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Davidson County v. City of High Point: The North Carolina Supreme Court Solves A City-County Conflict

As the municipal population increases and as county areas become more urbanized, North Carolina cities face growing pressures to expand their jurisdictions by annexing land of surrounding counties.¹ With the increase in a municipality's jurisdiction comes the obligation to extend municipal services to newly annexed areas. Orderly urban growth requires clear demarcation of city and county powers so that no area is subjected to inconsistent regulations. The North Carolina General Assembly has created an effective statutory framework that minimizes the jurisdictional conflict between cities and counties involved in the annexation process. However, a potential jurisdictional conflict between cities and counties remains.

In *Davidson County v. City of High Point*² the North Carolina Supreme Court dealt with the "jurisdictional conflict between the statutory power cities possess to provide services through public enterprises and the statutory power counties possess to regulate the use of land within their boundaries through zoning ordinances."³ Specifically, the issue in *Davidson County* was

whether a city-owned sewage treatment plant located outside the city but within the county, which is upgraded pursuant to the county's special use permit, may be used by the city to provide sewer service to its citizens in newly annexed areas without complying with a condition attached to the permit requiring the county's prior approval of service to county citizens.⁴

Based on the statutory powers conferred on cities and counties, the North Carolina Supreme Court held that the city of High Point did not have to comply with the condition attached to the county's special use permit requiring prior county approval for sewer extension.⁵

This Note summarizes the facts and decision in *Davidson County* and explains the significance of the supreme court's clarification of the division of powers between municipalities and counties. It discusses the rationale used by the supreme court and how it modified the holding of the North Carolina Court of Appeals. Finally, it concludes that the narrower holding of the supreme court is correct and points out a broader issue raised by the lower court but left unresolved by the supreme court.

1. The dominant units of local government in North Carolina are divided into two basic categories: cities (public or municipal corporations) and counties (public quasi-corporations). "[B]oth local governments have broad regulatory powers with respect to many specific matters, and both have general police powers. In short, both cities and counties are general-purpose units of local self-government." Wicker, *Relationships Between Counties and Municipalities*, in *STATE-LOCAL RELATIONS IN NORTH CAROLINA* 30, 32 (C. Linen ed. 1985); see also O. REYNOLDS, *LOCAL GOVERNMENT LAW* § 6 (1982) (discussing units of local government in the United States).

2. 321 N.C. 252, 362 S.E.2d 553 (1987).

3. *Id.* at 253, 362 S.E.2d at 554.

4. *Id.*

5. *Id.* at 260, 362 S.E.2d at 558.

The city of High Point owns the Westside High Point Wastewater Treatment Facility, which services the city and surrounding area. The fifty-year-old sewage plant is located outside the city limits, but within Davidson County.⁶ In May 1983, pursuant to a Davidson County zoning ordinance, the city applied for a special use permit to upgrade and expand the plant.⁷ In October 1983 the county issued the permit with various conditions attached, including the following:

4. SEWAGE TREATMENT CAPACITY FOR DAVIDSON COUNTY CITIZENS:

The necessary documents shall be executed to clearly identify projected volume of sewage treatment capacity which can be assessed by the citizens of Davidson County. *The provision of sewer service to the citizens of Davidson County shall be subject to final approval of the Davidson County Board of Commissioners.*⁸

The validity of this condition was at issue in *Davidson County*.

In September 1984 the owner of a sixty-acre parcel located in Davidson County made a request to the city of High Point for voluntary annexation.⁹ Because the county could not provide sewer service to the tract and the parcel was not suitable for septic tanks, the owner requested that the city provide sewer service through an outfall from the Westside plant which already ran through the property.¹⁰ The city gave notice of a public hearing to consider the annexation and did not plan to seek prior approval from the county regarding sewer service.¹¹

Acting under the apparent authority of the fourth condition attached to the special use permit,¹² Davidson County notified the city of High Point that the city would be in violation of the special use permit if it failed to seek prior county approval.¹³ The county stated that city annexation with subsequent sewer extension to the sixty-acre parcel should await the completion of the expansion and upgrading of the Westside Facility.¹⁴

In a letter to High Point city officials, the Davidson County Board of Commissioners expressed its concern about the economic and environmental impact of the annexation and sewer extension. The county cited the severe impact on its county budget that would result from "increased population density; school attendance; school population; school bus transportation; school capital outlay;

6. *Id.* at 253, 362 S.E.2d at 554-55.

