

STATE OF MICHIGAN
COURT OF APPEALS

DETROIT INTERNATIONAL BRIDGE
COMPANY,

Petitioner/Appellee,

v

CITY OF DETROIT,

Defendant/Appellant.

UNPUBLISHED
September 14, 2006

No. 257369
Wayne Circuit Court
LC No. 01-123461-AV

CITY OF DETROIT,

Plaintiff/Counter-
Defendant/Appellant,

v

AMBASSADOR BRIDGE COMPANY a/k/a
DETROIT INTERNATIONAL BRIDGE
COMPANY,

Defendant/Counter-
Plaintiff/Appellee.

No. 257415
Wayne Circuit Court
LC No. 01-106546-CZ

Before: Hoekstra, P.J. and Wilder and Zahra, JJ.

PER CURIAM.

In this consolidated appeal, the City of Detroit (the City) appeals by leave granted a July 27, 2004 “final order for declaratory and injunctive relief,” entered by the circuit court following twelve days of evidentiary hearings.

I. Basic Facts and Proceedings

DIBC owns the American side of the Ambassador Bridge (Bridge),¹ which spans the Detroit River connecting Detroit with Windsor, Canada. Congress authorized its construction in 1906 pursuant to the “Authorization Act of Congress—Ambassador Bridge 66th Cong., Sess. III Chp. 167 S.4903 (March 4, 1921)” (Authorization Act), which states, in part, that:

Be it enacted by the by the Senate and the House of Representatives of the United States of America in Congress assembled. The consent of the Congress is hereby granted to American Transit Company, its successors and assigns, to construct, maintain, and operate a bridge and approaches thereto across the Detroit River at a point suitable to the interests of navigation, within or near the city limits of Detroit, Wayne County, Michigan in accordance with the provisions of the Act entitled “An Act to regulate the construction of bridges over navigable waters,” approved March 23, 1906: *Provided*, That before the construction of the said bridge shall be begun all proper and requisite authority shall be obtained from the Government of the Dominion of Canada.[²]

The Detroit City Counsel approved construction of the Bridge in the City of Detroit on May 24, 1927, pursuant to Ordinance No. 27-C, which provides in relevant part, that:

Section 1. The American Transit Company, its successors and assigns, in constructing and maintaining its international bridge for travel between the City of Detroit and Canada . . . is hereby permitted and authorized to construct and maintain the said bridge and its approaches over and across all streets and alleys between Twenty-first and Twenty-second streets, between the north line of Howard Street and the Detroit River, between the north line of Howard Street and the Detroit River, in the City of Detroit

Sec 2. In the construction and, maintenance and operation of said bridge and approaches, including the drainage thereof, insofar as the same is within the City of Detroit, all valid applicable regulations by the laws of the United States of America or the State of Michigan, or Charter or ordinance of the City of Detroit, or police regulations of the City of Detroit including all reasonable traffic regulations, shall be complied with by the American Transit Company, its successors and assigns, and the work thereof shall be subject to inspection and supervision by the officials of the City of Detroit having jurisdiction of the enforcement of such regulations, and any connection with any storm or sanitary sewers shall be made only under the direction of the Department of Public Works of Detroit.[³]

¹ DIBC’s wholly owned subsidiary, the Canadian Transit Company, owns the Canadian side of the Bridge.

² DIBC succeeded the American Transit Company as owner of the Bridge.

³ Section 1 of the above ordinance was amended on February 7, 1928, to allow for a wider bridge at Howard Street.

On April 17, 1991, the Detroit City Council passed Ordinance No. 10-91, which provides in part, that:

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT:

Section 1. That Chapter 61 of the 1984 Detroit City Code be amended by amending District Map No. 42 of Ordinance 390-G, the Official Zoning Ordinance, as follows:

That District Map No. 42 be amended to show a B6 zoning classification where R2, R3, R5 B4 and M3 zoning classifications are currently shown for property bounded by Porter Street to the north, the eastern edge of the Ambassador Bridge and Plaza and the plane extending from that edge to the ground along the east, Fort Street to the south, W. Grand Boulevard to the west and the Fisher Freeway Service Drive to the Northwest.

