

STATE OF MICHIGAN
COURT OF APPEALS

Publication Docket

2/17/2015

Panel : Judges Mark Boonstra, Pat Donofrio, Elizabeth Gleicher

1. Vote: _____ 316422-C KENT COUNTY PROSECUTING ATTORNEY V CITY OF
GRAND RAPIDS

LC#:12-011068 CZ Submitter: LSMITH2

Publication Request Filed by Party#: 3

Answer Due: 2/6/2015

Call Date: November/2014 Item#:17

Opinion Date: 1/8/2015

Disposition Due: 3/3/2015

2. Vote: _____ 316422-C KENT COUNTY PROSECUTING ATTORNEY V CITY OF
GRAND RAPIDS

LC#:12-011068 CZ Submitter: LSMITH2

Publication Request Filed by Party#: 2

Answer Due: 2/11/2015

Call Date: November/2014 Item#:17

Opinion Date: 1/8/2015

Disposition Due: 3/3/2015

PLEASE NOTE:

Unanimity Requirement. Publication may not be ordered except by unanimous vote.

Automatic Denial After Due Date. Failure to provide the clerk's office with the panel's decision on or before the Disposition Due date stated above will result in a clerk's notification to the parties that the request has been denied. MCR 7.215(D)(3).

Certification re Conflict Rule. The authoring judge is responsible for advising the presiding judge, in writing, that a subsequent published opinion on the same issue was not released between the time that this opinion was issued and the time that publication is ordered. Such an opinion would be binding precedent on the issue under MCR 7.215(J). Denial of this publication request would avoid any possible violation of that court rule.

Publication of PC with Dissent. By vote of the judges at the December 1987 Judges' Meeting, *initial* publication of a PC with a dissent is barred and such an opinion is to be *initially* released as an authored opinion with a dissent. However, this policy does not apply to an

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January 23, 2015

Michigan Court of Appeals
Third District – Clerk of the Court
State of Michigan Building
350 Ottawa, NW
Grand Rapids, MI 49503-2349

Re: Request to Publish
Kent County Prosecuting Attorney v City of Grand Rapids, et al, unpublished
per curiam opinion of the Court of Appeals issued January 8, 2015
(Docket No. 316422)

Dear Court of Appeals:

Intervening Defendant DeCriminalizeGR requests, pursuant to MCR 7.215 (D), that the decision of the Court of Appeals in this matter be published for the reasons that the opinion construes a provision of a constitution and statute, MCR 7.215 (B) (2); reaffirms a principle of law not applied in a recently reported decision, *Id.*, (B) (4); and involves legal issues of continuing public interest, *Id.*, (B) (5).

A critical legal issue of continuing public interest is the authority of a local municipal government over its police force. This issue is currently at the forefront of national discussion. The Plaintiff-Appellant argued strenuously that “a city cannot limit the authority of its police force to enforce state law.” *Kent County Prosecuting Attorney v City of Grand Rapids, et al*, unpublished per curiam opinion of the Court of Appeals, issued January 8, 2015 (Docket No. 316422), p 5.

This Court held that under Michigan law a city indeed has the authority to limit when its police force exercises its discretion to enforce state law.

Because the use of the word “may” in MCL 764.15(1) denotes discretionary behavior, see *Walters v Nadell*, 481 Mich 377, 383; 751 NW2d 431 (2008), a local police officer has discretion, and is not required by law, to make arrests in connection with violations of state law. Thus, we see no conflict with state law when a city exercises its authority over its police department by limiting when its police force should exercise that discretion.” [*Id.*, p 6.]

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It is highly important that the resolution of this issue of continuing public interest be published in a precedentially binding decision.

Furthermore, decriminalization of marijuana by Michigan Home Rule Cities continues to be a matter of public interest. See: <http://michiganradio.org/post/these-14-cities-michigan-have-passed-laws-decriminalizing-marijuana-possession-and-use>. Publication of the instant opinion will provide needed guidance in this area.

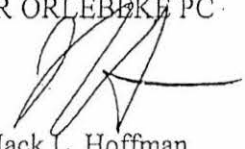
Finally, the opinion construes important provisions of Article VII, Local Government, of the Constitution of 1963 and of the Home Rule Cities Act and reaffirms the fundamental principle "that home rule cities enjoy not only those powers specifically granted, but they may also exercise all powers not expressly denied." *Id.*, p 3.

For the above reasons, Intervening Defendant-Appellee requests that the opinion be published.