7. *Id.* For a discussion of special use permits, see *infra* note 59 and accompanying text.

8. *Davidson County*, 321 N.C. at 253, 362 S.E.2d at 555.

9. *Id.* at 254, 362 S.E.2d at 555. For a discussion of annexations, see *infra* notes 37-39 and accompanying text.

10. *Davidson County*, 321 N.C. at 254, 362 S.E.2d at 555.

11. *Id.* Prior to the requested sixty-acre annexation, the city annexed an eight-acre tract in the county and provided sewer service from the Westside Facility without obtaining the county's approval. *Id.*

12. See *supra* text accompanying note 8.

13. *Davidson County*, 321 N.C. at 255, 362 S.E.2d at 555 (referring to a September 20, 1984, letter from the County Board of Commissioners to the city).

14. *Id.* at 254-55, 362 S.E.2d at 555.

provision of public water; fire protection and emergency ambulance service."¹⁵ Additionally, the county was worried about the "negative impact to the streams and properties of Davidson County" from the increased wastewater flow before the expansion and upgrading of the Westside Facility was completed.¹⁶

In February 1985, ignoring the county's demand, the city exercised a non-contiguous annexation of the sixty-acre parcel with plans to extend sewer service from the Westside plant.¹⁷ The county sought to enjoin the city "from annexing any areas located in the County for which the Westside Facility would be used to provide sewer service, and from using the Westside Facility to provide sewer service to residents of Davidson County *in the annexed areas* without prior approval from the County"¹⁸ If upheld, the effect of this decision would have been to allow the county to control any city annexation that required sewer service from the Westside Facility.

At trial the county argued that the city violated the condition attached to the special use permit requiring county approval for any sewer extension from the Westside plant.¹⁹ The city claimed the condition, as interpreted by the county, was beyond the scope of the county's zoning authority and that the condition was invalid because it did not promote the health, safety, morals, or general welfare of the citizens of Davidson County.²⁰ The trial court granted summary judgment in favor of the county and enjoined the city from using the Westside facility to provide sewer services to county citizens, whether inside or outside the city limits, without first obtaining approval from the county.²¹

The North Carolina Court of Appeals unanimously overruled the trial court, basing its decision on a theory not briefed by either party.²² The court addressed the broad issue of whether a city's public enterprise, in this case a sewage plant, located outside city limits but within the county, is subject to the county's zoning regulations. Distinguishing between a "building" and a "public enterprise" as used in the statutes, the court of appeals held that a city-owned public enterprise located outside city limits is not subject to a county's zoning laws.²³

15. *Id.* at 254, 362 S.E.2d at 555.

16. *Id.*

17. *Id.* at 255, 362 S.E.2d at 555. Annexation is discussed *infra* notes 37-39 and accompanying text.

18. *Davidson County*, 321 N.C. at 255, 362 S.E.2d at 556.

19. *See id.*

20. *Id.*

21. *Id.* at 255-56, 362 S.E.2d at 556.

22. *Davidson County v. City of High Point*, 85 N.C. App. 26, 26-27, 354 S.E.2d 280, 281, *modified and aff'd*, 321 N.C. 252, 362 S.E.2d 553 (1987); *see Davidson County*, 321 N.C. at 256, 362 S.E.2d at 556.

23. *Davidson County*, 85 N.C. App. at 26-27, 354 S.E.2d at 281. As summarized by the supreme court, the court of appeals found

that the Westside Facility was not a building within the meaning of N.C.G.S. § 153A-347 (which provides that a county's zoning regulations are applicable to the erection, construction, and use of buildings [owned by the State of North Carolina and its political subdivisions]) but was rather a public enterprise within the meaning of N.C.G.S. §§ 153A-274 and 160A-311 The Court of Appeals found that N.C.G.S. § 153A-340 [granting county zoning powers] did not specifically give a county the authority to regulate another jurisdic-

