenge under four provisions of the United States antitrust laws: (1) Section 1 of the Sherman Act, 15 U.S.C. § 1, which prohibits contracts "in restraint of trade"; (2) Section 2 of the Sherman Act, 15 U.S.C. § 2, which prohibits "attempt[s] to monopolize" and monopolization; (3) Section 3 of the Clayton Act, 15 U.S.C. § 14, which prohibits exclusive arrangements dealing with goods, machinery, and supplies, that may "substantially lessen competition" or tend to create a monopoly; and (4) section 5 of the FTC Act, 15 U.S.C. § 45(a), which prohibits "[u]nfair methods of competition."

But the acts of state legislatures are generally exempt from federal antitrust laws under the "state-action" doctrine. The U.S. Supreme Court has held that, under principles of dual sovereignty, federal antitrust laws do not apply to the actions of states, even if those actions are anticompetitive. *Parker v. Brown*, 317 U.S. 341, 350-52 (1943). This "state action doctrine" provides immunity to states from federal antitrust law. *Id.* at 351. The state-action doctrine thus shields decisions made by a state legislature from antitrust liability. *Id.* at 350-51.

A state acting in its sovereign capacity can immunize municipalities from antitrust liability by authorizing anticompetitive municipal activities. *Federal Trade Comm'n v. Phoebe Putney Health Sys., Inc.*, 568 U.S. 216, 225-26 (2013); *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 38-39 (1985). The state-action doctrine shields political subdivisions of states from liability when they act "pursuant to a 'clearly articulated and affirmatively expressed' state policy to displace competition." *FTC*, 568 U.S. at 226 (quoting *Community Communications Co. v. Boulder*, 455 U.S. 40, 52 (1982)). *See Hallie*, 471 U.S. at 40 (municipal activity must be in accordance with "clearly expressed state policy"). While a state legislature need not explicitly authorize anticompetitive conduct to satisfy this requirement, grants of general or neutral authority to govern local affairs do not suffice. *City of Columbia v. Omni Outdoor Advertising, Inc.*, 499 U.S. 365, 372 (1991) (citing *Hallie*, 471 U.S. at 41-42); *Community Communications*, 455 U.S. at 54-55. For state-action immunity to apply, "suppression of competition [must be] the 'foreseeable result' of what the statute authorizes." *Columbia*, 499 U.S. at 373 (citing *Hallie*, 471 U.S. at 42). *See FTC*, 568 U.S. at 226-27 (same).

The Sixth Circuit Court of Appeals' decision in *Michigan Paytel Joint Venture v. City of Detroit*, 287 F.3d 527 (6th Cir. 2002) offers an example of application of state-action immunity to a municipality. The court rejected an antitrust claim brought by an unsuccessful bidder on an exclusive contract to provide the Detroit Police Department with prison telephone services. While no Michigan law expressly authorized the City of Detroit to execute an exclusive contract with a telephone service provider for telephone services in its prisons, Michigan law did grant the City authority to bid out public contracts and to contract for the maintenance of its prisons. *Id*. at 535-36. Under the bidding process, there would be one successful bidder; thus, only one bidder would have the right to install and service the telephones. *Id*. at 536. Consequently, the City was immune from antitrust liability because anticompetitive effects were the "logical and foreseeable result" of the City's broad authority under state law to bid out public contracts for the maintenance of prisons. *Id*.

A similar analysis leads to the same conclusion here. Tennessee municipalities have express authority to "[c]ollect and dispose of drainage, sewage, ashes, garbage, refuse or other waste, or license and regulate their collection and disposal."[2] And they have express authority to execute *exclusive* contracts and franchise agreements. Tenn. Code Ann. §§ 6-2-201(12) and (13); Tenn. Code Ann. §§ 6-19-101(12) and (13); § 6-33-101(a). Therefore, a state policy to displace federal antitrust law is sufficiently expressed because the displacement of competition is the logical and foreseeable result of granting municipalities these powers. *See FTC*, 568 U.S. at 226-27; *Columbia*, 499 U.S. at 372-73; *Michigan Paytel*, 287 F.3d at 535-36.

