

**IN THE CIRCUIT COURT OF CARROLL COUNTY, ARKANSAS
CIVIL DIVISION**

**STEVEN HEDRICK;
And X-DUMPSTERS,**

PLAINTIFF

vs.

CASE NO. CV-2023-85

CITY OF HOLIDAY ISLAND

DEFENDANT

BRIEF IN SUPPORT OF DEFENDANT’S RENEWED MOTION TO DISMISS

City of Holiday Island, appearing by and through their attorneys, Gabrielle Gibson of the Arkansas Municipal League and Justin Eichmann of the Harrington, Miller, Kieklak, Eichmann, & Brown, P.A. Law Firm, for their Brief in Support of Renewed Motion to Dismiss, state as follows:

BACKGROUND

The City of Holiday Island (the “City”) enacted Ordinance No. 2022-004 (hereinafter “the Ordinance”) on April 19, 2022, which requires all residents and businesses that have water utilities provided by the City to contract with the Carroll County Solid Waste District (“CCSW”) for their trash collection. Am. Compl., Ex. 3. The City passed this Ordinance pursuant to Ark. Code Ann. § 8-6-211 (2020), the Arkansas Solid Waste Management Act, which expressly grants municipalities the right to contract with one or more entities, including a regional solid waste management district, to provide a solid waste management system for the city. Plaintiff’s trash hauling business is not an approved Contractor by the Holiday Island City Council and therefore not permitted to provide trash collection services to the residents serviced by CCSW. The City does not have the resources to supervise various trash haulers, and thus enacted this Ordinance to combat illegal dumping and other activities related to solid waste which impact the public’s health,

safety and welfare, as well as to ensure compliance with the state Arkansas statutory law and Arkansas Pollution Control and Ecology Commission rules and orders. Am. Compl. 5; Ark. Code Ann. § 8-6-211 (2020).

INTRODUCTION

Plaintiff filed this Amended Complaint alleging that the Ordinance violates his rights under the Arkansas Constitution's (1) prohibition against monopolies, 2) guarantees of due process, (3) guarantees of life, liberty, and property, and (4) that Ark. Code Ann. § 8-6-211 is unconstitutional as applied because it prevents him from providing trash hauling services to residents in Holiday Island serviced by CCSW. Am. Compl. 9-14. The Arkansas Legislature has affirmatively authorized municipalities to exclusively contract with a single private person for the collection and disposal of solid waste. Ark. Code Ann. § 8-6-211 (a). The Arkansas Supreme Court has previously upheld a similar city ordinance which granted the exclusive right to collect and dispose of trash to a single business entity; and ruled that such an ordinance does not violate the Arkansas Constitution's prohibition against monopolies. *Smith v. City of Springdale*, 291 Ark. 63, 66, 722 S.W.2d 569, 570 (1987). The Eighth Circuit Court of Appeals has unequivocally stated that the Arkansas Solid Waste Management Act allows municipalities to lawfully displace competition in order to regulate solid waste management and disposal. *L & H Sanitation, Inc. v. Lake City Sanitation, Inc.*, 769 F.2d 517, 522 (8th Cir. 1985); *see also* Ark. Op. Att'y Gen. No. 2006-062 (June 20, 2006).

Because Plaintiff seeks to enjoin a lawful city action, his Complaint should be dismissed for failure to state facts upon which relief can be granted. Ark. R. Civ. P. 12 (b)(6). Finally, the city is entitled to state action immunity, which it asserts against Plaintiff's claims as set forth in this brief.

