

TRANSPORTATION

Transportation: Mass Transit

***Garden Hills Civic Association, Incorporated v.
Metropolitan Atlanta Rapid Transit Authority,***
539 S.E.2d 811 (Ga. 2000)

As long as the Metropolitan Atlanta Rapid Transit Authority (MARTA) uses a type of competitive-bidding process to lease land that it is not using for the purpose of increasing its revenues, such a purpose will be considered public regardless of the lessee's private, for-profit business. The use will be within the powers expressly granted to MARTA by the Georgia statutes, even if MARTA uses its own funds to add utilities and other infrastructures to the leased land.

FACTS AND PROCEDURAL HISTORY

Garden Hills Civic Association filed an injunction to stop MARTA from leasing forty-seven acres of land surrounding the MARTA Lindbergh Station to a developer, Carter & Associates. MARTA wanted to lease the land not planned for further station uses to increase its revenues "in furtherance of its underlying purpose of providing the metropolitan Atlanta area with a functioning rapid transit system." *Garden Hills*, 539 S.E.2d at 814 (citing *Concept Capital Corp. v. DeKalb County*, 339 S.E.2d 583 (Ga. 1986)). After proper bidding procedures and negotiations, MARTA chose Carter. Garden Hills' request for an injunction was denied by the trial court and again on appeal to the Georgia Supreme Court.

LEGAL ANALYSIS

Garden Hills contended that MARTA did not possess the power to enter into an agreement with Carter because the express language to do so was not stated in the Georgia Constitution or statutory grant of power. Therefore, the proposed project was not within the limited scope of MARTA's constitutional purpose and function. MARTA maintained that its

authority to go through with the project came from the General Assembly's statutory grant of power expressly authorizing MARTA to "lease (as lessor), transfer, or dispose [of real property] whenever same is no longer required for [its] purposes." *Id.* (quoting 1965 Ga. Laws 2243, 2253, § 8(c)). The General Assembly obtained the authority to enact this statute from the Georgia Constitution, which states that "the acquisition, establishment, operation or administration of a system of public transportation of passengers for hire within the metropolitan area . . . is an essential governmental function and a public purpose." *Id.* at 813 (quoting Ga. Const. art. XVII, § I, ¶ I). Furthermore, the Constitution empowers "the General Assembly to grant MARTA 'such other powers as may be *necessary or convenient*'" to accomplish its function and purpose. *Id.* at 814 (quoting Ga. Const. art. XVII, § I, ¶ II). Because MARTA does not currently need the forty-seven-acre tract of land, it is a proper use of MARTA's express statutory power to lease the land.

Garden Hills further maintained that, even if MARTA were authorized to lease its real property, MARTA was still not allowed to "engage in an independent enterprise of the type usually pursued by private individuals." *Id.* (quoting 1965 Ga. Laws 1965, 2243, 2256, § 8(p)). The supreme court found that the trial court properly denied the injunction after considering the merits of the claim and determining that the potential injury to MARTA, if the injunction were granted, outweighed any potential harm to Garden Hills if the injunction were denied. Additionally, the court held that MARTA's agreement with Carter was lawful and valid.

MARTA's purpose in leasing the land is "to convert the real estate into an income-producing asset, with the resulting rent used to fund its existing operations and future expansion." *Id.* MARTA's purpose is a public one because the rent generated from the lease will be used to benefit the transit system. Additionally, "the use of MARTA's funds to increase the value of its property for the benefit of its ridership is an expenditure in furtherance of a valid public purpose." *Id.* at 814–815 (citing *City of Atlanta v. Petkas*, 321 S.E.2d 725 (Ga. 1984)). Furthermore, MARTA will be Carter's lessor, and will not be directly involved in any of Carter's business on the leased property. Therefore, MARTA is not engaging in a business traditionally performed by private enterprises. Finally, MARTA solicited proposals from developers and negotiated the terms of the lease to maximize its benefits.

Thus, the taxpayers received the best possible price because the competitive-bidding process was conducted in a manner similar to that required by statute. *Id.* at 815 (citing *City of Atlanta v. J.A. Jones Constr. Co.*, 398 S.E.2d 369 (Ga. 1990)). MARTA's negotiations with the two interested developers were carried out to maximize the benefit of the lease to MARTA. Thus, the competitive-bidding process was satisfied because MARTA chose the best proposal, and the best proposal was analogous to the highest bidder in a competitive-bidding process.

COMMENTARY

Although Georgia law prohibits public entities from engaging in enterprises usually pursued by private individuals, municipalities may generally lease to private parties public property that is not being used for municipal purposes as long as it does not interfere with the public use. Eugene McQuillin, *The Law of Municipal Corporations* vol. 10, § 28.42.25 (Thomas Evans & Judith O'Gallagher eds., 3d ed., West 1999). The property may be leased for compensation or gratuitously. Although MARTA will be making a profit in the form of rent collected from Carter's private business, MARTA will not be directly involved in Carter's private enterprise. Carter will be required to pay rent to MARTA regardless of the success or failure of Carter's private business. Therefore, MARTA is merely taking advantage of its statutory right to lease its unused land and is not engaging in a private enterprise.

RESEARCH REFERENCES

- Eugene McQuillin, *The Law of Municipal Corporations* vol. 10 § 28.37–28.38, 28.40 (Thomas Evans & Judith O'Gallagher eds., 3d ed., West 1999).
- Eugene McQuillin, *The Law of Municipal Corporations* vol. 15, § 39.31 (Beth A. Buday & Donna M. Poczatek eds., 3d ed., Clark Boardman Callaghan 1995).

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