The North Carolina Supreme Court unanimously agreed with the result of the court of appeals, but reached its conclusion on different and narrower grounds. The supreme court did not address whether a city's public enterprise located in a county is subject to that county's zoning regulations. Instead, the court decided what it termed "[t]he issue actually presented," whether the condition attached to the county's special use permit exceeded the scope of the county's zoning authority in granting the special use permit.²⁴ The validity of the special use permit proper was not an issue presented in this case. The supreme court only invalidated the condition attached to the special use permit, holding that to give a county the power to disapprove sewer service to city residents is beyond the county's authority granted by statute.²⁵ The court expressly declined to decide the correctness of the court of appeal's holding.²⁶

The North Carolina General Assembly has enacted a statutory scheme to minimize city-county conflicts when cities expand their jurisdictions in response to urban growth. The North Carolina Constitution vests legislative power in the general assembly.²⁷ Included in this power is the ability to provide for the organization and government of local governmental units.²⁸ The general assembly may, however, delegate this power to the local governmental units of the state, except where prohibited by the state constitution.²⁹ Pursuant to this authority, the general assembly has delegated broad land use regulation powers to both cities and counties.³⁰ These regulatory powers are essentially identical.³¹

To avoid potential power struggles between the two prominent units of local government, the statutory delegation of zoning authority to cities and counties is explicit as to which zoning power applies to an area. The general

tion's public enterprises located within its borders and held that the statute related to private property and was not to be broadened to include a municipality's use of land for a public enterprise as listed in N.C.G.S. § 160A-311 [The court concluded] that the City was not required to comply with the County's zoning ordinances in upgrading its Westside Facility or in using it to provide sewer service to newly annexed areas.

Davidson County, 321 N.C. at 256, 362 S.E.2d at 556; see *Davidson County*, 85 N.C. App. at 37, 40, 42, 354 S.E.2d at 286-89.

24. *Davidson County*, 321 N.C. at 256-57, 362 S.E.2d at 556; see *supra* text accompanying note 8.

25. *Davidson County*, 321 N.C. at 260, 362 S.E.2d at 558.

26. *Id.* at 256, 362 S.E.2d at 556.

27. N.C. CONST. art. II, § 1.

28. *Id.* art. IV, § 1.

29. *Id.*; see *Jackson v. Guilford County Bd. of Adjustment*, 275 N.C. 155, 163, 166 S.E.2d 78, 83 (1969).

30. N.C. GEN. STAT. § 153A-340 (1987) (county); *id.* § 160A-381 (city). There are at least two reasons for delegating land use regulation to local governments. First, the substantial administrative requirements associated with land use regulation dictate that this power be delegated. Second, being closer to the effect of land use regulations, local governments are probably better qualified than state or regional governments to respond to local land use problems. Comment, *Urban Planning and Land Use Regulation: The Need for Consistency*, 14 WAKE FOREST L. REV. 81, 84 (1978). "Certainly, the greater accessibility of local government should make it more responsive to citizen pressure." *Id.* However, this sensitivity to local pressure may not best protect regional and statewide concerns because "[t]he voice of the larger community to be served by land use controls [can be] muted by the local clamor." *Id.*

31. Compare N.C. GEN. STAT. § 153A-340 (1987) (county zoning power) with *id.* § 160A-381 (city zoning power).

assembly has conferred on cities exclusive jurisdiction over areas within their corporate limits.³² Likewise, counties have the power to zone those areas of the county not within a city.³³ The zoning power of cities and counties extends to the "erection, construction, and use of buildings by the State of North Carolina and its political subdivisions."³⁴ Therefore, city-owned buildings located outside city limits are subject to the zoning laws of the county and vice versa.³⁵

The statutory framework delegating zoning powers to cities and counties requires counties to defer to the growth of cities. It is a matter of state policy "[t]hat sound urban development is essential to the continued economic development of North Carolina."³⁶ To promote this development, the general assembly has empowered cities to expand their corporate limits by a process of annexation.³⁷ When a city annexes an area, the city obtains jurisdictional power over that area to the exclusion of all other governmental subdivisions.³⁸ Even though counties may control land use outside city limits, "[county zoning] regulations shall be made with reasonable consideration to expansion and development of any cities within the county, so as to provide for their orderly growth and development."³⁹ Not only are counties powerless to interfere with city annexation, but they must facilitate it.