STANDARD OF REVIEW

A motion to dismiss for failure to state facts upon which relief can be granted allows a defendant to challenge not only the legal sufficiency of the complaint, that is, whether the substantive law affords relief, but also the factual sufficiency of the complaint, which is whether the plaintiff has alleged sufficient factual information to determine whether he is entitled to relief. To properly dismiss a complaint for failure to state facts upon which relief can be granted, the circuit court must find that the complaining party either (1) failed to state general facts upon which relief could have been granted or (2) failed to include specific facts pertaining to one or more of the elements of one of his or her claims after accepting all facts contained in the complaint as true and in light most favorable to the moving party. *Thomas v. Pierce*, 87 Ark. App. 26, 184 S.W.3d 489 (2004) (citing *Wiseman v. Batchelor*, 315 Ark. 85, 864 S.W.2d 248 (1993)); *see also Brown v. Arkansas Dept. of Corrections*, 338 Ark. 458, 461, 6 S.W.3d 102, 104 (1999) (“All reasonable inference must be resolved in favor of the complaint.”) Accepting all facts alleged in a complaint as true – but not the legal conclusions – a complaint should be dismissed if the complainant is not entitled to the relief sought. *Fulton v. Beacon Nat. Ins. Co.*, 2012 Ark. App. 320, *7-8, 416 S.W.3d 759, 763-63 (citing Ark. R. Civ. P. 12(b)(6)).

Any valid claim for relief must contain “a statement in ordinary and concise language of facts showing that the court has jurisdiction...and that the pleader is entitled to relief...” Ark. R. Civ. P. 8(a)(1). A complaint is subject to dismissal if it fails to state facts upon which relief can be granted and is also deficient if it fails to set forth facts pertaining to essential elements of a cause of action. *Perrodin v. Rooker*, 322 Ark. 117, 908 S.W.2d 85 (1995).

ARGUMENT

An ordinance is entitled to the same presumption of validity that legislative enactments receive. *Lawrence v. Jones*, 228 Ark. 1136, 313 S.W2d 228 (1958); *Harris v. City of Little Rock*, 344 Ark. 95, 40 S.W.3d 214 (2001). Therefore, an ordinance is presumed constitutional, and the burden is on the challenging party to show the ordinance is invalid. *Id.* “Where the complainant offers no proof to support the claim that the ordinance is unconstitutional, our inquiry is limited ‘to the face of the ordinance, with every presumption being in its favor.’” *Morningstar v. Bush*, 2011 Ark. 350, 7 (2011) (quoting *Bd. of Adjustment of Fayetteville v. Osage Oil & Transp., Inc.*, 258 Ark. 91, 93 (1975)).

I. The Arkansas Supreme Court has specifically held that an Ordinance authorizing a City to enter an exclusive contract for waste disposal services is not a violation of Article 2, Section 9 anti-monopoly provision.

The issue of whether an Ordinance or Statute authorizing a city to enter an exclusive contract for sanitation services has already been decided in the affirmative, and thus Plaintiff has no basis with which to bring this lawsuit. In *Smith v. City of Springdale*, the Appellant claimed that the City Ordinance establishing an exclusive contract with a specific garbage disposal provider, pursuant to the Arkansas Solid Waste Management Act §§ 8-6- 201-223, was in violation of Article 2, Section 19 of the Arkansas Constitution prohibiting monopolies. *Smith*, 291 Ark. at 63. The Arkansas Supreme Court unequivocally stated that “[w]ithout question a city is authorized to enter into proper exclusive contracts for sanitation services” without violating Article 2, Section 19 of the Arkansas Constitution prohibition on monopolies. *Id.* (citing *Dreyfus v. Boone*, 88 Ark. 353 (1908)) (“Monopolies are upheld when deemed necessary in executing a duty incumbent on city

authorities or the legislature for the preservation of public health.”) Plaintiff is asking this Court to ignore the controlling precedent but provides no legal basis to do so.