In sum, a Tennessee municipality does not violate federal antitrust law when it awards an exclusive contract or franchise for roll-off dumpster services pursuant to the afore-referenced statutory provisions; the state-action doctrine shields the municipality from liability. *See FTC*, 568 U.S. at 225-26; *Hallie*, 471 U.S. at 38-39; *Michigan Paytel*, 287 F.3d at 535-36. *See*, *e.g.*, *Active Disposal, Inc. v. City of Darien*, 635 F.3d 883, 885, 888-89 (7th Cir. 2011) (based on similar

[2] Tenn. Code Ann. § 6-2-201(19) (mayor-aldermanic charter); Tenn. Code Ann. § 6-19-101(19) (city manager-commission charter); Tenn. Code Ann. § 6-33-101(a) (modified city manager-council charter). Many municipalities governed by Private Acts also have the express power to collect and dispose of waste.

Illinois statutory scheme, state-action doctrine shielded municipalities that awarded exclusive contracts to company providing roll-off dumpster services).

3. State Antitrust Implications of Exclusive Contracts for Roll-off Dumpster Services

The Tennessee Constitution, article I, section 22, provides "[t]hat perpetuities and monopolies are contrary to the genius of a free State, and shall not be allowed." For purposes of this constitutional prohibition, a "monopoly" is "'an exclusive right granted to a few, which was previously a common right.' If there is no common right in existence prior to the granting of the privilege for franchise, the grant is not a monopoly.'" *James Cable Partners, L.P. v. City of Jamestown*, 818 S.W.2d 338, 345 (Tenn. Ct. App. 1991) (quoting *City of Watauga v. City of Johnson City*, 589 S.W.2d 901, 904 (Tenn. 1979)). *See Leeper v. State*, 103 Tenn. 500, 514, 53 S.W. 962, 964 (1899).

A "common right" exists if a person had the right or liberty to do a certain act or engage in a particular business prior to the granting of the privilege for franchise in question. *City of Memphis v. Memphis Water Co.*, 52 Tenn. 495, 529 (1871). In *City of Memphis*, the Court rejected a claim that a water works company's exclusive right to supply water to the city's citizens violated article I, section 22 because there is no common right for anyone to destroy the streets of a city to put in water mains and pipes to establish a water plant. *Id*. at 529-530. Similarly, the Tennessee Court of Appeals refused to classify a city's grant of an exclusive right to use its streets for the operation of a cable communication system as a monopoly because it is not a common right to use city streets for this purpose. *James Cable Partners*, 818 S.W.2d at 345.

Conversely, the Tennessee Supreme Court has found that there is a common right to engage in the activity of slaughtering. *Noe v. Town of Morristown*, 128 Tenn. 350, 354-360, 161 S.W. 485, 486-87 (1913). Thus, the Court held that a Private Act authorizing the establishment of a municipal slaughterhouse must provide that all persons (or their agents) should have the right to resort to that place to do their own slaughtering for the Act to be constitutional. *Id*. at 359-362, 161 S.W. at 487-88. Relying on *Noe*, the Court similarly determined that a municipality does not have the implied authority to create a monopoly with respect to the taxi cab business. *Checker Cab v. City of Johnson City*, 187 Tenn. 622, 627, 216 S.W.2d 335, 337 (1948). "All persons inclined to pursue such an occupation should have an opportunity of conforming to such regulations." *Id*. (quoting *Noe*, 128 Tenn. at 359, 161 S.W. at 487).

