sonable to suppose that the people read the ordinance as a whole in such a way. I think it is appropriate and possible to regulate gang group assembly in the constitutional law, but at least, the ordinance should be rewritten to make clear the scope of the regulations.

2. Administrative Law

X v. Governor of Tokyo-to
Supreme Court 2nd P.B., October 19, 2007
Case No. (gyo-hi) 390 of 2007
1446 SAIBANSHO JIHO 4; 1259 HANREI TAIMUZU 197

Summary: Dismissal of final appeal concerning the governor's establishment permission of based on Article 7 of the Medical Treatment Act (before the change by law No. 84 in 2006) to A hospital, the medical association and the doctors which establish a medical facility around the A hospital and carried out medical practice do not possess the standing concerning the Action to quash the governor's permission disposal of the establishment of A hospital.

Reference: Medical Treatment Act Article 7, Article 30 no 3, Article 30 no 7
Administrative Litigation Act Article 9

Facts:

The Medical Treatment Act is, by prescribing the matters needed for the establishment and management of a hospital and the matters necessary to the purpose which promotes the maintenance of the hospital and so on, a law which plans for the security of the system to offer medical treatment and contributes to the maintenance of national health (Article1).

After it conforms to this gist, the Medical Treatment Act Article 7 Paragraph 1 prescribes that when anyone is trying to establish a hospital the permission of the prefectural governor in the place of establishment is needed. And, according to Article 7 Paragraph 4, when there is an applica-

tion for permission about the establishment of a hospital and the structure of the equipment in facilities and staff who affect the application fit in with the requirements of the regulations of Ministry of Health, Labour and Welfare, the prefectural governor has to show his approval.

Article 30 no 3 of the Medical Treatment Act prescribes that prefectures set a plan about the securement of a system to offer medical treatment in its prefectures (hereinafter it is called a medical plan.), and Article 30 no 7 of the Medical Treatment Act prescribes that a prefectural governor may recommend the establishment of a hospital, increase of the number of beds and a change in the clinical classification, etc. on the occasion of a need in particular for the promotion of the achievement of a medical scheme.

In January 26, 2004, the Tokyo-to Governor (defendant=appellee) made a hospital establishment permission disposal about A hospital based on the Medical Treatment Act Article 7 Paragraph 1 and Paragraph 4 (hereinafter it is called "the permission").

A hospital has 500 beds and is a large-scale one, so, the medical associations and doctors which establish the medical facility around the A hospital and carry out medical practice (plaintiffs=appellants) brought the case before the court, asking for the quashing of Tokyo Governor's hospital establishment permission disposal about A hospital, because when such a large hospital was constructed suddenly without also passing through a procedure of preliminary consultations, the disadvantage that it can not maintain and execute the community health care system concerned, that the plaintiffs have formed in the past, from now on is created.

In this case, plaintiffs insisted that the Medical Treatment Act Article 7 Paragraph 1 and Paragraph 4, which enables the governor to carry out a hospital establishment permission disposal contains provisions to the effect that the hospital establishment permission system should protect the benefit of A doctors and medical associations so that A doctors and a medical association can supply good quality and appropriate medical business by securement of an appropriate medical organization, so they possess the standing concerning the Action to quash the governor's permission disposal of the establishment of A hospital.

So the plaintiff's standing was a problem, and, in the light of Article 9 of the Administrative Litigation Act whether the mechanism of the hospi-

tal establishment permit system protects the third person's profit besides the person who make the license application, and whether the standing is admitted by the plaintiffs is an issue.

Opinion:

Medical Treatment Act…, concerning the disposal of permission for the establishment of a hospital, prescribes that so long as the structure of equipment and staff in facilities of the application meet the requirements of the regulations of the Ministry of Health, Labour and Welfare, based on Articles 21 and 23 of the Medical Treatment Act, a governor has to show his approval (Medical Treatment Act Article 7 Paragraph 4), and prescribes that a governor may be able not to show its approval to the person who tries to establish a hospital for the purpose of profit-making (Medical Treatment Act Article 7 Paragraph 4), and it is clear that, concerning the disposal of permission for the establishment of a hospital, those regulation which prescribe the requirement of the establishment of a hospital are not intended to take into account the interests of the third party which establish a medical facility around the A hospital.

Though the Medical Treatment Act Article 30 no 3 prescribes that prefectures set a medical plan, …and Article 30 no 7 also prescribes that a prefectural governor may recommend the establishment of the hospital, the increase of the number of beds and changes in the clinical classification, etc. as the occasion of a need in particular for the promotion of the achievement of a medical scheme, even when the person who made the application concerned does not follow the recommendation above-mentioned or even when the application of permission for hospital establishment does not fit in with the matter set as a medical scheme, a governor can not make an impermissible disposal to the application by reason of this matter.

Furthermore, so the purpose of Medical Treatment Act Article 30 no 3 which prescribes that a medical scheme is set in prefectures is understood to secure the system to offer good quality and appropriate medical treatment efficiently, is hard to read as containing the effect to protect the profit of the establisher of the other facilities.

Still from Article 1 of the Medical Treatment Act, which prescribes the purpose of this act, and Article 4 of the Medical Treatment Act, which

prescribes the doctor's obligation, it is hard to understand it to contain the effect that a modal regulation about permission of hospital establishment should protect the profit of the establisher of other facilities.