As a matter of public policy established by the general assembly, municipalities exist "to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional, and gov-

32. *Id.* § 160A-360(a); *Taylor v. Bowen*, 272 N.C. 726, 727, 158 S.E.2d 837, 839 (1968); *Parsons v. Wright*, 223 N.C. 520, 522, 27 S.E.2d 534, 537 (1943); *County of Cumberland v. Eastern Fed. Corp.*, 48 N.C. App. 518, 525, 269 S.E.2d 672, 677, *cert. denied*, 301 N.C. 527, 273 S.E.2d 453 (1980). To effect a smooth future annexation of a county area, a city may also exercise extraterritorial jurisdiction over an area up to three miles beyond its city limits, depending on the population of the city. N.C. GEN. STAT. § 160A-360(a)-(e) (1987).

33. N.C. GEN. STAT. §§ 153A-122, -320; *County of Cumberland v. Eastern Fed. Corp.*, 48 N.C. App. 518, 525, 269 S.E.2d 672, 677 (1980).

34. N.C. GEN. STAT. § 153A-347 (1987) (county zoning power applicable to buildings of the State and its political subdivisions located in county); *id.* § 160A-392 (city zoning power applicable to buildings of state and its political subdivisions located in city); see *Yancey v. North Carolina Highway & Pub. Works Comm'n*, 222 N.C. 106, 22 S.E.2d 256 (1942) (general statutes do not apply to state unless expressly stated).

35. See *supra* note 23 discussing the distinction drawn by the court of appeals in *Davidson County* between a building and a public enterprise as used in the North Carolina Statutes.

36. N.C. GEN. STAT. § 160A-45(1), -33(1) (1987).

37. See generally *id.* §§ 160A-29 to -58.9A (annexation by cities). City annexation may be voluntary or involuntary. Voluntary annexation describes the process when an owner of land voluntarily petitions a city to annex his land. See *id.* § 160A-31. Involuntary annexation is initiated by the city. See *id.* §§ 160A-46 (involuntary annexation by cities with population greater than 5,000), 160A-34 (involuntary annexation by cities with population less than 5,000). A city may annex land that is contiguous or noncontiguous to city boundaries. Contiguous land may be annexed voluntarily or involuntarily. See *id.* § 160A-31 (voluntary annexation); *id.* § 160A-36(b) (involuntary annexation by cities with population less than 5,000); *id.* § 160A-48(b) (involuntary annexation by cities with population greater than 5,000). Noncontiguous land can be annexed only if the owner of land requests annexation pursuant to §§ 58.1-58.6 of the North Carolina General Statutes, or if the noncontiguous land is owned by the municipality pursuant to § 160A-58.7.

38. *Id.* § 160A-360(f); see *Taylor v. Bowen*, 272 N.C. 726, 727-28, 158 S.E.2d 837, 839 (1968).

39. N.C. GEN. STAT. § 153A-341 (1987).

ernmental purposes or in areas undergoing such development.”⁴⁰ Predictably, a prerequisite to annexation is that a municipality stand ready to provide to a newly annexed area each major municipal service provided to the municipality at the time of annexation.⁴¹ “The central purpose behind [North Carolina’s] annexation procedure,” as interpreted by the North Carolina Supreme Court, “is to assure that, in return for the added financial burden of municipal taxation, the [newly annexed] residents receive the benefits of all the major services available to municipal residents.”⁴² Specifically, if the extension of sewer outfall lines and sewer lines is necessary for the annexed area, plans for such extension must be provided and construction must be completed within two years of the annexation.⁴³

As a corollary to the obligation to provide essential services to municipal residents, a city has the authority to own and operate “public enterprises” to furnish these services.⁴⁴ A “public enterprise” refers to systems for sewer, electric power, water, gas, public transportation, solid waste, cable television, off-street parking and airports.⁴⁵ Pursuant to statutory authority city-owned public enterprises may be located outside corporate limits in counties.⁴⁶ Allowing city-owned public enterprises outside city limits seems necessary for several reasons: 1) often these systems will service both city and county residents, as is the case for the Westside Facility; 2) good planning for future city growth will necessitate locating public enterprises in the “path” of such growth, which might require location outside city limits; 3) land located within city limits is more expensive; and 4) often in a growing urban area there is no city land available for large public enterprises. However, by allowing cities to own public enterprises outside their corporate limits, the North Carolina statutory scheme has led to the kind of city-county jurisdictional clash that arose in *Davidson County*.