DIBC constructs large walls around the Bridge to enclose an area that is referred to as “bridge plaza,” “bridge complex,” “federal compound” or “sterile zone” (hereafter referred to as the “Bridge Plaza”). Until 1991, the eastern edge of the Bridge Plaza extended east near to 21st Street. Daniel Stamper, president of DIBC, testified that in 1991, United States Customs & Immigration (Customs) inspected cars and trucks in an area east of 21st Street. Further, the size of the Bridge Plaza in 1991 is reflected on District Zoning Map No. 42, which, as amended in 1991, indicates B6 zoning classifications for “the eastern edge of the Ambassador Bridge and Plaza” extending east almost to 21st Street.

Stamper also testified that DIBC acquired several properties adjoining the eastern edge of the 1991 Bridge Plaza. He stated that sometime around 1991, Customs sought this property to construct additional primary inspection booths and a commercial inspection facility. Around this time, Bridge traffic had significantly increased as a result of the North Atlantic Free Trade Agreement. See 32 ILM 605 (1993). The General Services Administration (GSA) successfully condemned the mentioned DIBC-owned property adjoining the eastern edge of the Bridge to then 20th Street. Although the GSA constructed the commercial inspection facility entirely on the condemned property (west of then 20th Street), some of the primary inspections booths and a portion of parking area are located on property east of then 20th Street, which is property still owned by DIBC.

After the additional primary inspection booths, parking area and commercial inspection facility had been constructed, DIBC relocated the east wall of the Bridge Plaza to an alley that runs between 20th Street and St. Anne, which expanded the 1991 Bridge Plaza. In relocating the wall, DIBC not only enclosed the property that GSA had condemned to build a commercial inspections facility, but also enclosed some of its own property located between 20th Street and

the alley behind St. Anne. Stamper testified that DIBC decides where to erect the walls and a federal agency approves.⁴

To purportedly alleviate significant traffic backups in Windsor, DIBC planned to begin collecting tolls after traffic has alighted from the Bridge, with the intention that Customs of both countries would also relocate and conduct inspections before traffic enters onto the Bridge. In accordance with the plan, DIBC initially sought to construct 11 passenger vehicle tollbooths at 3031-3033 Porter Street (Project 1); construct 11 diesel fuel pumps at 3400 West Lafayette (Project 2), the duty-free store, which currently has only 6 diesel pumps and 20 gasoline pumps; and construct 7 truck tollbooths with scales at 2744 West Fort Street (Project 3).

DIBC submitted plans to the City for Project 3 on August 14, 2000, and petitioned to vacate streets and alleys underlying Project 3 on August 21, 2000. On August 30, 2000, the City's Traffic Engineering Department sent a letter to DIBC rejecting the plan for Project 3, indicating that DIBC needed to address pedestrian traffic and other related concerns. Sometime in January 2001, DIBC applied for building permits with the City's Building and Safety Engineering Department (BSE) in connection with all three Projects. DIBC began construction on the Projects "around the same time" it applied for the building permits. DIBC conceded that it began work without building permits for any Projects or permission to vacate streets and alleys in regard to Project 3. Despite the City posting stop-work orders at the sites, DIBC continued work on the Projects and the City eventually issued some 34 or 35 tickets to DIBC for its refusal to stop work.

In addition, on February 14, 2001, the City's Department of Buildings and Safety Engineering (BSE) "den[ie]d] permission to construct eleven (11) passenger tollbooths, . . . to construct seven (7) truck tollbooths with scales . . . and to construct eleven (11) diesel pumps islands onto existing motor filling station with duty free store." The BSE denied the building permits because all three Projects were in violation of the Detroit zoning ordinances. In sum, the BSE determined that it was without power to issue building permits because every Project required either an expansion of a nonconforming use or a use variance, and some Projects required a combination of both. Only the BZA can grant an expansion of a nonconforming use or a use variance.

On February 23, 2001, the City requested and received a temporary restraining order against DIBC enjoining work at the Projects pending a hearing. On February 26, 2001, the City filed a "complaint for preliminary injunction, permanent injunction, and other equitable relief" against the DIBC. The City essentially claimed that DIBC continued to construct the Projects without building permits, and that the Projects were in violation of Detroit zoning ordinances.

