



April 27, 2023

Sent via E-mail & U.S. Mail

The Honorable Dan Kees
City of Holiday Island
110 Woodsdale Dr., Suite 103
Holiday Island, AR 72631
mayor@cityofholidayisland.com

In re: Holiday Island Ordinance 2022-004

Dear Mayor Kees:

We represent Steven Hedrick, the owner of X Dumpsters located in the City of Holiday Island. The company provides roll-away dumpster services to the residents of Holiday Island and surrounding areas in Carroll County. We understand that on April 19, 2022, the City of Holiday Island enacted Ordinance 2022-004. This Ordinance requires that all Holiday Island residents contract with the City's selected contractor for the collection of solid waste. The City has awarded the sole and exclusive right to collect solid waste to the Carroll County Solid Waste District (CCSW).¹

The Ordinance makes the selected Contractor the *only* entity authorized to collect solid waste in Holiday Island.² This Ordinance apparently prohibits Mr. Hedrick from servicing residents in Holiday Island.

On November 8, 2022, Holiday Island sent Mr. Hedrick a letter informing him that he was in violation of Ordinance 2022-004 because his roll-off containers were seen within the city limits and "X-Dumpsters is not an approved contractor for collecting or hauling solid waste in Holiday Island." On November 18, 2022, the CCSW threatened to suspend Mr. Hedrick's permit to provide solid waste services in the remainder of Carroll County if he did not suspend all operations in Holiday Island.

¹ See Mayor Dan Kees, *Solid Waste Collection*, Mayor's Messages (Apr. 20, 2022)

<https://www.cityofholidayisland.com/post/solid-waste-collection>

² Ordinance 2022-004, § 1 ("no other person or entity except such exclusive contractor shall be permitted to convey or transport Solid Waste or recycling for Regular Units within the City.")

As a result of these two letters which offer an interpretation of the Ordinance, Mr. Hedrick has ceased his business operations within Holiday Island. This has required him to turn down multiple jobs a week as individuals in Holiday Island who have contracted with CCSW would like to use his service to supplement the services provided by CCSW. This Ordinance has harmed Mr. Hedrick's ability to earn an honest living.

In doing so, Ordinance 2022-004—or the way the City and CCSW have interpreted the Ordinance—has run afoul of multiple provisions of the Arkansas Constitution. First, the Arkansas Constitution prohibits the granting of monopolies as they “are contrary to the genius of a republic.”³ Second, the Arkansas Constitution prohibits the government from depriving individuals of their “life, liberty, or property, without due process of law.”⁴ Both of these provisions have long been held to prohibit the exact type of regulation present in Ordinance 2022-004.

The Arkansas Supreme Court has opined on the meaning of the Arkansas Constitution's prohibition on monopolies on multiple occasions. In 1884, the Arkansas Supreme Court explained the historical background of this prohibition:

“The monopolies which in England became so odious as to excite general opposition, and infuse a detestation which has been transmitted to the free States of America, were in the nature of exclusive privileges of trade, granted to favorites or purchasers from the crown, for the enrichment of individuals, at the cost of the public. They were supported by no considerations of public good. They enabled a few to oppress the community by undue charges for goods or services. The memory, and historical traditions, of abuses resulting from this practice, has left the impression that they are dangerous to Liberty, and it is this kind of monopoly, against which the constitutional provision is directed.”⁵

The Arkansas Supreme Court further explained that the prohibition was meant to prohibit laws that “restrained the subject from the exercise of occupations, which otherwise would have been proper.”⁶

In *North Little Rock Transportation Co. v. City of North Little Rock*, the Arkansas Supreme Court struck down a monopoly granted to the Checker Cab Company in North Little Rock as it stifled and prevented any competition.⁷ As the Court has explained: “This language is too clear to need elucidation, and no amount of judicial interpretation should ever be permitted to cause the slightest deviation from the clear language of the constitutional inhibition.”⁸

³ Ark. Const. art. 2, § 19.

⁴ Ark. Const. art. 2, § 8.

⁵ *Ex parte Levy*, 43 Ark. 42, 51 (1884).

⁶ *Id.* at 52.

⁷ 207 Ark. 976, 184 S.W.2d 52 (1944).

⁸ *Id.* at 981, 184 S.W.2d at 54.

The ordinance here does the same thing. It grants one company the exclusive right to operate in Holiday Island irrespective of whether the residents' needs are fully met. While cities can regulate to ensure the proper disposal of solid waste, they cannot prevent individuals from contracting with other entities for *supplemental* services.

Yet Ordinance 2022-004 prevents residents in Holiday Island from hiring otherwise qualified businesses, including the business run by Mr. Hedrick, that offer supplemental solid waste disposal services. In doing so, it violates the anti-monopoly provision of the Arkansas Constitution.

In addition to violating the Arkansas Constitution's prohibition on monopolies, Ordinance 2022-004 also violates the Arkansas Constitution's protections for economic liberty and the right to earn an honest living. Article 2, § 2, of the Arkansas Constitution declares that one of the rights possessed by all men is the right to acquire, possess, and protect property. Article 2, § 8, of the Arkansas Constitution prohibits the government from depriving an individual of their life, liberty, or property without due process of law. The protections have been found to prohibit blatant protectionism and onerous licensing requirements for certain professions⁹ and businesses.¹⁰

Ordinance 2022-004 arbitrarily prevents Mr. Hedrick from earning an honest living even though he is fully qualified to run a solid waste disposal business. What's more, because Mr. Hedrick's services are supplemental to the services provided by CCSW, the Ordinance is not rationally related to any city interest in periodic trash disposal. Instead, the Ordinance prevents individuals from earning an honest living, while denying residents of Holiday Island necessary supplemental solid waste disposal services.

In order to prevent ongoing and future violations of Mr. Hedrick's constitutional rights and the possibility of a lawsuit seeking to enforce those rights, we respectfully request that the City of Holiday Island amend Ordinance 2022-004 to allow individuals to provide supplemental waste disposal services to the people of Holiday Island.

Our staff is available at any time to discuss the constitutional issues raised by Ordinance 2022-004.

We appreciate your prompt and thoughtful consideration of these matters and look forward to receiving confirmation that the City of Holiday Island has taken actions to bring its Ordinances into compliance with the Arkansas Constitution.

Should you have any questions regarding this matter, please do not hesitate to contact me directly at (602) 633-8996 or ashelton@goldwaterinstitute.org.

⁹ *Patel v. Texas Dep't of Licensing & Regul.*, 469 S.W.3d 69 (Tex. 2015)

¹⁰ *St. Joseph Abbey v. Castille*, 712 F.3d 215 (5th Cir. 2013)

Hon. Dan Kees
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Regards,

A handwritten signature in cursive script that reads "Adam Shelton". The signature is written in black ink and includes a horizontal flourish at the end.

Adam Shelton
Staff Attorney
Scharf-Norton Center for Constitutional Litigation
at the Goldwater Institute