



Preservation Law Digest

Developments in Preservation and Conservation Law for Historic, Open Space and Working Lands Places

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Caplan vs. Town Of Acton

Mass. Supreme Judicial Court, SJC-12274, March 9, 2018: Preliminary injunction warranted against grant to preserve active church's stained glass.

In a case of first impression, this decision determined that the grant of public funds to renovate historic features of an active house of worship pursuant to a locally administered Massachusetts preservation funding statute is not categorically barred by the Massachusetts Constitution's "anti-aid amendment," but the constitutionality of such grants must be rigorously scrutinized under a three-factor test established in an earlier case involving a private school. (There was a majority opinion, a concurrence, and a dissent.)

The Massachusetts anti-aid amendment (Article 18 of the Amendments to the Massachusetts Constitution, as amended by arts. 46 and 103 of the Amendments), prohibits the "grant, appropriation or use of public money . . . for the purpose of founding, maintaining or aiding any church, religious denomination or society."

The Massachusetts Community Preservation Act (the "CPA"; M.G. L. c. 44B) establishes a municipal mechanism for public funding of projects relating to open space, historic resources, and community housing. A church in the town of Acton was granted CPA funds for two projects involving three adjacent buildings it owns and maintains in the town historic district: to prepare a "Master Plan for Historic Preservation" for the house of worship and two buildings rented to local families as private residences (the Master Plan grant), and restoration and preservation of the main house of worship building's stained glass windows, which were installed in 1898 and have explicitly Christian content (the stained glass grant).

The plaintiffs, as town taxpayers, sued in a lower court (Superior Court) under a law which permits taxpayers to act "as private attorneys general" to enforce laws designed to prevent abuse of public funds by local governments. (M.G. L. c. 40, § 53).

The trial judge applied the following three-factor test previously established for determining whether statutory aid to private schools violated the Constitution's anti-aid amendment: "(1) whether the purpose of the challenged statute is to aid private schools; (2) whether the statute does in fact substantially aid such schools; and (3) whether the statute avoids the political and economic abuses which prompted the passage of [the anti-aid amendment]." (Commonwealth v. School Comm. of Springfield, 382 Mass. 665, 675 (1981).)

The trial court applied the Springfield test and found that the plaintiffs failed to meet the first and third factors and therefore denied the plaintiffs' request for a preliminary injunction. The plaintiffs appealed.

The SJC first ruled that the three-factor Springfield test applies to public funding granted to an “active house of worship,” and the anti-aid amendment does not absolutely such a grant to churches. As with funding to private schools, the Court said, the language of the anti-aid amendment requires inquiry into the purpose of the grant. The court wrote, “[U]nder our three-factor test, whether a church can receive such a grant depends on the grant’s purpose, effect, and the risk that its award might trigger the risks that prompted the passage of the anti-aid amendment. Such an analysis would surely not bar the grant of public funds to a church preschool to provide a safer surface for its playground.”

The court then agreed with the plaintiffs that the trial judge had misapplied the three-factor test. The trial judges’ essential error, as identified by the court, was in her application of the Springfield test to the CPA statute, when what was at issue was the constitutionality of specific discretionary grants made pursuant to the CPA. (In defense of the CPA the court noted, “Nothing in the act itself specifically authorizes the expenditure of funds to assist churches or religious institutions.”) Further, while the statute has the benefit of a presumption of constitutionality, the grants under the statute do not.

The court applied the three-factor test to the grants as related to the plaintiffs’ claims and requests for relief.

On the first factor, whether there is a “hidden . . . purpose” to aid this particular church, the court found the record insufficient to determine whether a hidden purpose existed or not. Further trial proceedings would be required to make that determination. Nevertheless, the court pointed out that even if further discovery were to show that the purpose was not to aid this particular church, the other factors, especially the third factor, requires the conclusion that the stained glass grant (but not necessarily the Master Plan grant) violates the anti-aid amendment.

The second factor is whether the effect of the grants is to “substantially aid” a church in carrying out its “essential function,” rather than being “minimal.” That evaluation may focus on whether the aid that is provided contains certain “limiting features” designed to “cabin” the effect of the public funding to a use other than the church’s essential function. Here the church’s own application for funding worked against it. The application said that due to declining membership and contributions the church needed the grants to preserve its buildings while also “offering the congregation what draws them to their church” and that the grants would help pay costs the church would otherwise have to pay, allowing the money saved to be used to support its core religious activities. On this basis the court found that the stained glass grant substantially aids the church.

The third factor, which the court found the stained glass grant failed to meet, is whether it avoids “the risks that prompted the passage of the anti-aid amendment.” These risks, at least in this case, are the risk that “liberty of conscience” would be infringed by requiring some taxpayers to support the religious institutions of others; the risk that the historic preservation restriction on its building which, pursuant to the CPA, the church must grant the town as a quid pro quo for the grants, sets the stage for future improper government entanglement with religion; and the risk that the public support of religious institutions would threaten “civic harmony,” making the divisive “question of religion” a political question. “As centuries of experience have shown,” the court wrote, “government support of churches has always and inevitably been a politically divisive issue in

Massachusetts.” At the same time, the court cautioned that “we can imagine various circumstances where such grants would survive careful scrutiny, including, for instance, where historical events of great significance occurred in the church, or where the grants are limited to preserving church property with a primarily secular purpose.”

The court therefore overruled the lower court and allowed the plaintiffs’ motion for a preliminary injunction against making the grants, and sent the case back to the trial court for more fact finding about the Master Plan grant and a determination whether that grant, in full or in part, should survive “careful scrutiny” under the third factor (avoiding “the risk that prompted the passage of the anti-aid amendment”). The court treated the Master Plan grant differently because it addresses not only the renovation of worship space but also plans to renovate the two residential buildings. A concurring opinion (signed by two Justices) made the point that analysis of Massachusetts’ anti-aid amendment must take into account that the United States Supreme Court — in its interpretation of the religion clauses of the First Amendment to the United States Constitution — “has warned that only a very narrow category of exclusions are allowed by the free exercise clause from ... generally available public benefit programs.” This concurrence offered that the preliminary injunction against the stained glass grant is consistent with this permitted exclusion, and that “the Master Plan grant requires further analysis to decide both the anti-aid and First Amendment questions.”

A dissenting Justice wrote she would uphold the trial court’s denial of the injunction against the stained glass grant. She focused her dissent on the majority’s idea that CPA grants to active religious institutions warrant particularly “careful scrutiny.” The dissent interprets the anti-aid amendment and the court’s precedents to require that religious and secular entities must not be treated differently from one another when applying the anti-aid amendment.

Regarding the test of the purpose of the grants, she wrote that the trial judge was correct not to inquire into the stated purpose of the recipient but rather the purpose of the governmental authority making the grant. In this case, she found that the grants have a public purpose of historic preservation and cited precedent that requires giving the “every presumption in favor of the honesty and sufficiency of the motives actuating public officers in actions ostensibly taken for the general welfare.”

The dissent approved of the trial judge’s assumption, for the purpose of analysis of the plaintiffs’ motion for an injunction, that the plaintiffs would be able to show that the grants fail the second factor of the three-pronged test, i.e., that the grants substantially aided the church. Accordingly, it was appropriate, the dissent would hold, for the trial judge to balance the factors and conclude that the grants did not violate the anti-aid amendment.

The majority’s analysis, the dissent wrote, puts a historic religious building used for a religious purpose “at a distinct disadvantage” in future courts’ anti-aid scrutiny of a grant application for that building. Such a disadvantage would force a church to choose between eligibility for a grants and disavowing the building’s “religious character.”