DIBC filed a response on March 15, 2001, requesting summary disposition on the basis that "any attempt by the City to enforce its zoning and building ordinances against DIBC to be precluded, due to federal preemption." In its brief in support of the motion, DIBC specifically argued that local ordinances do not apply to the Projects because the Projects are within the

⁴ Stamper did not indicate which agency approves the location of the perimeter wall.

confines of the Bridge Plaza, which is “maintained under contract with the federal government for the essential governmental purposes of conducting customs, naturalization and border control functions.” Alternatively, DIBC claimed the Projects were in “compliance with a special zoning ordinance [specifically, Ordinance No. 10-91] passed to control construction and maintenance activities concerning the bridge.” On March 20, 2001, DIBC also filed a counterclaim against the City, alleging that DIBC “is lawfully engaged in construction activities relative to the . . . Bridge,” and that the City “is unlawfully impeding progress on its project . . . [because it has] unreasonably delayed in the processing and issuing of building permits.” The circuit court found that, “in order to make a determination on the issue of federal preemption it will be necessary to conduct a hearing and determine facts that appear to be in dispute in this case.”

Following the hearings, the circuit court issued an “Interim Order for Partial Declaratory Judgment of July 12, 2001” finding that “the Bridge was a federal instrumentally and that zoning laws cannot be applied to prevent the Bridge from utilizing for lawful purposes property within the Bridge Complex.” The circuit court “reserved ruling on the question of preemption of the City’s permitting and inspection requirements,” allowing the City to issue building permits for the Projects, which the City did shortly thereafter. Later, on July 27, 2004, the circuit court issued an opinion accompanied by a “Final Order for Declaratory Judgment and Injunctive Relief.” The opinion supplemented the interim order mentioned above by concluding “that the doctrine of field preemption precludes application of the local zoning ordinances to the property within the Bridge Complex.” The circuit court further concluded that “Congress has demonstrated its intent to occupy the field of regulation with respect to the Ambassador Bridge, its approaches and accessory works.” The circuit court eschewed addressing the question whether “DIBC’s status as a federal instrumentality or other federal preemption principles would serve as a basis for a declaration by the [c]ourt that local building and construction permit regulations may or may not be applied to the DIBC within the Bridge Complex.” This appeal ensued.⁵

II. Standard of Review

This Court gives regard “to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it,” and will not set aside “[f]indings of fact by the trial court” . . . unless clearly erroneous.” MCR 2.613(c). A finding is clearly erroneous when the reviewing court is left with the definite and firm conviction that a mistake has been committed.” *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

Questions implicating whether federal law preempts local law are questions of law. *Nelson v Associates Financial Services Co of Indiana*, 253 Mich App 580, 587; 659 NW2d 635

⁵ This Court granted a motion to file an amicus curiae brief on behalf of “Michigan Municipal League, Bagley Housing Association, Bridge Watch Detroit, Mexicantown Community Development Corporation, Ste. Anne’s Catholic Church, Southwest Detroit Business Association Inc, and People’s Community Services of Metropolitan Detroit.” *City of Detroit v Ambassador Bridge Company*, unpublished order of the Court of Appeal, entered July 6, 2005 (Docket No. 257415).

(2002), citing *Oakland Co Bd of Rd Comm'rs v Michigan Prop & Cas Guar Ass'n*, 456 Mich 590, 610, 575 NW2d 751 (1998) and *Konynenbelt v Flagstar Bank, FSB*, 242 Mich App 21, 27; 617 NW2d 706 (2000). “We review de novo questions of law.” *Fultz v Union-Commerce Associates*, 470 Mich 460, 463; 683 NW2d 587 (2004), citing *Byker v Mannes*, 465 Mich 637, 643; 641 NW2d 210 (2002).

III. Federal Instrumentality

The City argues DIBC is not a federal instrumentality. We agree.

A federal instrumentality is defined as “[a] manner or means used by the federal government to implement or carry out a federal law or function;” “[a] governmental agency immune from state control.” Black’s Law Dictionary, 6th ed. The consequence of “[d]esignating an entity a federal instrumentality colors the typical preemption analysis by requiring the court to presume, in the absence of clear and unambiguous congressional authorization to the contrary, that Congress intended to preempt state or local regulation of the federal instrumentality.” *Mount Olivet Cemetery Ass’n v Salt Lake City*, 164 F3d 480, 486 (CA 10, 1998), citing *Don’t Tear It Down, Inc v Pennsylvania Ave Dev Corp*, 206 US App DC 122, 130-131 (1980).

“There is no bright line rule or specific test to determine if an entity is a federal instrumentality.” *Mount Olivet Cemetery Ass’n, supra*, citing *T I Federal Credit Union v DelBonis*, 72 F3d 921, 931 (CA 1, 1995). “Courts therefore have looked to a variety of factors to make this determination.” *Id.* (Citations omitted).

