FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

WGZ CORPORATION and ASSUMPTION HIGH SCHOOL,

Appellees,

vs.

CITY COUNCIL OF THE CITY OF DAVENPORT, IOWA: and KATHRYN KIRSCHBAUM, Mayor of said City, ROBERT FENSTERBUSCH, DANIEL RODRICK, BURDETTE DOHSE, JOHN HALDEMAN, DONALD DITTMER, THOMAS HART, KENNETH JOHNSTON, LESTER JURGENS, JR., WILLIAM FENNELLY, and RONALD PHILLIPS, as Individual Aldermen of the City of Davenport, Iowa,

Appellants.

Filed September 9, 1977

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2-58810

Appeal from Scott District Court - R. K. Stohr, Judge.

Appeal from trial court ruling which sustained a writ of certiorari and held local zoning ordinance valid.

REVERSED.

Margaret Stevenson, of Davenport, counsel for appellants.

Edward N. Wehr, of Wehr and Lane, of Davenport, counsel for appellees.

Heard by Allbee, C.J., Donielson, Snell, Oxberger and Carter, JJ.

DONIELSON, J.

Defendants appeal the trial court's ruling sustaining a writ of certiorari and holding valid a zoning ordinance which had been passed by the Davenport City Council and subsequently rescinded, but later published after rescission by the Council. On June 18, 1975, the city council met at their regular meeting and considered the third reading of a proposed ordinance that would amend the existing ordinance, thereby enabling the city to grant plaintiffs' rezoning application. According to the stipulated facts, representatives of the WGZ Corporation were present at the June 18 meeting.

The proposed ordinance was passed by a vote of eight to two. After passage, a motion to reconsider was made but failed six to four. Subsequently, one of the aldermen announced that he would present a resolution at the next session to rescind the ordinance. A motion was then passed which directed the clerk not to record the ordinance. After the passage of the ordinance on June 18, the plaintiffs executed leases to occupy the premises rezoned by the ordinance on June 19. The ordinance was subsequently signed by the mayor prior to July 2, 1975.

At the next regular council meeting on July 2, 1975, a motion to rescind the June 18 passage of the ordinance passed by a vote of six to four. The ordinance was then again presented for passage, but failed five to five. However, the ordinance that was passed on June 18 was published in the newspaper on July 4, 1975.[1]

After a hearing, the lower court issued its ruling sustaining the writ, concluding that there was no procedure set forth in the statutes [Chapter 366, The Code (1973), repealed by Acts 1972 (64 G.A.), Chapter 1088, § 199, effective July 1, 1975][2] or ordinances of the City of Davenport which provide for a resolution to rescind an ordinance. Consequently, the trial court held that when the motion to reconsider was defeated, the council lost any power or authority it may have had to change the ordinance by any other means, and, therefore, the disputed ordinance was valid and in full force and effect.

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[1] The stipulated facts in this case indicate that no defendant "gave any directions to prohibit, stop or postpone publication" of this ordinance.

[2] Therefore, the 1973 statutes were not effective when the ordinance was published and second council meeting was held. Since July 1, 1975, Chapter 380, The Code (1975) has governed city legislation.

We find that an ordinance is not valid until it is published as required. State of Iowa v. Omaha & Council Bluffs Railway Co., 113 Iowa 30 33, 84 N.W. 983, 984 (1901); Boardman v. Davis, 231 Iowa 1227, 1232, 3 N.W.2d 608, 611 (1942). In general, publication is essential to the validity of an ordinance where it is a mandatory requirement of the general laws of the state. However, even though the general laws provided for publication [Chapter 366, The Code (1973) and Chapter 380, The Code (1975)], lack of publication does not render the ordinance invalid where the provisions for publication are directory only. 62 C.J.S. Muncipal Corporations § 427 (1949). "A provision for publication has been construed to be directory where there is no further provision that the ordinance should not take effect until after its publication . . . " Id. at 816. However, the supreme court has explicitly held in State of Iowa v. Omaha & Council Bluffs Railway Co., supra, at 33, that ordinances shall take effect only after publication in the manner provided by statute. Consequently, at least in Iowa, an ordinance is not effective until after its publication. Until such time, a city council has the power to revoke, repeal, rescind or otherwise annul the ordinance.

Although it is unfortunate where, as here, an ordinance is rescinded but later published as if the ordinance was approved, we feel that a city council must be given the latitude to reconsider its actions prior to publication. We do not have any legislative history at our disposal, but it seems logical to assume that it was a desire for this type of "latitude" that prompted the state legislature to require publication and the state supreme court to construe the publication requirement as a prerequisite to the validity of an ordinance.

The stipulated facts in this case indicate that the plaintiffs, WGZ Corporation and Assumption High School, entered into several real estate leases some two weeks prior to publication of the ordinance. By sending representatives to the June 18 meeting, the plaintiffs also became aware that an alderman would seek a resolution to rescind the ordinance at the next session of the council. Although plaintiffs assert that they relied upon the validity of the ordinance in signing the leases, they incorrectly evaluated the legal consequences of the passage of the ordinance and prematurely anticipated the time at which the ordinance was to be valid and binding -- after publication, and not before.

Therefore, we reverse the judgment of the district court.

REVERSED.