

The Appellate Advocate:

A Recap of Recent Decisions by NJ's Appellate Courts



SKT Management LLC v. Township of Irvington No. A-0528-24

There are a few times in your life when access to a 24-hour convenience store is, in my humble opinion, essential. Those fun nights in college. Those “fun” nights with a newborn infant. Is it easy to get municipal approval to operate a store at all hours? Well, let’s find out.

The case, SKT Management LLC v. Township of Irvington, arose after local officials adopted Ordinance MC3620 in 2017. The measure generally bars convenience stores from operating between 11 p.m. and 6 a.m., but creates an exception: stores larger than 2,400 square feet may remain open 24 hours if they meet additional safety requirements.

SKT Management, which owns a gas station and a 1,477-square-foot convenience store in Irvington, challenged the ordinance. The company argued that the square-footage threshold was arbitrary — a thinly veiled effort to benefit a proposed 2,552-square-foot 7-Eleven that would have qualified for round-the-clock operations.

Writing in a per curiam opinion, the Appellate Division framed the dispute not as a referendum on corporate favoritism, but as a test of municipal police power. Under New Jersey law, towns may enact ordinances to protect public health, safety, and welfare. Such measures carry a “strong presumption of validity,” and courts are instructed not to second-guess policy choices so long as a rational basis can be conceived.

Citing precedents like *Quick Chek Food Stores v. Springfield Township* and *Hutton Park Gardens v. West Orange Town Council*, the court reiterated that challengers bear the burden of proving an ordinance is arbitrary or unreasonable. Only when fundamental rights are implicated does the burden shift to the government.

Here, the judges found no constitutional infirmity. Irvington, they noted, did not impose a blanket ban on late-night commerce. Gas stations may operate 24 hours. Larger convenience stores may do so as well, provided they meet staffing and surveillance requirements. The 2,400-square-foot threshold, the court concluded, had a rational explanation: encouraging larger stores capable of stocking a wider range of goods for overnight customers, while limiting potential disturbances to residential neighborhoods.

The court distinguished the case from *Southland Corp. v. Edison Township*, in which a more sweeping prohibition on late-night operations was struck down as overly broad. Irvington's ordinance, the panel said, was more tailored.

SKT also advanced an equal-protection claim under both the federal and New Jersey constitutions, contending that the size requirement unfairly discriminated against smaller businesses. Applying the State's balancing test — weighing the nature of the right affected, the degree of intrusion, and the public need — the court sided with the municipality. The restriction was limited, the judges reasoned; smaller stores could expand if they wished to qualify. And the town's interest in safety and nighttime tranquility carried weight.

Notably, the opinion observed that if the 2,400-square-foot exemption were invalidated, a far more restrictive 48,000-square-foot threshold elsewhere in the zoning code might apply — effectively barring nearly all convenience stores from overnight operation. In that light, the ordinance appeared less a cudgel than a compromise.

In the end, the court affirmed summary judgment for the township, leaving Irvington's regulatory line intact.

About Thomas Cotton

Thomas Cotton is a litigation partner at Schenck Price, representing clients in trial and appellate courts throughout the United States. In addition to his practice, he authors *The Appellate Advocate*, a semi-weekly blog offering thoughtful yet accessible commentary on recent appellate rulings.



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