Here, the circuit court relied on the factors cited in *United States v Michigan*, 851 F2d 803 (CA 6, 1998), in which the court concluded that federal credit unions were federal instrumentalities immune from state tax liability. The Sixth Circuit specifically considered: (1) the purpose for which the entity was created; (2) whether the entity continues to perform that function; and (3) the amount of the federal government’s control and involvement with the entity. *Id.* at 806.

The circuit court specifically found that “the Bridge was constructed for the purpose of facilitating interstate and international commerce,” which is “obviously an important federal purpose.” The circuit court also found that the federal government exercised significant control over DIBC because (1) the Secretary of Transportation must approve Bridge related construction, (2) the Bridge Act of 1906 indicates that Congress intended there be strong and substantial federal control over the Bridge, and (3) federal agencies have strong and substantial control over the activity within the Bridge Plaza. *Id.* at 8-12. In support of its conclusion that DIBC was a federal instrumentality, the circuit court stated that DIBC is engaged in a uniquely federal activity, and that DIBC can employ condemnation power, which is generally reserved to the government.

While we agree with the circuit court that the *Bridge* was constructed to facilitate interstate and international commerce, we cannot agree with the circuit court that *DIBC* was constructed to facilitate interstate and international commerce. Rather, *DIBC* merely,

. . . owns, maintains, and operates a bridge between Michigan and Canada across the Detroit river; that for passing over this it demands and collects tolls

from vehicles and pedestrians. It ‘conveys no persons or goods across the international boundary line. It merely collects tolls from such persons as use it (the [B]ridge). It provides an instrumentality which others may use in conducting foreign commerce.’ [*Detroit International Bridge Co v Corporation Tax Appeal Board of State of Michigan*, 294 US 83, 85; 55 S Ct 332; 79 L Ed 777 (1935).]

Thus, the circuit court’s finding that DIBC was constructed for the purpose of facilitating interstate and international commerce is clearly erroneous.

In addition, we conclude that the circuit court clearly erred in finding sufficient federal government control over DIBC to designate it a federal instrumentality. Our Supreme Court has previously made clear that the federal government “did not originate, adopt, nor aid the [Bridge],” and that the federal government’s control over the Bridge, and by extension, DIBC, “is merely supervisory and permissive.” *Detroit International Bridge Co v American Seed Co*, 249 Mich 289, 298; 228 NW791 (1930) (*American Seed Co*).

Further, the Bridge itself is not an instrumentality exclusive to the federal government. Our Supreme Court has previously recognized that the Bridge does not exclusively serve a federal purpose. In *American Seed Co*, *supra* 297-298, our Supreme Court expressly rejected the claim that the “state cannot lawfully delegate exercise of its sovereign power of eminent domain to [DIBC] . . . because the [B]ridge, being used for commerce with another nation, is exclusively a federal purpose.” *Id.* at 297. In rejecting the claim, the Court stated that:

The bridge is not exclusively a national or state purpose. The federal government is interested in it by virtue of its constitutional authority over navigation, interstate and foreign commerce and post roads. But it did not originate, adopt, nor aid the project. Its function is merely supervisory and permissive. The state is interested in the extension of its highway system to the state boundary in the Detroit river, an indubitably state purpose, and is the source of the power to construct the bridge. [*American Seed Co*, *supra* at 298.]

Our Supreme Court supported the above statement citing to the United States Supreme Court’s rejection of a claim that “this is an international bridge, and that Congress has assumed such control of it as to exclude any intermeddling by the State.” *International Bridge Co v New York*, 254 US 126, 131; 41 S Ct 56; 65 L Ed 176 (1920). In rejecting this claim, the United States Supreme Court reiterated that “the mere fact that the bridge was [international] would not of itself take away part of the power of the State over its part of the structure if Congress were silent, any more than the fact it was a passageway for interstate commerce or crossed a navigable stream.” *Id.* at 133. Because the Bridge is not an instrumentality exclusive to the federal government, DIBC cannot properly be considered a federal instrumentality.