When a common right exists, the anti-monopoly clause in article I, section 22 of the Tennessee Constitution prevents the legislature from granting a monopoly unless the monopoly "has a reasonable tendency to aid in the promotion of the health, safety, morals and well being of the people." *Id.* at 627, 216 S.W.2d at 337. *See Landman v. Kizer*, 195 Tenn. 13, 16, 225 S.W.2d 6, 7 (1953); *Esquinance v. Polk Cnty. Educ. Ass'n*, 195 S.W.3d 35, 47 (Tenn. Ct. App. 2005). A valid monopoly cannot be "created merely by connecting such creation with the exercise of a police power." *Checker Cab*, 187 Tenn. at 627, 216 S.W.2d at 337. The test is whether the grant of a monopoly "has any real tendency to carry into effect the purposes designed – that is, the protection of public safety, the public health, or the public morals – and whether that is really the

end had in view." *Id*. at 628, 216 S.W.2d at 337 (quoting *Motlow v. State*, 125 Tenn. 547, 590, 145 S.W. 177, 185 (1912)).

No Tennessee court has considered whether a municipality's award of an exclusive contract or franchise agreement for any type of waste collection is an unlawful monopoly,[3] and whether the provision of the roll-off dumpster services is a "common right" is debatable. On the one hand, waste collection and disposal are traditional municipal functions; thus, the provision of these services may not be a common right. If that is the case, there can be no violation of article I, section 22 of the Tennessee Constitution. On the other hand, the right to perform roll-off dumpster services may be viewed as a common right since these services are confined to the collection and removal of waste generated by a particular project. The services do not include processing and disposing of the waste, unlike traditional trash services that are provided to the residents and businesses of a municipality.

But even if the right to provide roll-off dumpster services is viewed as a common right, a municipality is permitted to grant a monopoly for the provision of these services if "such monopoly has a reasonable tendency to aid in the promotion of the health, safety, morals and well being of

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[3] Many other courts, though, have addressed this question and have upheld the contracts. A few courts have upheld exclusive waste removal contracts on the basis that there is no common right to haul garbage through the streets. *See Elliott v. City of Eugene*, 294 P. 358, 361 (Or. 1930) ("Hauling garbage through the public streets, especially by [those] who did not produce it, cannot be considered as a common right."); *City of Grand Rapids v. De Vries*, 82 N.W. 269, 274 (Mich. 1900) ("No person has the right to carry garbage or other refuse matter through the streets of a city in open vessels."). But most courts have relied upon a city's police powers to uphold such contracts. *See, e.g., Gardner v. City of Dallas*, 81 F.2d 425, 426-28 (5th Cir. 1936); *Dreyfus v. Boone*, 114 S.W. 718, 720-721 (Ark. 1908); *Strub v. Village of Deerfield*, 167 N.E.2d 178, 179 (Ill. 1960); *O'Neal v. Harrison*, 150 P. 551, 552 (Kan. 1915); *Gomez v. City of Las Vegas*, 293 P.2d 984, 987 (N.M. 1956); *Tayloe v. City of Wahpeton*, 62 N.W.2d 31, 35-36 (N.D. 1953); *City of Portsmouth v. McGraw*, 488 N.E.2d 472, 475 (Ohio 1986); *State ex rel. Moock v. City of Cincinnati*, 166 N.E. 583, 585-86 (Ohio 1929); *Schmidt v. Masters*, 490 P.2d 1029, 1032-33 (Or. App. 1971); *City Sanitary Service Co. v. Rausch*, 117 P.2d 225, 226 (Wash. 1941).

The courts upholding exclusive waste management contracts on public health grounds generally reason that the collection and removal of waste is a municipal function and falls within a municipality's police power to protect public health, safety, and welfare. *See id*. "Quite obviously, the expeditious removal and disposal of waste substances are essential to protect against health menaces, danger of fire, and offensive and unwholesome smells." 7 McQuillin Mun. Corp. § 24:242 (2017); *see also* § 14:21 Sanitation, 3 Local Government Law (2017) (because proper waste removal is necessary for public health, private interests must yield to the common good).

And courts have found that the granting of an exclusive waste management contract bears a reasonable relation to the end sought to be accomplished,

> because it makes for the efficient handling of garbage, because obedience to the rules laid down for its handling is more easily compelled and enforced, and because . . . proper control can only be secured by close and careful inspection, which becomes more and more difficult as the number of places and persons to be watched increases.

