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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

PRESENT: **HON. THOMAS A. ADAMS**

Acting Supreme Court Justice

Trial/IAS, Part 13
NASSAU COUNTY

BALDWIN UNION FREE SCHOOL DISTRICT, et al.,

Petitioner (s),

-against-

COUNTY OF NASSAU,

Respondent (s).

ACTION NO. 1
MOTION DATE: 7/13/11
INDEX NO. : 3280/11
Seq. NOs. 1-4

BARBARA HAFNER and LINDA WEINER,

Plaintiff(s),

-against-

COUNTY OF NASSAU, NASSAU COUNTY LEGISLATURE and EDWARD P. MANGANO, in his capacity as County Executive of the County of Nassau,

Defendant (s),

ACTION NO. 2
INDEX NO. 4193/11

THE TOWN OF NORTH HEMPSTEAD, et al.,

Petitioner (s),

-against--

THE COUNTY OF NASSAU, et al.,

Respondent(s).

ACTION NO. 3
INDEX NO. 4381/11

Prior to 1938, the Nassau County Tax Act (Laws of 1916, Ch. 541) governed real property tax refunds in this county. It provided for the election of boards of assessors within each of our three towns. On June 5, 1936 the County Government Law of Nassau County (hereinafter "County Charter") was approved by the Governor (Laws of 1936, Ch. 879). Section 609 of the County Charter abolished the town assessors and created a County Board of Assessors which, pursuant to § 602, assess all property within the county liable for state, county, town, school or special district taxation. In 1939 the State Legislature gave Nassau County the authority to promulgate and amend local laws provided they did not conflict with the State Constitution and/or State Statues. (Laws of

1939, Ch. 700). *See* Chapter 150 and Chapter 162. Similarly, on April 12, 1939 the governor signed an act enacting an Administrative Code (hereinafter "Nassau County Administrative Code") supplementing and implementing the County Charter (Laws of 1939, Ch. 272).

In 1948, the County, enacted §§ 6-24.0, 6-25.0 and 6-26.0 of the Administrative Code and amended, *inter alia*, § 606 (formerly § 607) of the County Charter. More specifically, "[i]n view of the establishment of the County Board of Assessors whose members are charged with the duty of preparing the assessment rolls and extending the taxes," the County deemed it to be "in the best interests of the County" that § 606 be amended to provide that "any surplus existing or hereinafter arising from taxes in excess of the amount raised for the adopted budgets shall be credited to the County, and any deficiencies existing or hereinafter arising from the extension of taxes for the adopted budgets shall be a County charge" (*see* Exhibit B of the petitioners/plaintiffs Baldwin Union Free School District, et al.).

On October 29, 2010 the County Legislature adopted Local Law No. 18, of 2010, entitled "The Common Sense Act of 2010" (*see* Exhibit A of the petitioners/plaintiffs Town of North Hempstead, *et al.*), to repeal and replace §§ 6-24.0, 6-25.0 and 6-26.0 and portions of County Charter § 606. The law was subsequently approved by the County Executive on November 3, 2010. The petitioners/plaintiffs Baldwin Union Free School District, *et al.* (Index No. 3280/11), Town of North Hempstead, *et al.* (Index No. 4381/11) and plaintiffs Barbara Hafner and Linda Weiner (Index No. 4193/11) commenced these challenges, seeking to reverse and annul the law and declare it a nullity. Issue was joined with the service of the County's Verified Answers and objections in point of law. The County also moved, pursuant to CPLR 3211(a)(3) and (7), to dismiss Ms. Hafner and Ms. Weiner's complaint due to an alleged lack of standing and failure to state a cause of action. The proceedings were joined for trial (*see* CPLR § 602) in accordance with a so-ordered stipulation (Adams, J.).

The rationale for the law is "equity and fairness", *i.e.*, that the town, school districts and special districts should be required to reimburse the County for this estimated $80 million dollar annual expenditure. Conversely, Ranier W. Melucci, Ed.D., the President of the Nassau County Council of School Superintendents, opines that the imposition of an additional $962,962.96 obligation (or each of its 54 districts proportionate share of 65% of the $80 million dollar cost, representing that portion of annual real estate tax levies which constitutes school taxes) upon each of its districts would be "devastating" and "interfere, restrict and impinge upon their providing educational services" (2/28/11 Affidavit, ¶ 13). The Town of North Hempstead's Receiver of Taxes, Charles Berman,

asserts that Local Law 18 creates an inequitable scenario whereby the County retains "control over the assessment roll and the ability to correct it, while transferring liability for '[its] errors to the Towns, [school districts] and special districts" (3/22/11 Affidavit, para. 10).