Further, the only witnesses from the federal government, Donald Melcher, an architect project manager from the United States General Services Administration (GSA), and Kevin Weeks, Director of Field Operations at the United States Customs & Immigration, did not support DIBC’s claim. Even viewing the evidence in a light most favorable to DIBC, the record only shows that Weeks did not believe the Projects would interfere with Customs’ operations. But Weeks clearly indicated that, in regard to construction of the tollbooths, Customs would “ultimately pass that issue to the [GSA.]” Melcher at no point approved the Projects and even

testified that he was not convinced the Projects would relieve traffic problems. The twelve days of evidentiary hearings produced no evidence that federal agencies actually encouraged DIBC to undertake any of the Projects. Because the lower court record does not reveal that the federal government suggested or otherwise compelled DIBC undertake any of the Projects, we cannot conclude that there is any evidence that the federal government exercised control over DIBC's decision to undertake the Projects.

Last, in the case perhaps most analogous to the instant case, *Mount Olivet Cemetery Ass'n, supra*, the United States Court of Appeals for Tenth Circuit rejected the plaintiff's claim that it was an federal instrumentally, immune from local zoning regulations. In doing so, the court cataloged factors relied on by the United States Supreme Court in determining whether an entity is a federal instrumentality:

Lebron v National RR Passenger Corp, 513 US 374, 397-98; 115 S Ct 961; 130 L Ed 2d 902 (1995) (whether government officers handle and control its operations; whether officers of entity are appointed by government); *United States v Boyd*, 378 US 39, 45; 84 S Ct 1518; 12 L Ed 2d 713 (1964) (whether entity is organized for profit and using property "in connection with its own commercial activities"); *United States v Township of Muskegon*, 355 US 484, 486; 78 S Ct 483; 2 L Ed 2d 436 (1958) (whether governmental control over entity is such that it "could properly be called a 'servant' of the United States in agency terms"); *Cherry Cotton Mills, Inc v United States*, 327 US 536, 539; 105 Ct Cl 824; 66 S Ct 729; 90 L Ed 835 (1946) (whether entity is supported by governmental aid; whether entity's profits are distributed to and its losses borne by government); *Clallam County, Wash v United States*, 263 US 341, 343; 44 S Ct 121; 68 L Ed 328 (1923) (whether entity is owned by government) . . . [*Mount Olivet Cemetery Ass'n, supra*.]

Here, none of the factors listed in *Mount Olivet Cemetery Ass'n, supra*, support designating DIBC a federal instrumentality. Federal agencies do not now operate or maintain the Bridge. Rather, federal agencies only assert control over DIBC employees to accomplish their own limited operational objectives. The federal government does not appoint DIBC's officers. DIBC is a private Michigan corporation using the Bridge and accessory buildings for its own commercial activities. Also, governmental control over DIBC is "supervisory and permissive," *American Seed Co, supra* at 298, thus not so pervasive to allow DIBC to claim it is a "servant" of the United States in agency terms. Last, federal aide does not support DIBC and the federal government does not receive DIBC's profits or bear its losses. According to all of the above authorities, DIBC has not established itself as a federal instrumentality. Therefore, this Court is not required to "presume, in the absence of clear and unambiguous congressional authorization to the contrary, that Congress intended to preempt state or local regulation of the federal instrumentality." *Mount Olivet Cemetery Ass'n, supra*, citing *Don't Tear It Down, Inc, supra*.

IV. Preemption

The City argues that federal law does not preempt the City from enforcing Detroit zoning ordinances to construction Projects within the Bridge Plaza. We agree.

The law of federal preemption provides that:

Congress' power to preempt state and local law derives from the Supremacy Clause of the United States Constitution, which provides "the Laws of the United States . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Art. VI, cl 2. Preemption may occur in three situations: (1) express preemption, which occurs when the language of the federal statute reveals an express congressional intent to preempt state law . . . ; (2) field preemption, which occurs when the federal scheme of regulation is so pervasive that Congress must have intended to leave no room for a State to supplement it; and (3) conflict preemption, which occurs either when compliance with both the federal and state laws is a physical impossibility, or when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. [*Mount Olivet Cemetery Ass'n, supra.*]

The parties agree that Congress did not expressly preempt application of Detroit zoning ordinances. The issues thus are whether "the federal scheme of regulation is so pervasive that Congress must have intended to leave no room for a State to supplement it" or "compliance with both the federal and state laws is a physical impossibility, or when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" *Id.*

