

1977

State Tax Commission of Utah v. Department of Finance, State of Utah : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE TAX COMMISSION
OF UTAH,

Plaintiff-Appellant,

-vs-

DEPARTMENT OF FINANCE,
STATE OF UTAH,

Defendant-Respondent.

Case No.
14658

BRIEF OF RESPONDENT

APPEAL FROM AN ORDER OF THE THIRD
JUDICIAL DISTRICT COURT, IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH, THE
HONORABLE JAMES S. SAWAYA, JUDGE

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FILED

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BRIEF OF RESPONDENT

This appeal is brought by the Utah State Tax Commission from an order of the Third Judicial District Court, Salt Lake County, State of Utah, granting respondent's Motion for Summary Judgment on all issues and denying the Tax Commission's Motion for Summary Judgment.

Respondent prays that this Court affirm the decision of the Third Judicial District Court and hold Utah Code Ann. § 31-14-4(1)(b) (1953), as amended, to be

STATEMENT OF FACTS

In 1917, the Legislature created the State Insurance Fund. A comprehensive examination of the purposes and the nature of the Fund have been set out in Chez v. Industrial Commission, 90 Utah 447, 62 P.2d 549 (1936), and Gronnier v. Smart, 561 P.2d 690 (Utah 1977). Subsequently, the Legislature provided a 3 1/4 percent tax on the premiums paid by every insurance company writing workmen's compensation or occupational disease disability insurance as follows:

"Every insurance company engaged in the transaction of business in this state writing workmen's compensation or occupational disease disability insurance shall pay to the state tax commission, on or before the thirty-first day of March in each year, a tax of 3 1/4 % of the total premiums received by it during the next preceding calendar year from workmen's compensation or occupational disease disability insurance, subject to all provisions, limitations and exceptions contained in this section." Utah Code Ann. § 31-14-4(3) (1953), as amended.

This section is not contested.

In 1971, the Legislature levied a one percent tax on the premiums paid to the State Insurance Fund in addition to the 3 1/4 percent tax paid by the Fund and by private insurers. Utah Code Ann. § 31-14-4(1)(b) (1953), as amended, provides for:

". . . a tax of 1% of the total premiums received by it during the next preceding calendar year from insurance written within this state by any insurance fund or funds created by chapter 100, Laws of Utah 1917, to be collected by the state tax commission and to cover into the state treasury to the credit of the state general fund. This tax shall be in addition to any and all taxes levied under this section."

The Code does not levy this additional one percent premium tax against private insurance companies and, in the case of self-insured employers, provides for no premium tax or payment in lieu of tax.

The Department of Finance, acting according to Utah Code Ann. § 35-3-3 (1953), on behalf of the Fund, refused to pay the additional one percent tax. The Tax Commission then initiated this action to compel payment of the tax. Based upon defendant's Motion for Summary Judgment, the Third District Court held Utah Code Ann. § 31-14-1(1)(b) (1953), unconstitutional and excused the Fund from payment of the extra one percent premium tax levied therein. Contesting that decision, the Tax Commission brings this appeal.

ARGUMENT

POINT I

THE TAX IMPOSED BY UTAH CODE ANN. § 31-14-4(1)(b) (1953), AS AMENDED, UNCONSTITUTIONALLY DEPRIVES EMPLOYERS INSURING WITH THE STATE INSURANCE FUND OF EQUAL PROTECTION OF THE LAW AS DEFINED BY ARTICLE I, SECTION 2 OF THE UTAH CONSTITUTION, AND THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

Appellant alleges that the tax imposed by Utah Code Ann. § 31-14-4(1)(b) (1953), is constitutionally acceptable. It argues that the difference in tax rates between the Fund and other private insurance carriers is due to additional services and benefits provided the Fund by the State and its agencies. Citing authorities for the proposition that different classes may be taxed at different rates, appellant argues that the Fund is in a class separate from private insurance companies and, thus, subject to increased taxation.

Respondent asserts that Utah Code Ann. § 31-14-4(1)(b) (1953), and the tax levied exclusively on the State Insurance Fund therein are repugnant to all notions of equal protection of the law. Respondent strongly contends that, in substance, the State Insurance Fund is identical to private, mutual insurance carriers. Being of the same class, the Fund should

not be taxed at a rate in excess of that provided for private insurance companies.

In light of this Court's recent decision in Gronning v. Smart, 561 P.2d 690 (Utah 1977), reaffirming Chez v. Industrial Commission, 90 Utah 447, 62 P.2d 549 (1936), and its consideration of the origin, nature and purpose of the Fund in conjunction with Gronning, supra, respondent will just briefly set forth the major features of the Fund and its function. The assets of the Fund belong to contributing employers who pool money in a State created "mutual insurance company" to provide the means for meeting the employer's obligation to pay awards to workmen killed or injured on the job or as a result of an occupational disease. Gronning v. Smart, 561 P.2d at 692.