In discussing the legislative intent of the Arkansas Solid Waste Disposal Act the Court in *L & H Sanitation, Inc.*, remarked that the “intent to displace competition can be inferred from the statutory scheme because it is a ‘necessary and reasonable consequence of engaging in the authorized activity.’” *L & H Sanitation, Inc.*, 769 F.2d at 522 (citing *Gold Cross Ambulance & Transfer v. City of Kansas*, 705 F.2d 1005, 1013 (1983)) (“Arkansas law recognizes the validity of a municipal grant of a private monopoly in solid waste disposal.”); see *Geurin v. City of Little Rock*, 203 Ark. 103, 105-06 (1941). These same facts were also discussed in an Arkansas Attorney General Opinion, which stated that “municipalities in Arkansas may lawfully award an exclusive franchise with respect to the provision of certain services including, in particular, solid waste management and disposal services.” Ark. Op. Att’y Gen. No. 2006-062 (June 20, 2006); Ark. Op. Att’y Gen. No. 95-230. Plaintiff’s Complaint should be dismissed as the facts alleged do not support a claim for relief.

II. Plaintiff has alleged no facts that could support a finding that Ark. Code Ann. § 8-6-211 or Ordinance 2022-004 violates Plaintiff’s due process rights.

A. Ordinance 2022-004

The Plaintiff claims that the Ordinance prevented him from engaging in the lawful business of solid waste disposal and as a result deprived him of his substantive due process rights guaranteed by the Arkansas Constitution. Am. Compl. p. 10-12. The Ordinance does not involve a fundamental right or a suspect class; therefore, the Ordinance is analyzed under the rational basis test, which requires the Ordinance be designed to accomplish an objective within the government’s police power, and that a rational relationship existed between the Ordinance’s provisions and its purpose. *Scott v. Sioux City*, 736 F.2d 1207 (1984) (citing *Gold Cross Ambulance & Transfer v.*

City of Kansas, 705 F.2d 1005, 1015 (1983)). “This presumption imposes upon the party against whom it is directed the burden of proving the unconstitutionality of the legislation, i.e., that the act is not rationally related to achieving any legitimate objective of state government under any reasonably conceivable state of facts.” *City of Siloam Springs v. Benton County*, 350 Ark. 152, 158, 85 S.W.3d 504, 507 (2002). The court does not inquire into the actual basis of the legislation. *Streight v. Ragland*, 280 Ark. 206, 215, 655 S.W.2d 459, 464 (1983). Rather, the question is a purely hypothetical one. Is there any possible “rational basis ... which demonstrates the possibility of a deliberate nexus with state objectives.” *Id.* A statute passes the test if the Court can “reasonably conceive” of a lawful purpose for the statute. *Id.* The party challenging the statute has the burden of proving that the legislature acted arbitrarily or irrationally. *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976).

In *L & H Sanitation*, the Eighth Circuit Court of Appeals affirmed the circuit court’s dismissal where the Plaintiff claimed the Ordinance in question, which awarded the exclusive right to collect waste to a competitor, “prevented them from engaging in the lawful business of solid waste disposal and as a result deprived them of a property interest in violation of the due process and equal protection clauses of the fourteenth amendment.” *L & H Sanitation, Inc.*, 769 F.2d at 522. The Court held that the ordinance “was designed to accomplish a legitimate government purpose, the protection of public health and safety, and there is a rational relationship between the regulation of solid waste disposal and the protection of public health and safety.” *Id.* (“Regulation of solid waste management is one of the traditional public health functions of local government”) (citing *Geurin v. City of Little Rock*, 203 Ark. 103, 105-06 (1941)).

Here, the City enacted the Ordinance to establish an exclusive trash collection service in the City to combat the illegal dumping of trash and to promote public health and safety. Am.

Compl. 5. As it has been established by the Eighth Circuit, there is a rational relationship between the City's legitimate purpose of protecting public health and safety and the regulation of solid waste disposal. *Id.* Accordingly, the Plaintiff's claim that the Ordinance is unconstitutional is in direct contradiction with Arkansas Case Law, and Plaintiff has failed to supply any reason why precedent should not be followed. For these reasons, his Amended Complaint should be dismissed.

