

STATE OF MICHIGAN
COURT OF APPEALS

WEST BLOOMFIELD TOWNSHIP,

Plaintiff-Appellant,

v

THE DETROIT EDISON COMPANY,

Defendant-Appellee.

UNPUBLISHED

November 13, 2001

No. 222497

Oakland Circuit Court

LC No. 99-015757-CZ

Before: Holbrook, Jr., P.J., and Cavanagh and Collins, JJ.

PER CURIAM.

This case involves questions about the scope of state and local public utility franchises and the extent of defendant Detroit Edison's right to construct an electrical substation in plaintiff West Bloomfield Township (Township) in the absence of a current local franchise. Defendant Edison or its predecessor corporations have provided electrical service to plaintiff Township since 1886. Edison, through its predecessor, provided service under a thirty-year local franchise granted in 1908, a thirty-year local franchise granted in 1938, and a twenty-year local franchise granted in 1972. In 1991, Township residents "suffered major outages," and Edison and the Township began to discuss the possibility of a new substation. Edison has not had a local franchise agreement with the Township since 1992.

At some point around 1996, Edison applied for special use and site plan approval to build a new substation. After a number of public hearings on the matter, the Township determined that Edison met all requirements for approval of their special use and site plan for the substation. At a point during the hearings, however, members of the public challenged the Township's authority to approve Edison's request in the absence of an effective local franchise agreement. The Township sought a declaratory judgment from the circuit court as to whether Township approval of Edison's plan was authorized by law. Edison responded with a motion for summary disposition. The trial court granted Edison's motion, concluding that Edison was authorized to provide electrical service even in the absence of a local franchise, and was authorized to build the substation under its vested state franchise. We affirm.

First, the Township argues that Edison's vested rights under the Foote Act, 1905 PA 264, 1915 CL 4841 (the Act), does not authorize Edison's construction of the subject substation. We find this argument to be without merit. Statutory interpretation is a question of law, which this Court reviews de novo on appeal. *People v Stone Transport, Inc*, 241 Mich App 49, 50; 613

NW2d 737 (2000). The primary rule of statutory construction is to ascertain and give effect to the intent of the Legislature. *People v Borchard-Ruhland*, 460 Mich 278, 284; 597 NW2d 1 (1999). To determine the Legislature's intent, this Court must first look to the specific language of the statute. *Id.* If the plain and ordinary meaning of the statute is clear, judicial construction is not permitted. *Id.*

The Act, which created a state franchise for public utilities, provided:

Any person, firm or corporation authorized by the laws of this State to conduct the business of producing and supplying electricity for purposes of lighting, heating and power, and which shall be engaged or which shall hereafter desire to engage in the business of the transmission of such electricity, shall have the right to construct and maintain lines of poles and wires for use in the transmission and distribution of electricity on, along, or across any public streets, alleys and highways and over, under or across any of the waters of the State, and to construct and maintain in any such public streets, alleys or highways all such erections and appliances as shall be necessary to transform, convert and apply such electricity to the purposes of lighting, heating and power, and to distribute and deliver the same to the persons, firms and public or private corporations using the same: *Provided*, That the same shall not injuriously interfere with other public uses of such streets, alleys or highways, or with the navigation of said waters, and that the designation and location of all lines of poles and wires shall be subject to the regulation, direction, and approval of the common council of cities, the village council of villages, and the township board of townships, as the case may be: *Provided*, That this act shall not apply to the county of Wayne: *Provided further*, That nothing herein shall deprive cities, villages or townships of the power and control over their streets and highways, which they have by the general laws of this State.

The Act was abrogated by Const 1908, art 8, § 28, which provided:

No person, partnership, association or corporation operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any city, village or township for wires, poles, pipes, tracks or conduits, without the consent of the duly constituted authorities or such city, village or township; nor to transact a local business therein *without first obtaining a franchise* therefor from such city, village or township. The right of all cities, villages and townships to the reasonable control of their streets, alleys and public places is hereby reserved to such cities, villages and townships. [Emphasis added.]

The Township argues that these two provisions conflict, in that Const 1908, art 8, § 28 requires a local franchise as a prerequisite for doing business, whereas the Act does not. The Township also contends that the framers of the 1908 Constitution intended to require local franchises and that the Township is entitled to require them under their police powers.

However, as the trial court correctly observed, our Supreme Court has already interpreted the interplay between § 28 and the Act, ruling that, despite the repeal of the Act, the grant of a state franchise to defendant's predecessor under that act created a vested property right "which cannot be impaired or destroyed by the Legislature, Constitution or court." *City of Lansing v Michigan Power Co*, 183 Mich 400; 150 NW 250 (1914). See also *Village of Constantine v Michigan Gas & Electric*, 296 Mich 719, 732; 296 NW 847 (1941)(observing that the Court held in *City of Lansing* "that a State franchise was a contract which could not be impaired by abrogation of Act No. 264, Pub. Acts 1905, by the Constitution of 1908"). Thus, Edison's state franchise carries with it both the right and the duty to "extend its distributing conduits so as to meet the reasonable requirements of the community." *Traverse City v Consumers Power Co*, 340 Mich 85, 100; 64 NW2d 894 (1954)(quoting *Russell v Sebastian*, 233 US 195, 209; 34 S Ct 517; 58 L Ed 912 (1914). Further, in light of the evidence that the Township's electrical service is currently provided through a power plant and many substations outside its borders, we are not persuaded by the Township's argument that Edison has no authority to build a substation that might also serve neighboring residents.

The Township exercised its statutory "power and control" over this matter when it approved Edison's site and use plan and the plain language of the Act authorizes construction of "all such erections and appliances as shall be necessary to transform, convert and apply such electricity . . . and to distribute and deliver the same." The statutory language is clear and further construction is not warranted. *Hills of Lone Pine Ass'n v Texel Land Co, Inc*, 226 Mich App 120, 124; 572 NW2d 256 (1997). Accordingly, the trial court did not err in granting summary disposition to defendant Edison.

Having determined that the building of a substation was authorized by Edison's state franchise, we need not address the Township's claim that, in the absence of a state franchise, a local franchise is required.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Mark J. Cavanagh

/s/ Jeffrey G. Collins