In addition to the State Insurance Fund, an employer may meet his workmen's compensation insurance duty in two other ways: (1) by insuring with a private insurance company writing workmen's compensation and occupational disease insurance, or (2) through self-insurance. The Legislature has taxed premiums on each type of insurance as follows:

(1) Self-insurance. There is no premium and hence no tax.

(2) Private insurance underwriter. Premiums are taxed at 3 1/4 percent.

(3) State Insurance Fund. Premiums are taxed at 3 1/4 percent, as are the premiums of other private insurers, and at an additional one percent.

Respondent recognizes that the Legislature is endowed with discretion and power to make classifications for the purposes of taxation but such discretion is not without constitutional limits. The Legislature may establish different classes and provide separate and individual rates for each class, but it is always bound by the principles of equality and uniformity. Big Wood Canal Co. v. Unemployment Compensation Division, 126 P.2d 15, 63 Idaho 785 (1942). Therefore, upon judicial review, the Supreme Court will not concern itself with the policy or wisdom of legislative classifications, but functions to determine whether such classifications operate equally on all persons similarly situated. Slater v. Salt Lake City, 206 P.2d 153, 115 Utah 476 (1949).

The Utah Supreme Court has interpreted the equal protection guarantees of the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Utah Constitution as being abridged when an unreasonable

excluded from an act whether the act confers a privilege or a right or imposes a duty or an obligation." State v. Mason, 78 P.2d 920, 94 Utah 501 (1938), 78 P.2d at 922. Discrimination results when a law is inclusive as to some class or group and as to some human relationships, transactions, or functions and exclusive as to the remainder. For that reason, for a classification to be unconstitutionally discriminatory, it must be arbitrary and unreasonable. State v. Mason, supra; Hanson v. Public Employees Retirement System, 246 P.2d 591, 122 Utah 44 (1952). This Court has adjudged a law to be arbitrary and unreasonable where some persons or transactions included in the operation of the law are, as to subject matter, in no differentiable class from those excluded from its operation, and if no reasonable basis to differentiate those excluded from those included in its operation can be found, it must be held unconstitutional. State v. Mason, supra; Big Wood Canal Co., supra; Carter v. State Tax Commission, 96 P.2d 727, 98 Utah 96 (1939). The Carter Court stated:

"It is equally well settled that a statute makes an improper and unlawful discrimination if it confers particular privileges upon a class arbitrarily selected from a larger number of persons, all of whom stand in the same relation to the privileges granted, and

between whom and the person not so favored no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other." 96 P.2d at 732.

The courts have found a violation of the equal protection standard in several cases generally analogous to the instant case. In Liggett Co. v. Lee, 288 U.S. 517 (1933), the United States Supreme Court examined a Florida statute taxing chain stores. The statute provided a set tax for each store of the same chain within the same county. However, when a new store was opened in a different county, a higher tax was imposed upon the new store and upon all other stores within the original county. The Supreme Court found this statute arbitrary, and void, determining that the county line furnishes no rational basis for such a classification.

In State v. North American Car Corp., 164 P.2d 161, 118 Mont. 182 (1945), the Supreme Court of Montana considered a group of statutory provisions taxing railroad freight cars. Freight cars owned by common-carrier railroads not operating within Montana but which were furnished by such carriers, for compensation, to common carrier railroads operating within the State were taxed at a higher rate than freight cars owned by common-carrier railroads operating within Montana. The cars were of similar nature, kind,

utilization and classification. The Montana Court found such a class to be arbitrary and constitutionally discriminatory, stating:

" . . . any tax against the same kind of property used for identical purposes is not uniform when a different valuation and a different rate is applied to two distinct taxpayers, separately distinguishable only in name, and the tax being imposed by the same taxing district." 164 P.2d at 166.

Finally, in Perm Phillips Lands v. State Tax Commission, 430 P.2d 349, 247 Ore. 380 (1967), the Oregon Supreme Court considered a case where the taxpayer's real estate was reappraised at a rate of \$60.00 per acre while neighboring lands appraised at not more than \$5.00 per acre. The taxpayer's land was indistinguishable from that of his neighbors', the court noting only that the taxpayer designated his land as "homesites" and had invested considerable amounts of sales promotion. The Oregon Court found the higher rate applied to taxpayer to be unconstitutionally discriminatory as taxpayer's "class" was arbitrary and unreasonable.

In the instant case, the State Insurance Fund has been singled out from among a larger class of insurers to pay a tax imposed upon no one else. Respondent asserts that this tax is arbitrary and constitutionally prohibited.

The State Insurance Fund is just one of a larger class of workmen's compensation and occupational disease insurance writers. The assets of the Fund exist only to cover the identical obligations covered by private insurers.