In addition, we note that,

[i]n addressing preemption, we note that, "[l]and use policy such as zoning customarily has been considered a feature of local government and an area in which the tenets of federalism are particularly strong." *Mount Olivet Cemetery Ass'n, supra* at 487, citing *Evans v Board of County Comm'rs*, 994 F2d 755, 761 (CA 10, 1993). "A local government has broad power to implement its land use policies by way of zoning classifications." *Id.* citing *Schad v Borough of Mount Ephraim*, 452 US 61, 68; 101 SCt 2176; 68 L Ed 2d 671 (1981). Under such circumstances, courts "begin the assumption that the historic police powers of the States were not to be superseded . . . unless that was the clear and manifest purpose of Congress." *Id.*, citing *Wisconsin Pub Intervenor v Mortier*, 501 US 597, 605; 111 S Ct 2476; 115 L Ed 2d 532 (1991) and *Florida Lime & Avocado Growers, Inc v Paul*, 373 US 132, 146-47; 83 S Ct 1210; 10 L Ed 2d 248 (1963).

At oral argument, DIBC counsel suggested that, even absent a determination of federal instrumentality, this Court need not begin with "the assumption that the historic police powers of the States were not to be superseded." *Mount Olivet Cemetery Ass'n, supra* (citations omitted). In support, DIBC cites *Locke v United States*, 529 US 89; 120 S Ct 1135; 146 L Ed 2d 69 (2000), for the proposition that "an 'assumption' of non-pre-emption is not triggered when the State regulates in an area where there has been a history of federal presence." *Id.* at 108. *Locke* further states:

The state laws now in question bear upon national and international maritime commerce, and in this area there is no beginning assumption that concurrent regulation by the State is a valid exercise of its police powers. Rather, we must ask whether the local laws in question are consistent with the federal

statutory structure, which has as one of its objectives a uniformity of regulation for maritime commerce. No artificial presumption aids us in determining the scope of appropriate local regulation . . . does preserve . . . the historic role of the States to regulate local ports and waters under appropriate circumstances. [*Locke, supra* at 108-109.]

DIBC's reliance on *Locke* is misplaced. *Locke* addressed a question of concurrent regulation by the State. Here, as shown below, there is no federal statute, regulation or rule that regulates the land use of areas immediately surrounding an international Bridge. Further, there are no federal statutes, let alone statutory structure, that are inconsistent with Detroit's zoning ordinances.

A. Field Preemption

Even assuming that there is no presumption of pre-emption, DIBC's claim of pre-emption fails because DIBC has not shown any federal statute, rule or regulation that is inconsistent with Detroit's zoning ordinances.

In support of its field preemption claim, DIBC relies on the Authorization Act, and the Bridge Act of 1906, which the Authorization Act incorporates. Again, the Authorization Act states:

Be it enacted by the by the Senate and the House of Representatives of the United States of America in Congress assembled. The consent of the Congress is hereby granted to American Transit Company, its successors and assigns, to construct, maintain, and operate a bridge and approaches thereto across the Detroit River at a point suitable to the interests of navigation, within or near the city limits of Detroit, Wayne County, Michigan in accordance with the provisions of the Act entitled "An Act to regulate the construction of bridges over navigable waters," approved March 23, 1906: *Provided*, That before the construction of the said bridge shall be begun all proper and requisite authority shall be obtained from the Government of the Dominion of Canada.

The above Authorization Act, besides incorporating the Bridge Act of 1906, does not establish any degree of federal regulation of DIBC. Rather, the Authorization Act merely reflects that Congress *granted consent* to DIBC's predecessor to construct, maintain, and operate a bridge and approaches of the Bridge over navigable waters. As the United States Supreme Court has explained, congressional authorization to build a bridge:

. . . does not make Congress the source of the right to build but assumes that the right comes from another source, that is, the State. It merely subjects the right supposed to have been obtained from there to the further condition of getting from Congress consent to action upon the grant. [*International Bridge Co, supra*, at 133.]

Thus, Congressional authorization is merely a further condition to allow the Bridge to be built.

In addition, the Bridge Act of 1906 does not show a federal scheme of regulation so pervasive to evince Congress' intent to preempt Detroit zoning ordinances. In addressing the Bridge Act of 1906, the circuit court held:

Section 491 requires: “. . . plans and specifications for its construction, together with such drawings of the proposed construction and such map of the proposed location as may be required for a full understanding of the subject . . .” to be submitted to and approved by the Secretary of Transportation. It goes on to say, “. . . and when the plans . . . have been approved by the Secretary it shall not be lawful to deviate from such plans, either before or after completion of the structure, unless the modification of such plans has previously been submitted to and received the approval of the Secretary.” Earlier in Section 491, it states that the bridge may not be constructed until, “. . . the Secretary shall have approved such plans and specifications and the location of such bridge and accessory works.” Consequently it seems clear that the Secretary of Transportation must approve plans, specifications, location and accessory works and “any modifications thereto” even after the initial consideration. This Court assumes that the accessory works includes such things as are reasonably necessary and related to operation and maintenance of the bridge.