Strub, 167 N.E.2d at 180 (citations omitted). *See City of Portsmouth*, 488 N.E.2d at 475; *City Sanitary Service*, 117 P.2d at 226. In short, courts in other jurisdictions have routinely rejected claims that the granting of an exclusive waste management contract constitutes an unlawful monopoly. *See Gardner*, 81 F.2d at 426-28; *Dreyfus*, 114 S.W. at 720-721; *O'Neal*, 150 P. at 552; *Tayloe*, 62 N.W.2d at 35-36; *Moock*, 166 N.E. at 585-86.

the people." *Checker Cab*, 187 Tenn. at 627, 216 S.W.2d at 337. While a monopoly "cannot be validly created merely by connecting such creation with the exercise of a police power," a monopoly that has a real tendency to carry into effect the protection of public safety or public health does not violate article I, section 22 of the Tennessee Constitution. *Id.* at 627-28, 216 S.W.2d at 337. Thus, whether a municipality's award of an exclusive contract or franchise for roll-off dumpster services passes muster under the Tennessee Constitution would necessarily be measured by the exigencies of the particular situation.

4. Requirement that Residents Pay a Fee to the Exclusive Contractor

Tennessee Code Annotated §§ 6-2-201(12) and (13) allow the legislative bodies of municipalities to prescribe "rates, fares, charges and regulations that may be made by the grantee of the franchise" or "the person, firm, association or corporation with whom an exclusive contract is made." Moreover, municipalities have the express authority to charge property owners for the collection or disposal of waste.[4]

But whether a municipality may execute an exclusive contract or franchise agreement that requires its residents to pay a fee directly to the contractor or franchisee for roll-off dumpster services *and* that, at the same time, provides the municipality with a sum certain from the contractor or franchisee for each roll-off dumpster rental will depend on the facts and circumstances surrounding the execution of the particular agreement, as well as the particular terms and conditions of the agreement. For example, if the charges imposed upon property owners under such an exclusive contract do not bear a reasonable relation to the services provided, a court would likely find an unlawful monopoly exists because the award would not have been made to promote public safety or public health. Similarly, such a contract would be vulnerable to challenge if the municipality entered the contract merely to raise revenue.

5. Constitutionality of House Bill 1293 of the 110th General Assembly

As amended, House Bill 1293 of the 110th General Assembly would allow an individual to procure a roll-off dumpster from any business providing these services even if that person lives in a municipality that has awarded an exclusive contract or franchise to a particular waste management company to provide roll-off dumpster services:

> Notwithstanding any other law to the contrary, a private entity may provide a roll-off construction or demolition debris container to a person requesting such a container regardless of whether the site where the person is requesting the container be placed is located in a municipality that has granted an exclusive franchise within such municipality for the collection, removal, and disposal of solid waste.

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[4] In municipalities incorporated under mayor-aldermanic charters or modified city manager-council charters, the "cost of collection, regulation or disposal may be funded by taxation, special assessment to the property owner, user fees other charges." Tenn. Code Ann. § 6-2-201(19); Tenn. Code Ann. § 6-2-33-101(a). In municipalities incorporated under city manager-commission charters, "the cost of collection, regulation or disposal may be funded by taxation or special assessment to the property owner." Tenn. Code Ann. § 6-19-101(19). It is also common for municipalities governed by Private Acts to have the express authority to impose charges for the collection and disposal of waste.