Very truly yours,

KUIPER ORLEBEKE PC

By:


Jack L. Hoffman

JLH/clg

cc: Catherine M. Mish
William A. Forsyth
Michigan Supreme Court

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January 28, 2015

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Michigan Court of Appeals
State of Michigan Building
350 Ottawa Ave. NW
Grand Rapids, MI 49503

Re: Kent County Prosecuting Attorney v. City of Grand Rapids et al, Doc No. 316422
Publication Request

Dear Court of Appeals:

Defendant-Appellee City of Grand Rapids respectfully requests that this Court publish its January 8, 2015 opinion in the above-referenced matter. The opinion affirms the Kent County Circuit Court's ruling that Grand Rapids City Charter Title XVIII, Sec. 22 (Compiler's Paragraph 292), which (among other things) creates a civil infraction for possession of marijuana, is not directly preempted by state law. The opinion satisfies four of the eight standards for publication. To wit:

MCR 7.215(B)(2) construes provisions of the state constitution and statutes

The opinion construes several provisions of law. In particular, the Court construed Const 1963, art 7 § 22, and art 7 § 34 to render the statutory canon of *expressio unius exclusio alterius* "inapplicable to limit a home rule city's power" *Id.*, at *3-4. Additionally, the Court construed several statutes in order to determine that the City Charter Amendment was not in direct conflict with any state statute, including:

- Provisions of the Home Rule City Act, particularly, MCL 117.36, 117.41(3), and MCL 117.4b through § 4r. (*Id.* at *3, *4)
- Provisions of the Public Health Code, particularly, MCL 333.7401(2)(d), MCL 333.7403(2)(d), MCL 333.26424, and MCL 333.26428. (*Id.* at *3, *4)
- MCL 49.153, regarding the powers of a prosecuting attorney. (*Id.* at *5).
- MCL 674.15 regarding the powers of peace officers (*Id.* at *6).

The sheer number of statutes construed in this opinion makes publication appropriate, particularly where, this opinion is the first time all of these statutes have been construed together.

MCR 7.215(B)(6), criticizes existing law, and MCR 7.215(B)(7), creates a conflict of authority

The opinion is critical of *Joslin v Fourteenth Dist Judge*, 76 Mich App 90, 96; 255 NW2d 782 (1977), finding, in part, that *Joslin*'s holding conflicts with generally recognized legal principles. See *Id.* at *6. Accordingly, publication is appropriate under MCR 7.215(B)(7) because this opinion resolves, or at least recognizes for the first time, an apparent conflict in published case law. Moreover, while this Court is not bound by *Joslin* due to its age, MCR 2.715(J)(1), *Joslin* remains binding law on future litigants and lower courts under the rule of *stare decisis*. MCR 7.215(C). Publication of the instant opinion, therefore, is appropriate under MCR 7.215(B)(6) because the opinion is critical of existing law.

MCR 7.215(B)(5) involves a legal issue of continuing public interest

Grand Rapids is not the only home-rule city to have on its books a charter amendment like the one reviewed in this opinion. The Grand Rapids amendment was modeled after a similar provision found in the Ann Arbor City Charter.¹ Following the passage of Grand Rapids' charter amendment in 2012, voters in other cities have passed initiatives amending their city charters in order to guide or limit city law enforcement officers on enforcement of marijuana-related conduct.² Voters in home rule cities across the state will continue to exercise their right to place similar initiatives on the ballot. In fact, voters in the City of Montrose, will decide on February 24, 2015, whether to amend their city charter to limit enforcement of city ordinances pertaining to marijuana.³ The legal issues presented in this opinion are of continuing public interest.

For these reasons, the City asks that this Court publish its opinion in the above-referenced case.

Respectfully submitted,



Catherine Mish (P52528)
City Attorney
City of Grand Rapids

CC: Clerk of the Supreme Court
William A. Forsyth, Plaintiff-Appellant Kent County Prosecutor
Jack L. Hoffman, for Defendant-appellee Decriminalize GR

¹ Ann Arbor City Charter, Ch. 16, Sec. 16.2.

² See, e.g., Huntington Woods City Charter Chapter VI, Sec. 16; Lansing City Charter, Art. 8, Chapter 5, Sec 8-501; Mount Pleasant City Charter, Art XIV, Sec. 7; Oak Park City Charter, Chapter 8, Sec. 8.15; and Saginaw City Charter, Chapter IV, Sec. 24(a).

³ Ballot language available at: <https://vote.michigan.gov/mvic/PublicBallot.aspx>