State Law (RPTL § 726[1][a] and RPTL § 556[6]) requires a County to charge back the amount of the refund attributable to the town, special district or school district. By repealing the provisions of the Nassau County Administrative Code § 6-26-0 (b) (3) (c) that made the refunds a County charge, Local Law 18-2010 assures that the County Charter conforms with State. In short, both State statute and Local Law § 18-2010 now require the County to charge back the amount of refunds attributable to the town, special district or school district. *See* RPTL § 726(1)(a) ("So much of any tax or other levy, including interest thereon, as shall be refunded which was imposed for city, town, village or special district purposes, shall be charged to such city, town, village or special district."). *See also* RPTL § 556(6) (section (a) requiring chargebacks of refunds paid to municipal corporations and special districts; RPTL § 102(10), the definition of a "municipal corporation" includes a town and a school district. Local Law 18-2010 does not conflict with the Constitution by requiring that any portion of tax refunds ordered following a certiorari proceeding paid by the county attributable to school taxes or town taxes be charged back to the school district, or the town, as the case may be. Nassau County has the authority to amend its County Charter by making changes in the Administrative Code with respect to local matters that do not conflict with State Statutes. *Konz v Bedell*, 273 AD 777. Local Law 18-2010 does not inhibit the intent or operation of RPAPL. *See Jancyn Mfg. Corp. v County of Suffolk*, 71 NY2d 91.

The movants claim that "the restrictions and limitations on the enactment of charter laws set forth in Municipal Home Rule Law (MHRL) § 34 prohibit the repeal, by charter law, of the Nassau County Guaranty, a State legislative enactment which relates to the imposition, judicial review and distribution of the proceeds of taxes . . . ." Memorandum in Support of Summary Judgment motion, p. 11. Article 4 of the MHRL, "Powers of Counties and Cities to Adopt Charters", Part 1 "The County Charter Law", of which § 34 is a part, does not restrict Nassau County's pre-existing Charter powers. That the Municipal Home Rule Law overall was not intended to change prior grants of lawmaking authority at the time of its adoption in 1963, is evidenced by the fact that it included provisions by which the State Legislature demonstrated its intent not to alter any powers already granted to local governments. *See* MHRL § 50. In accordance with the State Constitution, the Municipal Home Rule Law was not intended to change existing laws at the time of its adoption. Nassau County's Charter was already in effect at the time of the adoption of the MHRL, § 50 which provides that "All existing valid provisions of laws,

charters and local laws not specifically repealed by this chapter shall continue in force until lawfully repealed, amended, modified or superseded." The MHRL was not intended to affect the grant of local lawmaking authority previously given Nassau County. Plaintiffs' arguments that Local Law 18-2010 violates the restrictions seemingly imposed by the MHRL are misplaced. *See also* MHRL § 35(2), (3) and (4).

The Charter sets forth the applicable restrictions on and parameters of the County's power to adopt local laws. Section 162 of the Charter states that "insofar as the provisions of this article are inconsistent [with "any other provision of this act or of any other law heretofore or hereafter enacted"], the provisions of this article shall be controlling." Thus, while it is true that MHRL 34 contains certain limitations and restrictions on the ability of counties in general to adopt and amend county charters and charter laws, those restrictions do not apply to Nassau County by virtue of Charter 162. Indeed, subjecting the County to the provisions of MHRL 34 would adversely affect the County's pre-existing Charter powers to enact local legislation and would be contrary to Article IX section 3(b) of the Constitution and the MHRL's own "savings clauses" contained in Sections 50, 56 and 35.

