

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WATAUGA
COUNTY OF WAKE

14 CVS 551
14 CVS 13934

TOWN OF BOONE,)
 Plaintiff)
))
 v.)
))
THE STATE OF NORTH CAROLINA,)
Defendant; COUNTY OF WATUAGA,)
Intervening Defendant)

ORDER ALLOWING MOTION FOR
PRELIMINARY INJUNCTION

THIS MATTER came on for hearing on December 15, 2014 before the undersigned three-judge panel upon the Plaintiff’s Motion for Preliminary Injunction. Upon consideration of all matters of record,¹ the Court finds and concludes as follows:

1. This Court has personal and subject matter jurisdiction over this cause.
2. This cause is properly referred to the undersigned three-judge panel pursuant to N.C. Gen. Stat. § 1-81.1(a1), § 1-267.1 and N.C. R. Civ. P. 42(b)(4).
3. The Plaintiff, in its motion for a preliminary injunction, seeks to enjoin the operation of legislation enacted by the North Carolina General Assembly on June 26, 2014, Session Law 2014-33, that amends Article 19 of Chapter 160A of the General Statutes [Planning and Regulation of Development] and provides that:

“Notwithstanding any other provision of law, the Town of Boone shall not exercise any powers of extraterritorial jurisdiction as provided in Article 19 of Chapter 160A

¹ The State has objected to the admissibility of certain affidavits proffered by the Plaintiff in support of Plaintiff’s motion for a preliminary injunction. The Court has disregarded those portions of the affidavits that are not relevant, competent and admissible evidence.

of the General Statutes.” The legislation, by its terms, becomes effective January 1, 2015.

4. The Plaintiff, the Town of Boone, filed suit against the State challenging the constitutionality of the enacted legislation and seeks declaratory relief and a preliminary and permanent injunction. Watauga County was added as an intervening party on December 11, 2014.
5. The Court finds and concludes that:
 - a. The Plaintiff, the Town of Boone, has shown a likelihood of success on the merits of its case; and
 - b. The Plaintiff is likely to sustain irreparable loss unless a preliminary injunction is issued and, in the opinion of the Court, the issuance of a preliminary injunction is necessary for the protection of the Plaintiff’s rights during the course of this litigation.

THEREFORE, with the unanimous concurrence of the three judges of this Court, the Court concludes that the Plaintiff’s Motion for a Preliminary Injunction should be ALLOWED and that the Defendants are enjoined until further order of the Court as follows:

- a. During the pendency of this litigation, the operation of Session Law 2014-33 is restrained and enjoined in its entirety; and
- b. During the pendency of this litigation, Plaintiff Town of Boone may continue to exercise its powers of extraterritorial jurisdiction as provided in Article 19 of Chapter 160A of the General Statutes.

c. In accordance with N.C. Rule Civ. P. 65(c), no security is required of the Plaintiff.

So ORDERED, this the 29th day of December, 2014.

/s/ Alma L. Hinton

Alma L. Hinton

/s/ Nathaniel J. Poovey

Nathaniel J. Poovey

/s/ Paul C. Ridgeway

Paul C. Ridgeway

Certificate of Service

The undersigned certifies that on the date set out below, the foregoing was served upon all parties by depositing the same in the custody of the United States Postal Service, first class postage prepaid, addressed as follows:

Lauren M. Clemmons
North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602

Jim W. Phillips, Jr.
Julia C. Ambrose
Daniel F.E. Smith
Brooks, Pierce, McLendon & Humphrey & Leonard
P.O. Box 26000
Greensboro, NC 27420

Stacy C. Eggers, IV
Eggers, Eggers, Eggers & Eggers
P.O. Box 248 DTS
Boone, NC 28607

This the 29th day of December, 2014.