Additionally, the basis which should understand the appellants to possess a legal interest from which the quashing of this establishment permission is asked can not be found.

Then the appellants do not possess the standings concerning the action to quash the governor's permission disposal of the establishment of A hospital.

Editorial Note:

Those who possess a "legal interest" in Article 9 Paragraph 1of the Administrative Litigation Act, which prescribes the "standing" of an action to quash is a person whose right or "legally protected interest" (in the Case Law) was infringed or may be infringed inevitably, and provided administrative legal provisions which prescribe a particular disposition intending that, besides the general public interest, individual interest should also be protected, such individual interest also belongs to "legally protected interest," so those whose interest was infringed or may be infringed inevitably possess "standings" in an action to quash.

Furthermore, in the case of judging the existence of a "legally protected interest" of a third party, without being based only on the terms of the provisions of the enabling act of the disposition, the aim and the purpose of the enabling act and the contents and the character of the interests which should be taken into consideration relating to making the disposition should be taken into consideration.

Moreover, in the case of judging the aim and the purpose of the enabling act, if there are some other related legal provisions, the aim and the purpose of those related legal provisions must be also taken into consideration, and in the case of judging the contents and the character of the interests, the following two points must be also taken into consideration. That is, ① the contents, the character of the interests which will be infringed in the situation that the disposition in violation of the enabling act is carried out, and ② the mode, the grade of the infringement (Article 9 Paragraph 2 of the Administrative Litigation Act and see alsoX v. Minister of Construction Supreme Court G.B., November 7,2005 Case No.

(gyo-hi) 114 of 2004).

So the hospital establishment permit system in this case adopts the mechanism to make the governor permit the application so long as the application satisfies the fixed standard on the decree which is prescribed in the Medical Treatment Act and other relevant regulations. The hospital establishment permit system in this case is interpreted as so-called police permission (*Erlaubnis*).

The police permit system has the theoretical framework as follows, namely, the police permit system prohibits, from the angle of the public interest, a private citizen to make the act which can be accomplished freely primarily, and the person who applied for the permission recovers the original freedom (in this case, the establishment of the hospital) by the police permission.

From the mechanism of such a police permit system, the disadvantage of a third person besides the party of the permission created by the permission concerned is understood as the disadvantage which forms collaterally by permission and it is hard to see that disadvantage as the infringement of a "legally protected interest".

Concerning the standing of a third person besides the party, Article 9 Paragraph 2 of the Administrative Litigation Act prescribes that the contents, the character of the interests which will be infringed in the situation that the disposition in violation of the enabling act is carried out, and the mode, the grade of the infringement, should be taken into consideration.

In this case, the Supreme Court took not only the nature of the hospital establishment permit system in the Medical Treatment Act but also the plan and recommendation systems which relates to permission for the hospital establishment into account, moreover, it also considered the disadvantage which a third person (the plaintiff) receives.

Thus, in this case, the judgment of Supreme Court was regarded as something appropriate along the prescriptions of Article 9 Paragraph 2 of the Administrative Litigation Act.

However, there is room for argument about the idea of a "legally protected interest" to decide about the presence of the plaintiff's standing, and about the "legal interest" in Article 9 Paragraph 1 of the Administrative Litigation Act. There is an excellent theory that it means just "interest worthy to legally protect", when there is an "interest worthy

to legally protect", the plaintiff' possesses the standing concerning the action to quash.

Though the judgment of the Supreme Court of this case was regarded as something appropriate following the prescriptions of Article 9 Paragraph 2 of the Administrative Litigation Act, therefore from now on, the reconsideration concerning the essential problem about the presence of the standing of a plaintiff, namely the issue between the limit of the "legally protected interest" theory and the possibility of the theory as "interest worthy to legally protect", will be an important problem.

3. Law of Property and Obligations

City's Co.Ltd. v. Kanda et al.
Supreme Court 2nd P.B., January 13, 2006
Case No. (ju) 1518 of 2004
60 (1) Minshu 1; 219 Saiko Saibansho Saibanshu Minji 1; 1403 Saibansho Jiho 2; 1926 Hanrei Jiho 17; 1205 Hanrei Taimuzu 99; 1223 Kinyu Shoji Horei 10; 1243 Kinyu Shoji Hanrei 20; 1778 Kinyu Homu Jiho 101

Summary:

(1) A part of the provisions of Article 15 (2) of the Ordinance for Enforcement of the Money-Lending Business Regulation Act, that provides that the moneylender may specify the loan contract concerning the repaid debts with the contract number or other information, instead of stating the matters listed in Article 18 (1) Item 1 to Item 3 of the Money-Lending Business Regulation Act, should be construed to be null and void as an illegal provision that goes beyond the bounds of the mandate of the above-mentioned Act.

(2) Even if a contract for a pecuniary loan which provides that the debtor shall repay the principal in installments with the agreed interest, the rate of which exceeds the upper limit provided by the Interest Rate Restriction Act, also has a specially agreed acceleration clause that the debtor will automatically lose the benefit of time in the event of a delay in payment of the principal or agreed interest, concerning the