As the Charter controls with respect to the County's power to adopt and amend local laws, it is only necessary to examine the provisions of the Charter to determine whether the County could properly enact Local Law 18-2010. Restrictions on the County's power to adopt local laws are contained in Charter 154, and none of the restrictions contained therein would have prevented the County from adopting Local Law 18-2010. The restrictions plaintiffs cite from the MHRL are not contained in Charter 154, and as such, do not apply to the County. The County appropriately followed applicable law in enacting Local Law 18-2010.

The County Guarantee is not located in the County Charter nor does it transfer a function or duty. It is not a "Charter Law' within the meaning of MHRL § 32(1). Local Law 18-201does not purport to supersede either RPTL § 708(3) or § 712(2-a). Local Law 18-2010 amends County Administrative Code § 6-17.3 (which is a special law exception to RPTL § 708(3) and has no bearing on the subject matter of RPTL § 712(2-a). Local Law 18-2010 does not relate to the judicial review of the proceeds of taxes, contrary to plaintiffs' contention; it does not make a school district parties to judicial proceedings.

Local Law 18-2010's repeal of Administrative Code § 6-24.0(b)(3)(c) does not in any way relate to the maintenance, support or administration of any educational system. Responsibility for the cost of property tax refunds allocated to School Districts is imposed by the State Legislature by operation of law in RPTL § 726. It is not the County that is affecting the maintenance of the educational system, but rather the operation of State law.

Local Law 18-2010 does not contain any provisions which exceed those contained in State Statute. The intent of passing Local Law 18-2010 is to place Nassau on the same legislative footing as other counties in the state. Any impact on the County's educational system, assuming there is such an impact, occurs by operation of State Law. The County is not affecting the maintenance or administration of the local educational system.

Nor does Local Law 18-2010 impair the powers of the Town to administer local taxes and assessments under Town Law § 64(1). The Town will have the same authority of general management and control of the finances of the Town as it had before the enactment of Local Law 18-2010. It will simply be subject to charge backs for assessment refunds pursuant to RPTPL § 726 or RPTPL § 556. Thus, any impairment of the powers of the Town occurs through the operation of State law, not through the passage of Local Law 18-2010.

Local Law 18-2010 is not impacting the State Legislature's ability to support education. Local Law 18-2010 makes Nassau conform to the exact same legislative scheme that applies to all counties of the state. The opponents of Local Law 18-2010 are condoning and asserting that Nassau County support the financing of public education in New York State. There is nothing in the State Statute or the Constitution to directly or indirectly substantiate such a burden on all the citizens of Nassau County. The responsibility to finance public education is with the local school districts and the State. Local Law 18-2010 does not change this concept.

Movants contend that Local Law 18-2010, to the extent that it amended § 6-17.3 of the Administrative Code, violates the special districts' rights of due process since the amendment to the Administrative Code does not provide for service of a copy of the petition upon the special districts. Statutes enjoy a strong presumption of constitutionality, including a rebuttle presumption of appropriate legislative investigation and necessary factual support. *Van Berkel v Power*, 16 NY2d 37, 40. It is presumed that the enacting agency or legislative body has investigated the subject and has acted with reason rather than from mere whim or caprice. *Farrington v Pinckney*, 1 NY2d 74, 88. It is a maxim of constitutional law that a legislature is presumed to have acted within constitutional limits, upon full knowledge of the facts and with the purpose of promoting the interests of the people as a whole. *Id.* To overcome these presumptions as they relate to constitutional due process and equal protection, it is incumbent upon the movants to establish beyond question that the statutes and regulations complained of are without any rational basis whatsoever; that they are totally unreasonable, arbitrary and capricious; and that they are impermissibly discriminatory. *Grossman v Baumgartner*, 17 NY2d 345, 349. Furthermore, the mere showing of economic hardship, no matter how threatening or severe,

does not warrant a finding of unconstitutionality nor justify the enjoining of presumptively valid legislation. *Mariculture Ltd. v Biggane*, 48 AD2d 295, 298.

