

MAYOR
THOM SERRANI



CITY OF STAMFORD

DEPARTMENT OF LAW

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May 1, 1985

JHS-#58
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Honorable Thom Serrani
Mayor of Stamford

Dear Mayor Serrani:

We are in receipt of a copy of a letter dated April 22, 1985 from Mr. Gary W. Dayton, Executive Director of the Urban Redevelopment Commission, to Mr. Raymond E. Butler, Coordinator, Government Center Technical Team which contains the following statement:

"In our research we have found that state law with respect to municipal zoning allows for the exemption of municipal property from prescribed zoning regulations upon approval of the local legislative body. Thus, your property requirement in a downtown location could be substantially reduced through a zoning exemption. This would preserve URC's development options in the case of Block 9 and would cause a reduction in the overall cost of the City Hall project. A copy of the state statute providing for the zoning exemption of municipal property is attached."

The aforementioned statement and the attachment to said correspondence refers to Section 8-2 of the Connecticut General Statutes entitled "Regulations".

We have also reviewed the memo to you regarding the URC Position on Government Center Location dated April 23, 1985, wherein the statement is made that the last sentence of Section 8-2 of the Connecticut General Statutes "would appear to allow

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the Board of Representatives to exempt the City Government from the zoning regulations at any selected location for the Government Center project."

Unfortunately those individuals who have relied upon the provisions of Section 8-2 of the Connecticut General Statutes have mistakenly applied the verbiage within the statutes. The City of Stamford does not function under the state enabling legislation originating under Section 8-1 of the Connecticut General Statutes, which state enabling legislation embodies Section 8-2 of the Connecticut General Statutes. Rather, zoning within the City of Stamford is the product of a Special Act, therefore, the provisions of Section 8-2 of the Connecticut General Statutes do not apply to the City of Stamford.

However, as our office has indicated in a number of previous opinions, the City of Stamford has been found to be exempt from the application of its Zoning Regulations in the past based upon the general theory of "governmental immunity". Such a theory has necessitated an individual, independent, case-by-case analysis in order to ascertain whether the specific facts warrant an exemption from the subject Zoning Regulations.

As a result of our review, the current zoning spectrum provides several areas of evaluation in order to determine whether a particular governmental activity is immune from the local zoning regulations. The five areas of evaluation and theories incorporated into current zoning principles are as follows:

1. The governmental-proprietary test.
2. The superior sovereign test.
3. The eminent domain theory.
4. The statutory guidance test.
5. The balancing of interests test.

See, 5 Rohan, Zoning and Land Use Controls, Section 35.07 et seq. (1978)

Under the traditional approach to zoning in the United States, the great weight of authority has made a distinction between municipal functions which are "governmental" in nature and those functions which are "proprietary" in nature. In a comprehensive treatment of governmental immunity, it was suggested that the following criteria should be used in distinguishing whether an activity is classified as a governmental activity or a proprietary activity:

"... (1) a municipality performs a governmental function when doing acts required by legislative mandate whereas it acts in a proprietary capacity when performing by legislative permission, and, (2) a municipal function is governmental when the acts involve benefit to the general public as distinguished from acts which involve private benefits and in which public benefit is indirect." (Emphasis Supplied)

Comment, "The Applicability of Zoning Ordinances to Governmental Land Use," 39 Tex. L. Rev. 316, 318 (1961). See generally, Comment, "The Inapplicability of Municipal Zoning Ordinances to Governmental Land Uses," 19 Syr. L. Rev. 698 (1968); Note, Governmental Immunity From Local Zoning Ordinances, 84 Harv. L. Rev. 869 (1971); Note, "State Immunity From Zoning: A Question of Reasonableness," 31 Miami L. Rev. 191 (1976).

It has consistently been recognized that municipal activities involving police protection, police stations and the construction and location of county jails are not subject to municipal zoning regulations. Green County v. Monroe, 87 N.W.2d 827. See also, 2 Anderson, American Law of Zoning, Section 12.03 et. seq. (1976). It has also been determined that a municipality which provides a courtroom, a meeting place for its legislative body, an office for its clerk, or a city hall to house municipal offices is performing a "governmental function."

Based upon our review of the current law and its application to the proposed location and construction of the Government Center Project, it is our opinion that said project would come within the parameters of a "governmental function" and, therefore, is totally exempt from any provisions of the Zoning Regulations of the City of Stamford. Although there are other tests which have been employed in current zoning circles, as referred herein, it is our opinion that the governmental versus proprietary distinction is uniquely applicable to the current inquiry and that no further theories would have to be employed in order to determine the proper approach to the present situation.

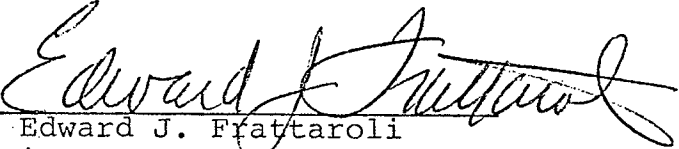
It should be clearly understood that our opinion is predicated upon the premise and assumption that the entire complex and project would be used and utilized solely and exclusively for municipal purposes satisfying the governmental criteria to which we have referred herein. We have not addressed a situation wherein there would be a mixed use of such a complex since such an approach could conceivably affect the principles and theories mentioned herein and the application thereof.

May 1, 1985

Once again, it should be clearly understood that any and all decisions regarding immunity from the Zoning Regulations of the City of Stamford must be treated on an individual, independent, case-by-case basis. Although the theories enunciated herein are the current recognized zoning theories dealing with governmental immunity, they project the general approach to evaluating specific factual circumstances, thereby resulting in the need to evaluate each and every case on its own merits in accordance with the specific facts related thereto.

Very truly yours,

Jay H. Sandak
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