Section 491 provides:

When, after March 23, 1906, authority is granted by Congress to any persons to construct and maintain a bridge across or over any of the navigable waters of the United States, such bridge shall not be built or commenced until the plans and specifications for its construction, together with such drawings of the proposed construction and such map of the proposed location as may be required for a full understanding of the subject, have been submitted to the Secretary of Transportation for the Secretary's approval, nor until the Secretary shall have approved such plans and specifications and the location of such bridge and accessory works; and when the plans for any bridge to be constructed under the provisions of sections 491 to 498 of this title, have been approved by the Secretary it shall not be lawful to deviate from such plans, either before or after completion of the structure, unless the modification of such plans has previously been submitted to and received the approval of the Secretary. [33 USC 491.]

Even accepting the circuit court's reading of the Bridge Act of 1906, i.e., that the Secretary of Transportation must approve the instant Projects as accessory works after the Bridge has been constructed, section 491 does not reflect a pervasive federal scheme of regulation. Just as the Authorization Act requires the further condition of getting from Congress consent to build a bridge, so also does the Bridge Act of 1906 require the further condition of getting from Secretary of Transportation consent to build a bridge. Thus, the Bridge Act of 1906 supposes that the source of the right to build has approved the construction of a bridge. And while the Bridge Act of 1906 requires plans and specifications to enable “a full understanding of the subject,” there is no suggestion that the Secretary of Transportation considers land use or regulates the actual construction of the bridge. More important, there is no indication in the lower court record that DIBC sought or received approval from the Secretary of Transportation to undertake the Projects. Thus, we reject DIBC's claim that the Bridge Act of 1906 imposed on

DIBC a federal scheme of regulation so pervasive to evince Congress' intent to preempt Detroit zoning ordinances. Accordingly, DIBC has failed to show a claim of field preemption.

B. Conflict Preemption

Here, DIBC can physically comply with both federal and state law. DIBC has not presented evidence of any federal law, regulation or rule that requires DIBC to violate Detroit zoning ordinances. DIBC has failed to establish its claim of conflict preemption in this regard. See *Wayne County Bd of Com'rs v Wayne County Airport Authority*, 253 Mich App 144, 198; 658 NW2d 804 (2002).

DIBC argues that Detroit zoning ordinances “stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Mount Olivet Cemetery Ass’n, supra*. As previously stated, neither the Authorization Act or the Bridge Act of 1906 indicates that Detroit’s zoning ordinances cannot be applied to immediately surrounding the Bridge. “[A] court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself.” *Roberts v Mecosta County General Hospital*, 466 Mich 57, 63; 642 NW2d 663 (2002). Thus, because the Authorization Act or the Bridge Act of 1906 does not evince full purposes and objectives of Congress that conflict with the Detroit zoning ordinances, DIBC’s claim of pre-emption fails in this regard.

V. Zoning

The City also appeals the circuit court’s order dismissing DIBC’s claim of appeal from the Detroit Board of Zoning Appeals (BZA) denial of zoning variances for the three construction projects as moot.⁶ However, given our conclusions that DIBC is not a federal instrumentality and that federal law does not preempt application of Detroit zoning ordinances, the zoning issues

⁶ In any event, the City, as respondent, is the party in whose favor the circuit court entered the order. Accordingly, the City’s pecuniary interest was not affected and it is not an aggrieved party entitled to an appeal.

To have standing to appeal means that a person must be “aggrieved” by a lower body’s decision. MCR 7.203(A). This Court has defined the term “aggrieved party” as ‘one whose legal right is invaded by an action, or whose pecuniary interest is directly or adversely affected by a judgment or order. It is a party who has an interest in the subject matter of the litigation.’ *Dep’t of Consumer & Industry Services v Shah*, 236 Mich App 381, 385; 600 NW2d 406 (1999). (citations omitted).

Thus, the City is presently without standing to challenge the dismissal of DIBC’s claim of appeal.

no longer appear moot. *In re Dudzinski Contempt*, 257 Mich App 96; 667 NW2d 68 (2003). We remand for further proceedings in this regard.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra