Day, Morris & Schreiber L.L.P.
Law Offices

Michael W. Day Robert L. Morris Brad A. Schreiber+

August 25, 2005

Jason E. Green
City Attorney
City of Rapid City
300 6th Street
Rapid City, SD 57701

RE: Our Client: **Lamar Outdoor Advertising of South Dakota, Inc.**

Matter: **Grant of Sign Ordinance Exemption to Epic Outdoor Advertising**

Our File No.: **815.200501**

Dear Jason:

This firm has been retained by Lamar Outdoor Advertising of South Dakota, Inc. regarding the decision of the City Council to exempt Epic Outdoor Advertising from the City Sign Code, Chapter 15.28. In my representation of Lamar, I thought it best to outline our position in this matter in writing for the benefit of yourself, the Mayor, and City Council. Our hope is that this matter can be resolved appropriately without the need for litigation to challenge the validity of the City's actions in this matter. In this regard, I submit the following for consideration.

Epic apparently began construction of four billboards in the City without obtaining the requisite sign permit under Ch. 15.28. The City's Building Inspector office, once it learned of Epic's actions, issued stop work orders to Epic regarding the un-permitted billboards. Epic asserted justification of its actions to the City Building Inspector by alleging that Epic was exempt from the sign permit requirement under the exemption found in 15.28.080(B)(10). Epic apparently asserted that the signs were to be used for a "public purpose" and Epic was exempt from the requirements of the Ordinance. The City's Building Inspector rejected Epic's exemption argument. Epic then appealed the Building Inspector's decision to the Sign Code Board of Appeals which upheld the Building Inspector's decision.

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Epic took the decision of the Building Inspector and Sign Code Board of Appeals to the City Council. The City Council reversed the decision of its Building Inspector and the Sign Code Board of Appeals allowing Epic to fall under the exemption set forth in 15.28.080(B)(10) as Epic apparently convinced the City Council that the billboards were to be used for a "public purpose."

I have reviewed the Sign Ordinance and researched this matter on behalf of Lamar. It is my opinion and conclusion that the City of Rapid City has clearly failed to properly enforce Ch. 15.28 and acted improperly by allowing Epic to fall under the 15.28.080(B)(10) exemption.

15.28.080(A)(1) provides:

> Except as otherwise provided in this code, it shall be unlawful for any person to erect, construct, enlarge, move or convert any sign in the city, or cause the same to be done without first obtaining a signed building permit for each sign from the building official as required by this code.

15.28.080(B) and 15.28.080(B)(10) provide:

> Exemptions. The following types of signs and activities are exempt from the provisions of (A) of this section:
>
> > 10. Signs required or specifically authorized for a public purpose, which may be of any type, number, area, height above grade, location, lumination, or animation;

15.28.080(B)(10) is stated in the disjunctive. First of all, there is an exemption from the sign permit for "Signs required for a public purpose, which may be of any type, number, area, height above grade, location, lumination or animation." Secondly, the exemption exists for those "Signs specifically authorized for a public purpose, which may be of any type, number, height above grade, location, lumination, or animation." It is apparent that the definition of "public purpose" becomes the determinative issue when seeking an exemption under 15.28.080(B)(10). I do note that "public purpose" is not defined anywhere in the Ordinance.

When the City chose to overrule the Building Inspector and the Sign Code Appeal Board, it apparently was persuaded by Epic's argument that by allowing for "public service" activity on the billboards for a certain period of time, that the billboards then became used for a "public purpose." Such a decision is clearly arbitrary, capricious, contrary to the law, and also contrary to the spirit and intent of the Ordinance.

In looking at the Sign Ordinance on the Internet, I do not see that a specifically stated "purpose" is set forth in the Ordinance. Nonetheless, it is apparent that the City undertook the adoption of a sign ordinance under its public, health, welfare, and safety powers. Generally, a municipality enacts a sign ordinance for the purpose of regulation of all signs publically displayed as the safety of pedestrians and vehicles, fire protection, and enhancement of the outward appearance of the community are important factors in the general welfare of the people. As such, reasonable control of signs by ordinances is in the public interest.

As "public purpose" is not defined in the Ordinance, I did some research to determine what the definition of the same is in the law. When I first read the Ordinance it was apparent to me that "public purposes," taking into consideration the spirit and intent and regulatory nature of the Ordinance, meant that "public purpose" was associated with a governmental entity or governmental function.

In Black's Law Dictionary under the definition of "public purpose," it is noted that "The term is synonymous with governmental purpose." I am providing a copy of page 1231 of Black's Law Dictionary, Sixth Edition for your review and consideration.

Additionally, I am enclosing a copy of the Rhode Island Supreme Court Case Nunes v. Town of Bristol, 232 A2d 775 (RI 1967). The issue in the Town of Bristol case was the meaning of "public or municipal purposes" within an Ordinance. The Rhode Island Supreme Court, after engaging in the principles of statutory construction, held that "the phrase 'public or municipal purposes' . . .encompasses only those functions which a municipality may perform in a governmental capacity. Town of Bristol, 232 A2d at 781.

It is apparent, and should be without question, that the phrase "public purpose" is synonymous with governmental purpose rather than a private or proprietary purpose[1]. As such, it is quite clear that 15.28.080(B)(10) is an exemption that would allow "signs required for a governmental purpose" or "signs specifically authorized for a governmental purpose." To allow signs to be exempted that are owned, operated, maintained, and leased by private enterprise is clearly contrary to and in conflict with the Sign Ordinance and its regulatory nature.

Any contrary conclusion would essentially allow the City, in enforcement of its Sign Code Ordinance, to function on an ad hoc basis regarding the exemption. The Sign Code Ordinance does not work on a case by case basis but clearly sets forth regulations which dictate when sign permits are required and when sign permits are not required. The City's decision was clearly an ad hoc decision which was unjustified and contrary to the Sign Code Ordinance.

Lamar wishes to avoid litigation over the issue and would request the City Council take such action to enforce the Ordinance and prohibit the construction of the Epic signs under exemption 15.28.080(B)(10). If the City, after consultation with your office, fails to enforce the Ordinance, than Lamar would have no choice but to pursue legal remedies against the City. Such legal remedies would clearly be justified under the circumstances of this case.

On behalf of Lamar, we would request that this issue be placed on the next City Council Agenda for consideration in light of the aforementioned information. If my presence is required or requested before the Council, please advise.

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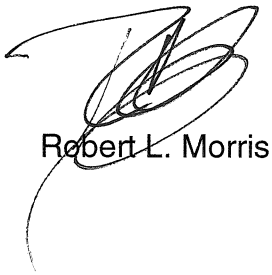
[1] This conclusion is consistent with Assistant City Attorney, Joel P. Landeen's April 29, 2005 Memorandum to the Sign Code Board of Appeals.

Very truly yours,

DAY, MORRIS & SCHREIBER, LLP



Robert L. Morris

RLM/gmf
cc/ Client

morals, and welfare of the community. A place exposed to the public, and where the public gather together or pass to and fro.

Public policy. Community common sense and common conscience, extended and applied throughout the state to matters of public morals, health, safety, welfare, and the like; it is that general and well-settled public opinion relating to man's plain, palpable duty to his fellowmen, having due regard to all circumstances of each particular relation and situation. Hammonds v. Aetna Cas. & Sur. Co., D.C.Ohio, 243 F.Supp. 793, 796.

Public policy doctrine. Doctrine whereby a court may refuse to enforce contracts that violate law or public policy. United Paperworkers International Union v. Nisco, Inc., 484 U.S. 29, 108 S.Ct. 364, 373, 98 L.Ed.2d 286. Invoked, for example, to preclude the contractually authorized termination of an employee who refuses to participate in a violation of law. Phipps v. Clark Oil & Refining Corp., Minn., 408 N.W.2d 569, 571. *See* Whistle-blower Acts.

Public policy limitation. A concept developed by the courts precluding an income tax deduction for certain expenses related to activities deemed to be contrary to the public welfare. In this connection, Congress has incorporated into the Internal Revenue Code specific disallowance provisions covering such items as illegal bribes, kickbacks, and fines and penalties. I.R.C. §§ 162(c) and (f).

Public purpose. In the law of taxation, eminent domain, etc., this is a term of classification to distinguish the objects for which, according to settled usage, the government is to provide, from those which, by the like usage, are left to private interest, inclination, or liberality. The constitutional requirement that the purpose of any tax, police regulation, or particular exertion of the power of eminent domain shall be the convenience, safety, or welfare of the entire community and not the welfare of a specific individual or class of persons. "Public purpose" that will justify expenditure of public money generally means such an activity as will serve as benefit to community as a body and which at same time is directly related function of government. Pack v. Southern Bell Tel. & Tel. Co., 215 Tenn. 503, 387 S.W.2d 789, 794.

The term is synonymous with governmental purpose. As employed to denote the objects for which taxes may be levied, it has no relation to the urgency of the public need or to the extent of the public benefit which is to follow; the essential requisite being that a public service or use shall affect the inhabitants as a community, and not merely as individuals. A public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division, as, for example, a state, the sovereign powers of which are exercised to promote such public purpose or public business.

Public record. Public records are those records which a governmental unit is required by law to keep or which it is necessary to keep in discharge of duties imposed by law; *e.g.* records of land transactions kept at county court house; records of court cases kept by clerk of court. Curran v. Board of Park Com'rs, Lake County Metropolitan Park Dist., Com.Pl., 22 Ohio Misc. 197, 259 N.E.2d 757, 759, 51 O.O.2d 321. Elements essential to constitute a public record are that it be a written memorial, that it be made by a public officer, and that the officer be authorized by law to make it. Nero v. Hyland, 76 N.J. 213, 386 A.2d 846, 851. A record is a "public record" within purview of statute providing that books and records required by law to be kept by county clerk may be received in evidence in any court if it is a record which a public officer is required to keep and if it is filed in such a manner that it is subject to public inspection. In re LaSarge's Estate, Okl., 526 P.2d 930, 933. For purposes of right-to-know law, includes decisions which establish, alter, or deny rights, privileges, immunities, duties, or obligations. Lamolinara v. Barger, 30 Pa. Cmwlth. 307, 373 A.2d 788, 790. *See also* Record.

Public safety. A state may exercise its police power (derivatively, a city or town) by enacting laws for the protection of the public from injury and dangers.

Public sale. Sale at auction of property upon notice to public of such. May result from *e.g.* tax foreclosure. *See also* Sheriff's sale.

Public service. A term applied to the objects and enterprises of certain kinds of corporations, which specially serve the needs of the general public or conduce to the comfort and convenience of an entire community, such as railroad, gas, water, and electric light companies; and companies furnishing public transportation. A public service or quasi public corporation is one private in its ownership, but which has an appropriate franchise from the state to provide for a necessity or convenience of the general public, incapable of being furnished by private competitive business, and dependent for its exercise on eminent domain or governmental agency. It is one of a large class of private corporations which on account of special franchises conferred on them owe a duty to the public which they may be compelled to perform. *See also* Public corporations.

Public service commission. A board or commission created by the legislature to exercise power of supervision or regulation over public utilities or public service corporations. An administrative agency established by the State legislature to regulate rates and services of electric, gas, telephone, and other public utilities. Such a commission is a legal, administrative body, provided for the administration of certain matters within the police power, with power to make regulations as to certain matters when required for the public safety and convenience, and to determine facts on which existing laws shall operate.

Public service corporation. A utility company privately owned but regulated by the government. It may sell gas, water or electricity but its rates are established by the state. It may be a broadcasting company. *See also* Public convenience and necessity; Public utility.

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102 R.I. 729, 232 A.2d 775

Supreme Court of Rhode Island.
Joseph P. NUNES et al.
v.
TOWN OF BRISTOL et al.
Gilbert FERREIRA et ux.
v.
TOWN OF BRISTOL et al.
Appeal Nos. 6, 7.

Aug. 18, 1967.

Civil actions to enjoin construction by town of addition to one of its fire stations. The Superior Court, Providence and Bristol Counties, McKiernan, J., certified four questions. The Supreme Court, Kelleher, J., held that phrase 'public or municipal purposes' as used in Bristol zoning amendment to effect that any building may be erected or used by town or agency or department thereof for public or municipal purposes in any zoning district and shall be exempt from provisions of ordinance encompassed only those functions which municipality might perform in governmental capacity and exempted town from any zoning restriction otherwise applied to addition.

Returned to Superior Court for further proceedings.

West Headnotes

[1] **Appeal and Error 30 ⚿315**
30k315 Most Cited Cases
Parties invoking assistance of Supreme Court pursuant to certification statute must adhere with care to established procedures incidental thereto and by failing to do so they run risk of improper certification which Supreme Court will not answer. Gen.Laws 1956, §§ 9-24-25 , 9-24-27 ; Rules of Civil Procedure, rule 72(a).

[2] **Appeal and Error 30 ⚿315**
30k315 Most Cited Cases
Where Supreme Court had before it an issue of extreme public interest involving public safety of one of municipalities, court would overlook unorthodox manner in which its aid was sought by certification, but such action could be taken without any intention of setting precedent for the future. Gen.Laws 1956, §§ 9-24-25 , 9-24-27 ; Rules of Civil Procedure, rule 72(a).

[3] **Municipal Corporations 268 ⚿733(1)**
268k733(1) Most Cited Cases
Municipality when engaged in construction or expansion of fire station is performing in a governmental capacity.

[4] **Zoning and Planning 414 ⚿13**
414k13 Most Cited Cases
In Rhode Island, a municipality may or may not choose to enact a zoning ordinance.

[5] **Zoning and Planning 414 ⚿5.1**
414k5.1 Most Cited Cases
(Formerly 414k5)
Power to permit municipality to exempt itself from provisions of its own zoning ordinance must be found within provisions of enabling act. Gen.Laws 1956, § 45-24-1 et seq.

[6] **Zoning and Planning 414 ⚿159**
414k159 Most Cited Cases
If enactment of zoning amendment bears such reasonable relationship to public health, safety and welfare as to justify its adoption, comprehensive zoning plan remains inviolate.

[7] **Zoning and Planning 414 ⚿33**
414k33 Most Cited Cases

Zoning and Planning 414 ⚿156
414k156 Most Cited Cases
Any city or town may legally amend its zoning ordinance by adopting ordinance exempting from its operation any building or use employed by municipality

in performance of its governmental functions, and a provision in original zoning ordinance embracing similar exemption is also valid. Gen.Laws 1956, § 45-24-1 et seq.

[8] **Zoning and Planning 414 ⚿33**
414k33 Most Cited Cases
Authority to exempt municipality from zoning ordinances is applicable exclusively to those situations in which it operates in governmental as distinguished from proprietary capacity. Gen.Laws 1956, § 45-24-1 et seq.

[9] **Municipal Corporations 268 ⚿54**
268k54 Most Cited Cases
In exercise of its governmental function, municipality acts as agent of state performing those duties delegated to it by the sovereign.

[10] **Municipal Corporations 268 ⚿57**
268k57 Most Cited Cases
In exercise of its proprietary functions, city or town has same full measure of authority over its property that private corporations or individuals enjoy.

[11] **Municipal Corporations 268 ⚿120**
268k120 Most Cited Cases
Rules of statutory construction apply in interpreting ordinance.

[12] **Municipal Corporations 268 ⚿120**
268k120 Most Cited Cases
If reasonably possible, court will construe ordinance to avoid its invalidity.

[13] **Municipal Corporations 268 ⚿120**
268k120 Most Cited Cases
Whenever language of ordinance is susceptible of more than one interpretation, court will adopt interpretation that will best carry out its evident purpose.

[14] **Municipal Corporations 268 ⚿120**
268k120 Most Cited Cases
Though legislative intent is to be found primarily in language of ordinance, where language is ambiguous or uncertain, court may take into consideration certain extrinsic matters which tend to throw some light on legislative intent, including objective to be accomplished by enactment of ordinance.

[15] **Municipal Corporations 268 ⚿120**
268k120 Most Cited Cases
Words "public or municipal purposes" standing alone are not susceptible of any precise definition, but in each case when used in ordinance they will be considered in context in which they are used.

[16] **Zoning and Planning 414 ⚿233**
414k233 Most Cited Cases
Phrase "public or municipal purposes" as used in Bristol zoning amendment to effect that any building may be erected or used by town or agency or department thereof for public or municipal purposes in any zoning district and shall be exempt from provisions of ordinance encompassed only those functions which municipality might perform in governmental capacity and exempted town from any zoning restriction otherwise applicable to construction of addition to one of its fire stations. Gen.Laws 1956, § 45-24-1 et seq.

[17] **Zoning and Planning 414 ⚿41**
414k41 Most Cited Cases
Provision in zoning ordinance specifically exempting therefrom governmental functions of municipality is not improper delegation of authority by Legislature. Gen.Laws 1956, § 45-24-1 et seq.

[18] **Zoning and Planning 414 ⚿607**
414k607 Most Cited Cases
Whether use of land satisfies requirements for special exception or variance under ordinance is matter to be decided in first instance by zoning board of review in town and only after it has heard evidence in support thereof. Gen.Laws 1956, § 45-24-20.

***740 **776** Hugo L. Ricci, Providence, for Joseph P. Nunes et al.
Helen M. MacGregor, Providence, for Gilbert Ferreira et ux.
Anthony R. Berretto, Bristol, Ralph C. DeLuca, Providence, for respondents.

OPINION

***730** KELLEHER, Justice.

[1] [2] These civil actions [FN1] were brought to enjoin***731** the construction by the town of Bristol of an addition to one of its fire stations. We treat these actions as having been certified to us as an agreed ****777** statement of facts pursuant to G.L.1956, s 9-24-25, as amended. In doing so, we think it appropriate to comment on the hybrid method chosen by the parties to bring these actions before us. In these cases a decree was entered on February 15, 1966, which includes fifteen separate findings of fact, a statement that the 'cause is ready for a final decree' and four questions propounded for our determination. The use of findings of fact and the four questions make it dubious as to whether these actions have been certified on an agreed statement of facts pursuant to s 9-24-25, as amended, or as questions of importance pursuant to s 9-24-27, as amended. It is clear that each section is different from the other. Section 9-24-25, which calls for the statement of facts, provides that a final judgment based on our decision will be entered by the superior court. Section 9-24-27 contains no such provision but merely states that proceedings in the superior court will be stayed pending our decision on the questions certified to us. Since this certification appears to have been initiated by the parties on the filing of an agreed statement of facts, it should be noted also that neither party filed in the superior court a motion for certification as is required by the provisions of rule 72(a) of the rules of civil procedure of the superior court. In deference to orderly procedure, it behooves all parties when they invoke our assistance pursuant to a certification statute to adhere with care to the established procedures incidental thereto. By failing to do so, they run the risk of an improper certification which we, quite properly, will not answer. Since we have before us in the instant cases an issue of extreme public interest involving the public safety of one of our municipalities, we shall overlook the unorthodox manner in which our aid is sought. Our action here, however, is taken without any intention of setting a precedent for the future.

FN1. Although these were bills in equity, certification was begun after the January 10, 1966 effective date of the new rules of civil procedure of the superior court. We have therefore used the terminology of the new rules.

***732** The record discloses that sometime prior to August 17, 1961, the town of Bristol purchased a new addition to its fire-fighting equipment described in the record as a 'snorkel fire truck.' Because this particular apparatus is designed especially for the extinguishing of fires or the rescuing of people in the upper portions of tall buildings, it is of unusual design. The snorkel on this truck is a large boom at the end of which is a basket wherein stands the fire-fighter. With the aid of a hydraulic system this boom can be raised to great heights. In order to house the snorkel truck, it was planned to build an addition to the Dreadnaught fire station which stands at the southwesterly corner of High and Church streets.

When several of plaintiffs learned of the size and the proposed location of the addition, they initiated litigation which has succeeded in keeping the town in court and the fire truck out of the station for the past six years.

Building plans show that the addition would abut the property of one of plaintiffs and come within two feet of two of the remaining plaintiffs. The Bristol zoning ordinance, which is an exhibit here, shows that in 1961 a fire station was a permitted use in this area of the town. It is clear, however, that the proposed structure violated the area or set-back requirements of the ordinance.

Faced with this dilemma, the town council president applied to the zoning board for relief. The board granted the application but certain of plaintiffs appealed this action to us. In Nunes v. Zoning Board of Review, 93 R.I. 483, 176 A.2d 721, the town, for reasons which are not apparent in the record, conceded that the board's decision was a nullity. Because of this concession, this court on January 12, 1962, held that there was no further justiciable controversy between the parties and the decision of the board was quashed.

Later the controversy arose again because the town

council amended the zoning ordinance by providing that the *733 town, or any agency thereof, would be exempt from the provisions thereof whenever it sought to **778 erect a use or a building for public or municipal purposes. [FN2] The town also secured a building permit and commenced construction on the addition. Subsequently plaintiffs instituted suit and further construction was enjoined. When the causes were reached for trial, the superior court certified the following four questions:

> FN2. 'Section 1. 'Article I, Section 2' of said Zoning Ordinance of the Town of Bristol is amended so as to add the following language after the last sentence thereof:"Notwithstanding any provision of this ordinance, structures, buildings and land may be erected or used by the Town of Bristol, or any agency or department thereof, for public or municipal purposes in any Zoning District, and said structures, buildings and land so erected or used shall be exempt from the provisions of this Ordinance."

'1. Is the Town of Bristol acting in a governmental (sic) capacity to erect an addition to an existing fire station exempt from the provisions of the zoning ordinance of the Town of Bristol.

'2. Does the Town of Bristol under the State Enabling Act (Title 45-24-1 through 20) or otherwise have the power by specific terms or otherwise to exempt itself from the operation of its zoning ordinance.

'3. If the Town of Bristol does have the power to exempt itself from the operation of its zoning ordinance, does this constitute an unlawful delegation of power by the legislature.

'4. If it is found that the Town of Bristol does not have the power to exempt itself then:

a. Does this use of land satisfy the requirements for a special exception as set forth in Section C(2) of the 1961 Zoning Ordinance of the Town of Bristol.

b. Does this use of land satisfy the requirements for a variance as set forth in Section C(3) of the 1961 Zoning Ordinance of the Town of Bristol'

We answer the first question in the negative; the second in the affirmative; the third in the negative. Because of our replies to the earlier inquiries, there is no need to reply to the fourth question.

*734 I

[3] It needs no citation of authority to hold that a municipality when engaged in the construction or expansion of a fire station, is performing in a governmental capacity. We have so ruled in Buckhout v. City of Newport, 68 R.I. 280, 27 A.2d 317, 141 A.L.R. 1440.

[4] In Rhode Island a municipality may or may not choose to enact a zoning ordinance. The extent of the authority of the great majority of cities and towns in this state in promulgating such legislation is prescribed in the pertinent provisions of the enabling act, chap. 24 of title 45, G.L.1956. Bristol is one such municipality. We have examined the provisions of the enabling act and can find no provision which exempts, ipso facto, a municipality from any zoning ordinance which may be enacted pursuant to its terms. Had the general assembly desired that the cities and towns of this state automatically be exempt from their own zoning laws, it would have so provided. Its failure to do so, in our opinion, is significant. Indeed, we believe that a declaration by us to the effect that a municipality is by its nature beyond the provisions of its own ordinance would be an unwarranted and unjustifiable intrusion upon a legislative prerogative. If the legislature wishes to exempt the cities and towns from their own zoning regulations, it may do so. Since they have not done so as yet, we will not arrogate to ourselves this purely legislative function.

Our answer to the first question therefore is 'no.'

**779 II

[5] Our reply to the second question submitted to us is, as one will see, a qualified yes. It is based upon a considerate study of the enabling act and an examination of the general principles of law pertinent to

the issue formulated here. The power and the extent thereof which will permit a municipality in this state to exempt itself from the provisions*735 of its own zoning ordinance must be found within the provisions of the enabling act.

An analysis of the enabling act discloses that there is no provision in this legislation which expressly permits a local legislative body to exempt a municipality from zoning restrictions. Consequently, any such power must be found in an implied grant from the general assembly to each of the local governmental units which see fit to enact a zoning ordinance.

In Cianciarulo v. Tarro, 92 R.I. 352, 168 A.2d 719, we discussed at length the authority delegated to a local legislature by the enabling act. There we said that by s 45-24-1 thereof gave the city or town council power to regulate and restrict the uses of land. We also stated there and in Hadley v. Harold Realty Co., 97 R.I. 403, 198 A.2d 149, 199 A.2d 121, that s 45-24-3 of the act set forth the objectives which hopefully would be achieved by the exercise of the conferred zoning power. From the language of the section it was clear, we said, that the general assembly had incorporated therein norms and guidelines which a local council could look to when it invoked this delegated authority. We declared in Cianciarulo that the provisions of s 45-24-3 [FN3] were not mandatory but were directory only with a broad discretion as to the manner in which such ends shall be accomplished. In this same opinion we discussed the interrelationship between*736 s 45-24-3 and s 45-24-5-the latter being the provisions which authorize the amendment of a zoning ordinance. We concluded that s 45-24-3 limited the council's power to amend only to the extent that any change effected by such amendment must be in conformity with a comprehensive plan. In Hadley we described a comprehensive plan as a scheme or formula of zoning that reasonably relates the regulation and restriction of land uses and the establishment of districts therefor to the health, safety and welfare of the public.

> FN3. '45-24-3. General purposes of ordinances.-Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote the public health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such town or municipality.'

[6] [7] In Hadley, supra, we established the criterion to be used to determine whether or not an amendment to the zoning ordinance violates the comprehensive plan. There we held that if the enactment of the amendment bears such a reasonable relationship to the public health, safety and welfare so as to justify its adoption, the comprehensive plan remains inviolate. With this standard in mind, it is our belief that any city or town in this state may legally amend its zoning ordinance by adopting a properly drawn ordinance which exempts from its operation any building or use employed by a municipality in the performance of its governmental functions. Likewise a provision in an original zoning ordinance embracing a similar exemption is valid.

[8] We point out, however, that the authority to exempt a municipality is applicable exclusively to those situations in which **780 it operates in governmental as distinguished from a proprietary capacity. The distinction drawn between the mandatory and necessary governmental functions as opposed to the proprietary functions performed by a city or town have been recognized and emphasized as being an important determinative factor by various courts and noted *737 authorities when they have addressed themselves to the issue now before us. [FN4]

> FN4. See: Stiger v. Village of Hewlett Bay Park, 283 App.Div. 827, 129 N.Y.S.2d 38;

Nehrbas v. Incorporated Village of Lloyd Harbor, 2 N.Y.2d 190, 159 N.Y.S.2d 145, 140 N.E.2d 241, 61 A.L.R.2d 965; 2 Metzenbaum (2d ed.), Law of Zoning, ch. X-i-1, pp. 1283-1285; 2 Yokley (3d ed.), Zoning Law and Practice, ch. XXI, s 21-2, p. 469; 2 Rathkopf (3d ed.), Law of Zoning & Planning, ch. 53, pp. 1-10. See also annotation on this subject, 61 A.L.R.2d 970, and the cases cited therein and in the later case service.

[9] [10] In this jurisdiction we recognize the distinction between the governmental functions of a city and town and its proprietary functions. Buckhout v. Newport, supra. In the exercise of the first, the municipality acts as the agent of the state performing duties delegated to it by the sovereign. Whereas in the exercise of its proprietary functions, a city or town has the same full measure of authority over its property that a private corporation or individuals enjoy. City of Providence v. Hall, 49 R.I. 230, 142 A. 156. We can perceive no reason why a city or town in the performance of its proprietary capacity, like any other individual or corporation, should not be bound by a zoning ordinance.

Having enunciated the above rule, we shall examine the Bristol amendment to determine if the town council has properly exempted the town from the restrictions of its zoning ordinance. The issue is whether or not the phrase 'public or municipal purposes' as used in the ordinance properly limits the circumstances in which the town is freed from the strictures of its zoning regulations to those occasions when it acts in a governmental, as distinguished from a proprietary, capacity.

[11] [12] [13] In making a finding in this regard, we apply the rules of statutory construction with equal force in interpreting this ordinance as we do when we have a statute before us for our analysis and determination. We are guided in our consideration by the principle set forth in Novak v. City Council of Pawtucket, 99 R.I. 41, 205 A.2d 589, where we stated ***738** that this court, if reasonably possible, will construe an ordinance to avoid its invalidity. Whenever the language of an ordinance is susceptible of more than one interpretation, we will adopt the interpretation that will best carry out its evident purpose. Taft v. Zoning Board of Review, 75 R.I. 117, 64 A.2d 200. In Doherty v. Town Council of Town of South Kingstown, 61 R.I. 248, 200 A. 964, we pointed out that though the legislative intent is to be found primarily in the language of an ordinance yet where the language is ambiguous or uncertain the court may take into consideration certain extrinsic matters which tend to throw some light on the legislative intent. We stated in Doherty that among matters which could properly be considered as giving an indication of the legislative intent was the objective to be accomplished by the enactment of the ordinance.

[14] It is generally agreed that the words 'public or municipal purposes' standing alone are not susceptible of any precise and neat definition but in each case they must be considered in the context in which they are used. State ex rel. McClure v. Hagerman, 155 Ohio St. 320, 98 N.E.2d 835, 37 Am.Jur., Municipal Corporations, s 120, p. 734. While it is conceivable that in certain circumstances the phrase 'public or municipal purposes' could be used to describe a proprietary function of a city or town, it does not appear that the town council of Bristol intended that such a meaning be ascribed to this language.

****781** [15] Having in mind the principles of statutory construction to which we have referred earlier, it is obvious that the council enacted the ordinance which contains the amendment for the specific purpose of permitting the addition to be made to the existing fire station. We believe that the phrase 'public or municipal purposes' as used in the ordinance is synonymous with the term public purposes and was employed by the council to include only those well recognized governmental functions performed by the town ***739** in the interest of all the public. It refers to a governmental or public purpose as opposed to a private or proprietary one.

[16] We hold therefore that the phrase 'public or municipal purposes,' as used in the Bristol amendment, encompasses only those functions which a municipality may perform in a governmental capacity. Accordingly the amendment under study here effectively exempts the

town of Bristol from any restriction contained in its zoning ordinance.

[17] In considering the third question certified to us by the superior court, we are not required to indulge in any lengthy discourse or give any extensive citation of authority to hold, as we do here, that a provision in a zoning ordinance which specifically exempts therefrom the governmental functions of a municipality is not an improper delegation of authority by the legislature for the reasons which appear heretofore in this opinion.

[18] While our opinion herein renders moot the inquiries posed to us by question four, we would be remiss if we did not point out that any reply whatsoever to the queries contained in the question would be completely beyond the proper realm of the certification statutes. Whether the use of land satisfies the requirements for a special exception or variance under the Bristol ordinance is a matter to be decided in the first instance by the zoning board of review of the town and only after it has heard evidence in support thereof. Although we will review the board's decision, our action in this regard is initiated by the filing in this court of a petition for a writ of certiorari pursuant to the provisions of s 45-24-20. This court will not stand idly by and allow the statutory certification procedures to be used to bypass established avenues of review which have been delineated for us by the general assembly.

The papers in both cases with our decision endorsed thereon are returned to the superior court for further proceedings.

R.I. 1967.
Nunes v. Town of Bristol
102 R.I. 729, 232 A.2d 775

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