B. Ark. Code Ann. § 8-6-211

When the constitutionality of a statute is challenged, all doubts must be resolved in favor of finding it to be constitutional. *E.g., Streight v. Ragland*, 280 Ark. 206, 213-15, 655 S.W.2d 459, 463-64 (1983). Statutes are presumed to be constitutional, and a party that challenges one has the heavy burden of proving it to be unconstitutional. *E.g., Quinn v. Webb Wheel Prods.*, 59 Ark.App. 272, 277, 957 S.W.2d 187, 189 (1997). The Plaintiff must provide facts that show how "the act is not rationally related to achieving any legitimate objective of state government under any reasonably conceivable state of facts." *City of Siloam Springs v. Benton County*, 350 Ark. 152, 158, 85 S.W.3d 504, 507 (2002). All doubts pertaining to a statute in question are resolved in favor of constitutionality. *Hamilton v. Hamilton*, 317 Ark. 572, 576, 879 S.W.2d 416, 576 (1994). Where a constitutional construction is possible, the Court should uphold the validity of the statute under attack. *Id.*

The Statute is constitutional for the same recognized reasons the Ordinance is, because it "was designed to accomplish a legitimate government purpose, the protection of public health and safety, and there is a rational relationship between the regulation of solid waste disposal and the protection of public health and safety." *Id.* ("Regulation of solid waste management is one of the traditional public health functions of local government") (citing *Geurin v. City of Little Rock*, 203 Ark. 103, 105-06 (1941)). Plaintiff has provided no facts whatsoever that would support

overturning precedent that establishes there is a rational relationship between the regulation of solid waste disposal and the protection of public health and safety. Therefore, Plaintiff's Amended Complaint should be dismissed.

III. The City is entitled to state action immunity.

Disregarding the fact that Plaintiff's claims have no merit, the City is entitled to state action immunity. To be entitled to state action immunity the "state legislature must have authorized the challenged municipal activity" and "the legislature must have intended to displace competition." *Scott*, 736 F.2d at 1211. The Arkansas Legislature "has clearly authorized the challenged municipal activity, the regulation of solid waste and disposal." *L & H Sanitation, Inc.*, 769 F.2d at 521. "The state policy to displace competition can be inferred 'if the challenged restraint is a necessary and reasonable consequence of engaging in the authorized activity.'" *Id.* (citing *Gold Cross Ambulance & Transfer*, 705 F.2d at 1013). The Solid Waste Management Act authorized the City to contract with one private entity for solid waste collection, and, as the court in *L & H Sanitation* declared, "anticompetitive regulation by a municipality in the area of solid waste management is indeed 'necessary and reasonable.'" 769 F.2d at 521 ("In sum, we hold that the state action immunity doctrine is applicable to the city's award of the exclusive solid waste disposal franchise to Lake City.") State action immunity is therefore asserted in this matter by the City of Holiday Island. For all these reasons, the Plaintiff's claims should be dismissed as a matter of law.

CONCLUSION

The Ordinance was enacted pursuant to the Arkansas Legislature's direct granting of authority to municipal governments to exclusively contract with a private entity to provide a solid waste management system for the City. The Plaintiff cannot enjoin the City from exercising their police powers for the public health, safety, and well-being of its residents. The Arkansas

Legislature undoubtedly has the authority to legislate for the protection of public health and safety, and Plaintiff's Amended Complaint is devoid of any facts that give rise to a claim for relief pursuant to Ark. R. Civ. P. 8 and 12(b)(6). Therefore, the Complaint must be dismissed in its entirety.

WHEREFORE, for the reasons set forth above, the City of Holiday Island respectfully requests that the Court grant its Renewed Motion to Dismiss, dismiss all claims against it with prejudice, for appropriate attorney's fees, and for all other relief, both law and in equity, to which the Court determines it is justly entitled.

Respectfully submitted,

City of Holiday Island, Arkansas
DEFENDANT

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CERTIFICATE OF SERVICE

I, Gabrielle Gibson, hereby certify that on November 2, 2023, a true and correct copy of the above and foregoing was filed with the Clerk of the Court via electronic filing who will send notice of same to the attorneys of record listed below:

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