It is well settled that municipalities may exercise only those express or necessarily implied powers that are delegated to them by the General Assembly in their charters or under statutes. *Allmand v. Pavletic*, 292 S.W.3d 618, 625-26 (Tenn. 2009); *City of Lebanon v. Baird*, 756 S.W.2d 236, 241 (Tenn. 1998); *Barnes v. City of Dayton*, 216 Tenn. 400, 410, 392 S.W.2d 813, 817 (1965). Hence, "[i]t is elementary that the Legislature . . . may give and take away as it chooses [a municipality's] powers and privileges." *Highwoods Properties, Inc. v. City of Memphis*, 297 S.W.3d 695 (Tenn. 2009) (quoting *First Suburban Water Util. Dist. v. McCanless*, 177 Tenn. 128, 146 S.W.2d 948, 950 (1941)).

But the Tennessee and United States Constitutions both have "Contract Clauses" that prohibit states from enacting laws that impair the obligation of a contract.[5] Unless House Bill 1293 is applied prospectively only, it could be challenged by the holder of an exclusive contract or franchise for roll-off dumpster services as a violation of these Contract Clauses.[6]

The threshold inquiry in determining the validity of a state law under the Contract Clause is "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978). Total destruction of contractual expectations is not necessary to sustain a Contract Clause challenge. *Energy Reserves Group, Inc. v. Kansas Power & Light Co*., 459 U.S. 400, 411 (1983). A contract may be impaired if the law lessens the value of the contract, *Lake Cnty*., 160 Tenn. at 629-631, 28 S.W.2d at 354-55, or denies or obstructs rights accruing under the contract. *Hannum v. McInturf*, 65 Tenn. 225, 229 (1873). Courts also consider whether the challenger's industry has been regulated in the past. *Allied Structural Steel*, 438 U.S. at 242 n. 13. If the contract terms recognize the existence of extensive regulation and demonstrate that changes in state law are foreseeable, then such a change in the law does not impair the parties' reasonable expectations. *See Energy Reserves Group,* 459 U.S. at 416.

If the challenged regulatory measure does substantially impair a contract, the next inquiry is whether the regulatory measure furthers a significant and legitimate public purpose, *United States Trust Co. v. New Jersey*, 431 U.S. 1, 22 (1977), such as the remedying of a "broad, generalized economic or social problem." *See Allied Structural Steel*, 438 U.S. at 250. "[A]ll contracts are subject to be interfered with, or otherwise affected by, subsequent statutes . . . enacted in the bona fide exercise of police power." *Profill Dev., Inc. v. Dills*, 960 S.W.2d 17, 33 (Tenn. Ct. App. 1997) (quoting *Sherwin Williams Co. v. Morris*, 25 Tenn. App. 272, 156 S.W.2d 350, 352 (1941)). The State's police power includes authority to protect the lives, health, morals, comfort and general welfare of the people. *Ford Motor Co. v. Pace*, 206 Tenn. 559, 583, 335 S.W.2d 360, 370 (1960).

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[5] "[N]o retrospective law, or law impairing the obligations of contracts, shall be made." Tenn. Const. art. I, sec. 20. "No state shall … pass any ... law impairing the obligation of contracts." U.S. Const., Art. I, Sec. 10. The meaning of the federal and state constitutional provisions is identical. *First Util. Dist. of Carter County v. Clark*, 834 S.W.2d 283, 287 (Tenn. 1992); *Lake Cnty. v. Morris*, 160 Tenn. 619, 628-29, 28 S.W.2d 351, 354 (1930).

[6] The United States Supreme Court has held that a city may not challenge a state statute on the grounds that it impairs an agreement between a city and a third party. *City of Pawhuska v. Pawhuska Oil & Gas Co*., 250 U.S. 394 (1919); *Worchester v. Worchester Consolidated Street Rwy. Co*., 196 U.S. 539 (1905). Similarly, the Tennessee Supreme Court has held that a municipal corporation is not entitled to challenge a state statute on the ground that it impairs a contractual right of the municipal corporation. *Clark*, 834 S.W.2d at 287.

In sum, the success of a Contract Clause challenge would depend on whether the contractor or franchisee can show a "substantial impairment" of its contract rights and, if so, that the challenged "impairment" does not further a legitimate public purpose. That, in turn, will depend on the particular facts and circumstances in any given case.

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