

STATE OF NEW YORK
SUPREME COURT COUNTY OF FRANKLIN
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TRACY SANTAGATE, JAMES LALONDE,
EDWARD MURPHY, JOHN McBRIDE,
JAMES MONTABELLO, THOMAS and
PATRICIA WILLIS, and RESIDENTS
PROMOTING THE SALE AND LAWFUL
USE OF ATV'S AND SNOWMOBILES,

Index No.: 99-23
RJI No.: 99-0008

Petitioners-Plaintiffs,

Vs.

FRANKLIN COUNTY,

HON. JOHN A. LAHTINEN

Respondent-Defendant.

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DECISION AND ORDER

Petitioners-Plaintiffs (Petitioners) commenced this special proceeding by Order to Show Cause seeking an order annulling Respondent-Defendant's (Respondent) Local Law No. 3 of 1998. Petitioners' Verified Petition and Complaint also seeks a declaratory judgment annulling Respondent's Local Law No. 5 of 1995. Pending determination of the issues raised, Petitioners seek a preliminary injunction restraining and enjoining Respondent from implementing its Local Law No. 3 of 1998.

The matter was initially returnable in open court on January 19, 1999 at a Special Term held in Clinton County. Respondent was granted additional time to answer and filed its answering papers with the Court at Chambers on January 25, 1999. Before the Court in support of the relief requested by Petitioners are the Petition and Complaint verified January 12, 1999; affidavit of Scott B. Goldie, Esq., sworn to January 12, 1999 with a copy

of Franklin County Local Law No. 3 of 1998; affidavit of Edward Murphy, sworn to January 12, 1999 with Exhibits A & B; affidavit of Tracy Santagate sworn to January 12, 1999 with Exhibits A through G; a memorandum of law dated January 5, 1999; and supplemental affidavit of Scott Goldie, Esq., sworn to January 25, 1999. Respondent has filed the affidavit of Franklin County Attorney Jonathan J. Miller, Esq., sworn to January 25, 1999 with Exhibits 1 through 8; affidavit of Jeffrey B. Smith, Franklin County Superintendent of Highways sworn to January 25, 1999; affidavit of Raymond A. Susice, Chair of the Franklin County Board of Legislature sworn to January 25, 1999 with Exhibits 1 through 8; affidavit of Franklin County Legislator Gerald F. Gillmett sworn to January 25, 1999 with Exhibits 1 & 2; and a memorandum of law dated January 25, 1999 all in opposition to the relief sought by Petitioners.

Initially, Respondent claims that those Petitioners designated as "Residents Promoting the Safe and Lawful Use of ATV's[sic] and Snowmobiles" lack standing to bring these proceedings. No such claim is made as to the individually named Petitioners and the Petition-Complaint alleges each of the individuals are residents of Franklin County. The Court finds that the individual Petitioners have standing to bring this proceeding and shall proceed to the merits.

The Court did not find in the submissions of Respondent an answer to the petition (CPLR §7804[c] and CPLR §403[b]) which commenced the special proceeding seeking to annul Respondents'

Local Law No. 3 of 1998. However, upon the pleadings, papers and admissions before the Court a summary determination (CPLR §409[b]) with respect to Petitioners' request for an order annulling Respondent's Local Law No. 3 of 1998 can be made.

Franklin County Local Law No. 3 of 1998 is entitled "A local law Amending Local Law No. 5 of 1995, A Local Law Designating Certain County Highways As Open For Travel By All-Terrain Vehicles And To Now Include Use By Snowmobiles On All Designated Highways" (see Exhibit A to the January 12, 1999 affidavit of Scott Goldie, Esq.). The law was passed by the Franklin County Legislature on September 17, 1998. Petitioners' claim, *inter alia*, that Respondent did not have the authority to designate county highways for snowmobile use, that authorization being left to the towns (or city or village) pursuant to Article 25 of the Parks, Recreation, and Historic Preservation Law (PRHPL §25.09 [1][a]). In the answering papers submitted by Respondent, no authority is cited authorizing the County to take such action. Rather, Respondent takes the position that Local Law No. 3 of 1998 "...should be considered merely as a ratification of the actions of the underlying towns which have already opened up county roads for (snowmobile) use within the town". The statute (PRHPL §25.09) designates the town governing body to authorize snowmobile travel on county highways located within the town. There is nothing in Article 25, or any other law found in this Court's research, authorizing Respondent to ratify actions by town governing boards with respect to snowmobile use on county

highways. Respondent has not shown the Court any other general delegation of power to county government which would allow them to regulate highways within its boundaries for the use of snowmobiles. Accordingly, that portion of Local Law No. 3 of 1998 insofar as it applies to snowmobile use on county highways is held to be of no force and/or effect. Nothing herein is intended to affect any duly enacted town ordinance or local law pertaining to snowmobile use on County highways within that respective town.

Insofar as Local Law No. 3 of 1998 applies to the use of all-terrain vehicles (ATVs) on county highways, such authority is delegated to counties by virtue of Article 48-C of the Vehicle and Traffic Law. Specifically, Section 2405(1) of the Vehicle and Traffic Law allows a county to open highways under its jurisdiction for travel by ATVs "...when in the determination of the governmental agency concerned, it is otherwise impossible for ATVs to gain access to areas or trails adjacent to the highway." Petitioners claim that Respondent failed to make such a determination regarding the highways affected by Local Law No. 3 of 1998 and, accordingly, the enactment of Local Law No. 3 of 1998 was arbitrary and capricious. Respondent's affidavits in opposition all indicate that consideration was given to Article 48-C of the Vehicle and Traffic Law, however, no county official could provide to the Court any documentation that Respondent complied with Section 2405 by making a determination that without opening county roads to ATV use, it was otherwise impossible for

There is no proof that a summons was ever filed and served
thereby duly commencing the declaratory judgment action (CPLR
§304).

It is all **SO ORDERED**.

Dated: January 28, 1999
at Plattsburgh, New York



John A. Lahtinen
Justice