*Cabarrus County v. City of Charlotte*⁴⁷ illustrates this conflict. In *Cabarrus County* the city of Charlotte owned a landfill, a public enterprise, located outside city limits but within Cabarrus County.⁴⁸ The issue presented was whether the county had the power to impose its solid waste disposal ordinance on the city-owned landfill, thereby overriding the fees set by Charlotte.⁴⁹ The North Carolina Court of Appeals noted that a city has the right to own a public enterprise outside its city limits in a county.⁵⁰ Because the statute empowering the county

40. *Id.* §§ 160A-45(2),-33(2).

41. *Id.* § 160A-31(e) (citizens of annexed area subject to debts, laws, ordinances, and regulations of city as of date of annexation); *id.* § 160A-35(3) (city must set forth a plan for extension of municipal services to annexed area before annexation); *id.* § 160A-47(3) (same); *id.* § 160A-58.3 (annexed area subject to city taxes); see *Cockrell v. City of Raleigh*, 306 N.C. 479, 487, 293 S.E.2d 770, 775 (1982).

42. *In re Annexation Ordinance 300-X*, 304 N.C. 549, 554, 284 S.E.2d 470, 474 (1981).

43. N.C. GEN. STAT. § 160A-47(3)(c) (1987).

44. *Id.* § 160A-312.

45. *Id.* § 160A-311.

46. *Id.* § 160A-312.

47. 71 N.C. App. 192, 321 S.E.2d 476 (1984).

48. *Id.* at 192-93, 321 S.E.2d at 477.

49. *Id.* at 194, 321 S.E.2d at 478.

50. *Id.* at 194, 321 S.E.2d at 478-79.

to impose its solid waste disposal ordinance was not applicable to a city-owned public enterprise located in the county, the court held that the county could not override the city's landfill disposal fees.⁵¹

Cabarrus County illustrates the legislative bias toward granting cities the power to control their public enterprises when located outside corporate limits in a county. The North Carolina Supreme Court reaffirmed this legislative bias in deciding the jurisdictional conflict in *Davidson County* between a city's mandate to service its residents and a county's statutory power to regulate land use within its boundaries.⁵²

In *Davidson County* the supreme court began its analysis by stating the mode of statutory construction applicable to determining county powers.⁵³ Because counties, like cities, exist solely as political subdivisions of North Carolina and are created by statute, their powers are limited to: 1) those expressly granted by statute, and 2) those necessarily or fairly implied from express powers.⁵⁴ "The implied powers," the court has said, "are such as are necessarily or reasonably implied from those expressly granted or such as are essential to the exercise of those which are expressly conferred."⁵⁵ Additionally, statutory powers are strictly construed.⁵⁶

After establishing the method of statutory construction, the North Carolina Supreme Court defined the scope of a county's statutory power to zone. Pursuant to North Carolina General Statute section 150A-340, the court held that a county's power to zone is limited to the purposes of promoting health, safety, morals, or the general welfare by regulating and restricting buildings and other structures.⁵⁷ This zoning power applies to buildings owned by the state of North Carolina and its political subdivisions.⁵⁸ In exercising its zoning power, a

51. *Id.*

52. 321 N.C. at 253, 362 S.E.2d at 554. In this case, the conflict arose because High Point's sewer facility was located outside city limits but within Davidson County.

53. *Davidson County*, 321 N.C. at 257, 362 S.E.2d at 557.

54. *Id.*; see *O'Neal v. Wake County*, 196 N.C. 184, 186, 145 S.E. 28, 29 (1928); *Board of Comm'rs v. Hanchett Bond Co.*, 194 N.C. 137, 138, 138 S.E. 614, 615 (1927); 1 DILLON, MUNICIPAL CORPORATIONS § 237 (5th ed. 1911); 56 Am. Jur. 2d *Municipal Corporations* § 194 (1971); see also *State v. Gullidge*, 208 N.C. 204, 207, 179 S.E. 883, 885 (1935) (applying same standard to cities); N.C. GEN. STAT. § 153A-11 (1987) (county is political subdivision); *id.* § 160A-11 (city is political subdivision).

