

Constitutionality of WSWP Program affirmed in N.C. Supreme Court decision  
Town of Spruce Pine v. Avery County, N.C. Supreme Court.  
(No. 431A96, Filed 24 July 1997)

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In *Town of Spruce Pine v. Avery County, N.C.*, S.E.2d (1997) (No. 431A96), filed July 24, 1997, the North Carolina Supreme Court ruled that North Carolina's Water Supply Watershed Protection Act (G.S. Sec.143-214.5) is constitutional. According to the court, the North Carolina General Assembly did provide adequate, sufficiently specific standards in the legislation to guide and restrain the discretion of the Environmental Management Commission (EMC) in its rule-making. Thus the court held that the watershed protection statutes do not amount to an unconstitutional delegation of legislative authority to an administrative agency. The court also ruled that even if the General Assembly's 1993 statutory exemption of the Ivy River watershed from the act was unconstitutional (because there was no basis for singling out that watershed), the unconstitutional amendment could be severed from the act, and the rest of the act remained constitutional and still intact.

The court noted that the primary sources of legislative guidance are declarations by the General Assembly of the legislative goals and policies which an agency is to apply when exercising its delegated powers. But it also noted that the General Assembly is not required to lay down a detailed agenda covering every conceivable problem which might arise. General policies and standards can be enough "to provide direction to an administrative body possessing the expertise to adapt the goals to varying circumstances." The court also referred to the more specific direction of the watershed act that the Environmental Management Commission establish minimum statewide water supply watershed protection requirements by (i) controlling development density, (ii) providing for performance-based alternatives to development density controls that are based on sound engineering principles, or (iii) a combination of both (i) and (ii). According to the court, the "classification of watersheds is a complex subject. It is not something the General Assembly can micro-manage."

The court also recognized the growing trend of authority that the presence or absence of procedural safeguards is relevant to the broader question of whether the delegation of authority is accompanied by adequate guiding standards. In a revealing comment the court noted that the "procedural safeguards in this case were, to say the least, adequate." It pointed out that the rule-making power of the Commission is subject to legislative review. The act requires the EMC to submit reports quarterly on the implementation of the act to the Environmental Review Commission, a legislative commission. Also, some forty informational meetings and eight public hearings were held across the state prior to the adoption of rules by the EMC.

One peculiarity in the case is the way the court determined that Avery County had standing to challenge the constitutionality of the watershed act. The court concluded that the rule in North Carolina is that a local government may not challenge the constitutionality of a state statute if it accepts benefits under the challenged statute. It then ruled that Avery County had standing to bring the suit because it "is not accepting

benefits under the (watershed) statute . . . " It is unclear whether the court thought that the lack of benefit stemmed from the fact that the county was expected to adopt land development regulations protecting a water supply that was not used by Avery County residents.

It is important to remember that *Town of Spruce Pine v. Avery County* does not involve the specific roles of the State and local governments in the adoption and enforcement of land development controls, the nature of required watershed protection regulations, or the question of whether watershed protection regulations can amount to a taking. Those matters were never raised in this suit.

The North Carolina Supreme Court's opinion is a relatively short one. It comes over ten months after the North Carolina Court of Appeals ruled that the watershed act was unconstitutional. The resolution of the case by the court may have been difficult. As is often true in a case like this one, there may have been more going on than meets the eye.

*Thanks to Richard Ducker of UNC Institute of Government for allowing this reprint of his opinion.*