

Insurance Federation, City Agree to Ordinance Injunction

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HUNTINGTON — The City of Huntington agreed to an injunction on a new ordinance aimed at recouping losses on dilapidated property.

The city and the West Virginia Insurance Federation reached an agreement late July 29, said Jill Bentz, president of the Federation. Her organization filed a civil suit in Cabell County Circuit Court challenging the legality of the ordinance, which took effect July 1. The injunction is retroactive to that date, Bentz said.

"They have agreed to the order granting injunctive relief the Insurance Federation sought," she said July 30 after a brief hearing before Cabell

County Circuit Court Judge F. Janet Husted. "(The injunction) will stay enforcement of the ordinance until a decision on the merits of the case can be made by the court."

The city and the Federation agreed to modify the language of the proposed injunction, said James Lamp, attorney for the Insurance Federation. John McCorkle represented the city during the hearing.

At issue is city article 954, which establishes that the city would grant each property owner a Certificate of Good Standing after a total fire loss. Such a certificate would certify that the property owner is not delinquent in municipal service fees, refuse fees, assessments, penalties or other charges.

Those who receive certificates would be unaffected by the ordinance. For those who do not receive certificates, their insurance companies would be required to withhold \$2,000 for every \$15,000 of coverage. That money would go to the city to cover delinquent charges.

The Insurance Federation, however, contends the measure is unconstitutional because it would require insurance companies to breach their contracts with property owners by withholding payments.

During the four weeks since the ordinance took effect, there have been at least two total fire losses in Huntington that might have been affected, Bentz said. The parties involved in one of those cases were in the process

of becoming interveners in the case, but that now is a moot point because the injunction is retroactive, she said.

Because of the retroactivity, the insurance companies in those cases can deal with those claims, Lamp said.

The court case is scheduled to be heard before Dec. 31, 2009, Bentz said.

On a broader level, the case has attracted attention from around West Virginia because it calls into question the constitutionality of the state's Municipal Home Rule Pilot Program. The suit alleges that act violates the Home Rule Amendment of the state constitution, which prohibits municipal corporations from enacting ordinances that violate the state constitution.