55. *O'Neal*, 196 N.C. at 187, 145 S.E. at 29; see also *Davidson County*, 321 N.C. at 257, 362 S.E.2d at 557.

56. *Davidson County*, 321 N.C. at 257, 362 S.E.2d at 557; see *Jackson v. Guilford County Bd. of Adjustment*, 275 N.C. 155, 167, 166 S.E.2d 78, 86 (1969); *Jefferson Standard Life Ins. Co. v. Guilford County*, 225 N.C. 293, 301-02, 34 S.E.2d 430, 435 (1945); see also *Porsh Builders, Inc. v. City of Winston-Salem*, 302 N.C. 550, 554, 276 S.E.2d 443, 445 (1981) (applying same standard to cities); *Kass v. Hedgepeth*, 226 N.C. 405, 408, 38 S.E.2d 164, 165-66 (1968) (same).

57. *Davidson County*, 321 N.C. at 257, 362 S.E.2d at 557.

[A] county may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and to provide density credits or severable development rights for dedicated rights-of-way

N.C. GEN. STAT. § 153A-340 (1987).

58. *Davidson County*, 321 N.C. at 257, 362 S.E.2d at 557; see N.C. GEN. STAT. § 150A-347 (1987).

county may issue special use permits with "reasonable and appropriate conditions and safeguards upon these permits."⁵⁹ Because Davidson County brought suit to enforce the condition attached to the special use permit for expanding and upgrading the city-owned Westside facility, the North Carolina Supreme Court addressed the narrow issue of whether requiring county approval of the extension of sewer services to city residents of newly annexed areas as a condition was reasonable and appropriate in light of the statutory language delegating powers to counties and cities.⁶⁰

Strictly construing the statutory language of Section 153A-340 conferring zoning powers on a county, the court determined that a county can "make ordinances and regulate buildings within their borders."⁶¹ However, nothing in the statute empowers the county to regulate the *provision of services* from a public enterprise to city residents in existing or newly annexed areas.⁶² Therefore, the condition attached to the special use permit allowing Davidson County to regulate the city's provision of sewer services to city residents was beyond the county's statutory authority.

The supreme court offered a sound policy argument for its conclusion: "To hold otherwise would give the County unfettered discretion to control the City's population growth through zoning restrictions and would ignore the legislative intent with regard to urban growth."⁶³ To promote the policy of urban growth, cities have the power to annex land.⁶⁴ Before a city can exercise its statutory annexation authority, however, it is obligated to provide municipal services, including sewer service, to the annexed area.⁶⁵ If counties could control the extension of municipal services to city-annexed areas, thereby preventing urban growth, counties would have powers at odds with the statutory purpose of promoting urban growth. Such power would lead to confusion and conflicts of jurisdiction and authority between cities and counties.⁶⁶ The supreme court concluded: "Since the County has no authority to restrict or regulate the City's *provision of sewer service* to its residents, the City can use the Westside Facility to meet its statutory mandate without seeking the County's prior approval, even

59. *Davidson County*, 321 N.C. at 257, 362 S.E.2d at 557; see N.C. GEN. STAT. § 150A-340 (1987). "A special [use] within the meaning of a zoning ordinance is [a use] which is expressly permitted in a given zone upon proof that certain facts and conditions detailed in the ordinance exist." *In re Application of Ellis*, 277 N.C. 419, 425, 178 S.E.2d 77, 80 (1970). Certain land uses are almost always subject to approval as special uses. An example is a community facility, such as a sewage plant, that may have an adverse impact on an area but deserves consideration because it serves a community need. D. MANDELKER, *LAND USE LAW* 174 (1982). A special use differs from a zoning variance which authorizes property use forbidden by a zoning ordinance. *Id.* at 166.

60. *Davidson County*, 321 N.C. at 256-57, 362 S.E.2d at 556-57. Compare the issue addressed by court of appeals *supra* note 23.

61. *Davidson County*, 321 N.C. at 257, 362 S.E.2d at 557; see *supra* note 57.

