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Home Rule

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HOME RULE

In 1973, Congress enacted the District of Columbia Self-Government and Governmental Reorganization Act.¹ This Act created a locally-elected government and gave it broad authority over District affairs.

The Self-Government Act created a unique legislative process for the District. Under the Act, permanent District of Columbia Council legislation must undergo two readings or votes and a period of congressional review.² In contrast, emergency Council legislation needs one reading only and no congressional review, but requires a two-thirds vote of the Council. However, emergency legislation may remain effective for no more than ninety days.³

The scope of the ninety-day limit on emergency legislation was before the District of Columbia Court of Appeals in *District of Columbia v. Washington Home Ownership Council, Inc.*⁴ Prior to this case, the Council had routinely adopted successive substantially identical acts under its emergency powers. In *Washington Home Ownership Council, Inc.*, the court declared that Congress intended the emergency process as an exception to the required two readings and congressional review and held that the Council may not adopt successive substantially identical legislation in response to the same emergency.⁵ In a footnote, however, the court hinted that a congressional recess that delays the permanent legislative process may itself constitute a new emergency sufficient to waive two readings and congressional review.⁶

The District of Columbia Court of Appeals disapproved another council action in *United States v. Chesapeake & Potomac Telephone Co.*⁷ The

1. D.C. CODE §§ 1-121 to -171 (Supp. V 1978 & Supp. VII 1980).

2. *Id.* §§ 1-146(a) (Supp. V 1978) & 1-147(c)(1) (Supp. VII 1980). If Congress fails to pass a joint resolution of disapproval within 30 legislative days, which exclude weekends, holidays, and recesses of more than three days, a Council act becomes law. *Id.* § 1-147(c)(1) (Supp. VII 1980). Budget acts, however, do not become law until both houses of Congress adopt them. *Id.* § 47-224 (Supp. V 1978). Criminal statutes may be disapproved by either house within 30 legislative days. *Id.* § 1-147(c)(2) (Supp. V 1978 & Supp. VII 1980).

3. *Id.* § 1-146(a) (Supp. V 1978).

4. 415 A.2d 1349 (D.C. 1980) (en banc).

5. *Id.* at 1359.

6. *Id.* at 1359 n.20. The District had contended that permanent legislation often cannot be enacted within 90 days. *Id.* at 1356. The court, however, noted that an emergency could also be adopted on first reading simultaneously. *Id.* at 1356-57.

7. 418 A.2d 114 (D.C. 1980).

Council, using its authority to close unneeded alleys,⁸ had conditioned the closing of several alleys—which had been created when the original District was laid out in 1791—upon the payment of their fair market value by adjacent property owners. The court rejected a previous decision of the United States Court of Claims⁹ and held that the government never had title to the District's original alleys.¹⁰ As a result, the Council could not condition the closing of an original alley upon the payment of money.¹¹

Another major case, *Don't Tear It Down, Inc. v. Pennsylvania Avenue Development Corp.*,¹² also limited the Council's power. In this case, the United States Court of Appeals for the District of Columbia Circuit permitted the Pennsylvania Avenue Development Corporation, created by Congress in 1972, to demolish a historic landmark, in connection with the redevelopment of a downtown neighborhood, without complying with the District of Columbia Historic Landmark and Historic District Protection Act,¹³ enacted by the Council in 1979. The court found the Act's hearing requirement for demolishing landmarks to be incompatible with the Corporation's purpose and thus exempted the Corporation from this requirement.¹⁴

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8. D.C. CODE § 7-401 (1973).

9. *Washington Medical Center, Inc. v. United States*, 545 F.2d 116, 123-24 (Ct. Cl. 1976), *cert. denied*, 434 U.S. 902 (1977) (government has title to District's original alleys).

10. 418 A.2d at 119, 121 (D.C. 1980).

11. Relying on principles of collateral estoppel, the United States Court of Appeals for the District of Columbia Circuit reached this conclusion in *Carr v. District of Columbia*, 646 F.2d 599 (D.C. Cir. 1980).

12. 642 F.2d 527 (D.C. Cir. 1980).

13. D.C. CODE §§ 5-821 to -835 (Supp. VII 1980).

14. 642 F.2d at 536-38.