Administrative Code § 6-17.3 is based on the provisions of the RPTL § 708, a state special law, which provides for service upon the assessing authority. No provision is made in RPTL § 708 for service of the petition on any party other than the party responsible for the assessment. While RPTL § 708 requires the petitioner to mail a copy to any affected school district or municipality, the only party *served* with the petition is the party responsible for the assessment. Under State law, where a town is an assessing unit, a county would not be served with the petition, even though its tax revenues could be affected by the outcome of the proceeding. Moreover, the State Legislature made no provision for the service of a petition on a special district. If a special district has a direct financial interest in the outcome of the proceeding in the form of a potential liability to the petitioner for a tax refund, it is free to seek intervention in the proceeding. *Vantage Petroleum v Bd. of Assessment Review, etc., of Town of Babylon*, 91 AD2d 1037, *affd sub nom. Vantage Petroleum v Bd. of Assessment Review of Town of Babylon*, 61 NY2d 695. Thus, § 6-17.3 is no more violative of any alleged due process rights of the special districts than is RPTL § 708. Movants' argument that 6-17.3 is unconstitutionally vague is similarly misplaced. Movants assert that because the Town does not have a treasurer, there is no provision made for service in that section. However, the section specifically provides that service should be made upon the treasurer or equivalent fiscal officer. Pursuant to Town Law § 29(1), the supervisor of each town acts as its treasurer. Service would be accomplished under this provision by serving one copy of the petition on the Town's supervisor. As every Town has a chief fiscal officer, there is simply no reason to claim that "men of common intelligence must necessarily guess at its meaning," (Petitioners' Memorandum, p. 9).

The Municipal Home Rule Law prohibits a County from adopting local laws inconsistent with the State Constitution or any general laws of the state. State preemption occurs in one of two ways: First, when a local government adopts a law that directly conflicts with a State statute; Second, when a local government legislates in a field for which the State Legislature has assumed full responsibility. The State Legislature may expressly articulate its intent to occupy a field. It may also do so by implication. An implied intent to preempt may be found in a declaration of State policy by the State Legislature or from the fact that the Legislature has enacted a comprehensive and detailed regulatory scheme in a particular area. In that event, a local government is precluded from legislating on the same subject matter unless it has received clear and explicit authority to the contrary. *See DJL Restaurant Corp. v City of New York*, 96 NY2d 91; *New York State Club Assn. v City of New York*, 69 NY2d 211; *Consolidated Edison of New York v Town*

of Red Hook, 60 NY2d 99; *People v DeJesus*, 54 NY2d 465; *Robin v Incorporated Village of Hempstead*, 30 NY2d 347. There is nothing in the State Legislation or the Constitution that prohibits the County from passing a Local Law 18-2011. No other state statute aside from MHRL Law is involved in this action and MHRL Law does not either expressly or by implication limit the effect of Local Law 18-2011. *See Hauser v Giunta*, 88 NY2d 449; *Daugherty v Board of Trustees*, 22 AD2d 111.

It is the determination of this Court that the subject matter of Local Law 2011 is purely local in nature and not in conflict with the State Constitution or State Legislation. *Konz v Bedell*, 273 AD 777.

Moreover, petitioner's argument that a referendum is required is misplaced. A referendum can be held only pursuant to constitutional or statutory authority. *See Mills v Sweeney*, 219 NY213. In *Matter of McCabe v Voorhis*, 243 NY 401 at p. 413, the Court stated:

> "The power to provide for a referendum must be found in the City Home Rule (citations omitted). Otherwise it is unauthorized . . . Government by representation is still the rule. Direct action by the people is the exception."

There is no provision in any local law or any other law of the State including the constitution requiring a referendum in connection with the subject matter of this litigation.

The petitioners/plaintiffs' motions pursuant to CPLR Article 78 and 3001 to reverse and annul Local Law 18-2010 and for a judgment declaring it invalid are denied. In view of the foregoing, whether or not the individual plaintiffs have standing to contest the legislation (*see New York State of Ass'n of Nurse Anesthetists v Novello*, 2 NY3d 207, 211) is irrelevant. The County's motion, pursuant to CPLR 3211(a)(3) and (7), asserting that Ms. Hafner and Ms. Weiner lack capacity to sue and to dismiss their complaint due to its failure to state a cause of action is academic.

This decision is the order of the Court. All proceedings under Index Nos. 3280/11, 4193/11 and 4381/11 are terminated.

DATED JAN 04 2012

A.J.S.C.
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ENTERED
JAN 06 2012
NASSAU COUNTY
COUNTY CLERK'S OFFICE