62. *Davidson County*, 321 N.C. at 258, 362 S.E.2d at 557; see *Taylor v. Bowen*, 272 N.C. 726, 727, 158 S.E.2d 837, 839 (1968).

63. *Davidson County*, 321 N.C. at 258, 362 S.E.2d at 557; see N.C. GEN. STAT. §§ 160A-45(1), 153A-341 (1987).

64. See N.C. GEN. STAT. § 160A-46 (1987).

65. *Id.* §§ 160A-47(3), -35(3).

66. *Cf. Parsons v. Wright*, 223 N.C. 520, 524, 27 S.E.2d 534, 537 (1943) (holding cities have exclusive authority to regulate urban streets).

though the facility is located in the county.”⁶⁷

In light of the statutory scheme conferring powers on counties and cities in North Carolina, the result in *Davidson County* was entirely correct. Counties should not be able to control city growth indirectly by regulating the provision of municipal services to city residents when counties are prohibited by statute from directly controlling city growth. A contrary ruling would upend the careful subdivision of city and county powers established by North Carolina statutes.

Although the North Carolina Supreme Court and the court of appeals reached the same result in *Davidson County*, their respective rationales were quite different. The supreme court should be commended for ruling on the narrow issue actually presented in *Davidson County*, rather than using the case, as did the court of appeals, to decide an issue that was not properly presented by the facts and that neither party in the suit briefed.⁶⁸ The supreme court correctly identified the issue presented in *Davidson County* as the validity of the condition attached to the county's special use permit to upgrade the Westside sewage facility, rather than the broad issue addressed by the court of appeals of whether a city-owned public enterprise located outside city limits but within the county is subject to county zoning regulations.

However, a significant aspect of *Davidson County* was that the supreme court intentionally did not decide the correctness of the court of appeals' rationale, thus leaving open the issue in North Carolina of whether a city-owned public enterprise located outside city limits but within a county is subject to county zoning regulations.⁶⁹ This is especially significant because the supreme court admitted that the broad issue addressed by the court of appeals underlies the conflict that arose in *Davidson County*, but it concluded that the resolution of this issue was unnecessary in this case.⁷⁰

The decision of the North Carolina Supreme Court to base its holding on the narrower grounds can be seen as a commendable exercise of judicial restraint. Although the broader issue addressed by the court of appeals underlies the conflict in *Davidson County*, the facts of the case and the issues presented did not warrant a decision based on the broader issue. Such a decision would have been premature and not based soundly on the facts. On the other hand, the

67. *Davidson County*, 321 N.C. at 259, 362 S.E.2d at 558 (emphasis added). The supreme court also ruled against the county on the other two theories it had offered: 1) that the city was estopped from challenging the condition of the special use permit, and 2) that the city's failure to exhaust administrative remedies prohibited the city from challenging the condition. See *id.* at 259-60, 362 S.E.2d at 558. First, the city's acceptance of benefits of the county's special use permit did not estop the city from challenging the condition attached to the special use permit because the city was not questioning the validity of the permit, but only the interpretation of the condition. *Id.* at 259, 362 S.E.2d at 558. Second, the city's failure to exhaust the administrative remedies to challenge the special use permit did not preclude the city from challenging the meaning of the condition. *Id.* at 260, 362 S.E.2d at 558. Because the interpretation of the condition was at issue, the city had no reason to appeal the issuance of the permit within the required thirty-day period after receiving the permit. *Id.* at 260, 362 S.E.2d at 558.

68. *Id.* at 256, 362 S.E.2d at 556.

69. *Id.* “We express no opinion as to the correctness of the Court of Appeals' conclusion that a city-owned public enterprise located outside corporate limits is not subject to the county's zoning laws.” *Id.*

70. *Id.*; see *supra* note 23.

court of appeals pointed out a problem lurking behind the scene in city-county relations. The issue has not been addressed in North Carolina, and other jurisdictions have reached varying results in determining whether city-owned public enterprises located outside city limits are exempt from complying with county zoning regulations.⁷¹

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71. See *Davidson County*, 85 N.C. App. 28, 31-32, 354 S.E.2d 280, 283-84 (1987) (discussing the split in jurisdictions).