The Fund has the same administrative costs as private insurers: establishment of premium and hazard rates, procedures for analyzing claims and making disbursements, reinsurance considerations, Fund investment decisions, collection procedures, legal fees and policy issuance. These administrative costs, as well as many other administration related expenses, are deducted from the Fund by the Legislature's appropriations of Fund money in accordance with Utah Code Ann. § 35-3-1 (1953), as amended. The Fund has the same rights to sue and be sued and makes contracts that a private insurer has. The Fund enjoys no immunities not provided for the private insurer. In essence, the State Insurance Fund is indistinguishable from private insurance writers, the only difference being its administration by a State agency.

Appellant contends that the Fund is a separate and valid class for tax purposes being one of "any insurance fund or funds created by Chapter 100, Laws of Utah, 1917." This "class" is fictitious as there is only one fund (the State Insurance Fund), created by Chapter 100, Laws of Utah 1917, such being the case for sixty years.

As this Court determined in Chez v. Industrial Commission, supra and Gronning v. Smart, supra, the Fund is a mutual insurance company and properly belongs to the class designated by Utah Code Ann. § 31-14-4(3) (1953).

Appellant's argument infers that the additional tax could be justified on a de minimus theory. Appellant argues that respondent's operating costs are lower than those of private insurers and, therefore, it is only fair to tax it at a higher rate in order to equalize their relative financial positions. The record does not support this contention and respondent's supposed ability to pay does not establish sufficient differentiation to justify a separate class for taxation purposes. As the California Supreme Court stated in Department of Mental Hygiene v. Kirchner, 388 P.2d 720, 60 C.2d 716, 36 Cal.Rptr. 488, vacated 380 U.S. 194, on remand 400 P.2d 321, 60 C.2d 586, 43 Cal. Rptr. 329 (1964):

" . . . the mere presence of wealth or lack thereof . . . cannot be the basis for valid class discrimination." 388 P.2d at 723.

From the foregoing, it is clear that there are no natural, intrinsic or fundamental differences between the Fund and private insurance writers. To provide an additional tax exclusively for the Fund without clearly establishing the necessary differences is arbitrary and unreasonable, and respondent asserts, a violation of equal protection of the law.

Respondent makes one additional point. Self-insurers pay no premium tax. Failure to secure an equivalent tax from self-insurers denies employers insuring with the Fund and private insurance companies equal protection of the law. The law favors

very large employers over smaller employers who do not have sufficient assets to be self-insured. Thus, the constitutionality of Utah Code Ann. § 31-14-4 (1953), may be even more doubtful.

POINT II

UTAH CODE ANN. §31-14-4(1)(b)(1953)
AS AMENDED, IS A SPECIAL LAW AND IS
THEREFORE UNCONSTITUTIONAL.

Article VI, Section 26 of the Utah Constitution presently provides that, "No private or special law shall be enacted where a general law can be applicable." This 1972 Amendment replaced the former section which enumerated specific cases in which the Legislature was prohibited from enacting private or special law, and also provided that in "all cases where a general law can be applicable, no special law shall be enacted."

In State v. Kallas, 94 P.2d 414, 97 Utah 492 (1939), this Court set forth definitions of special and general laws as follows:

"Laws which apply to and operate uniformly upon all members of any class of persons, places, or things requiring legislation peculiar to themselves in the matters covered by the laws in question, are general and not special. . . . Special legislation is such as relates either to particular persons, places, or things, or to persons, places, or things which, though not particularized, are separated by any method of selection from the whole class to which the law might, but for such legislation, be applied, . . ." 94 P.2d at 421.

Article VI, Section 26 was designed and enacted to prevent the Legislature from singling out special interest groups for special treatment; treatment either favorable or

unfavorable. Special laws are therefore prohibited in any case where a general law is applicable. It is also clear that legislation which violates the prohibition against special or private laws may also run afoul with the equal protection clauses of the federal and state constitutions.

An example of an improper special law is set forth in Continental Insurance Co. v. Smrha , 270 N.W. 122, 131 Neb. 791 (1936). The Nebraska Supreme Court held a 2% tax on premiums received on fire insurance to be distributed to cities and villages to maintain fire departments to be invalid stating:

"It necessarily follows that the law is not general but special which does not operate uniformly upon the class within the relations or circumstances provided for."
270 N.W. at 124 .

Respondent contends that Utah Code Ann. §31-14-4 (1)(b) (1953), as amended, is a special law in violation of Article VI, Section 26 of the Utah Constitution. The State Insurance Fund is engaged solely in the business of writing workmen's compensation and occupational disease disability insurance. As such, it is part of a larger class of workmen's compensation insurers. The Fund is indistinguishable from the larger class of private insurers in terms of its intrinsic purpose and operation. It is distinguishable

perhaps only by the fact that it is State administered. Therefore, being just one of many "mutual insurance companies", the Fund clearly should be taxed under the general law applicable to all workmen's compensation insurers; Utah Code Ann. §31-14-4(3). But the Fund is also taxed an additional 1% under Utah Code Ann. §31-14-4(1)(b). Subsection (1)(b), created to tax ". . . any insurance fund or funds created by Chapter 100, Laws of Utah, 1917," can only be applied to the State Insurance Fund. Thus, Utah Code Ann. §31-14-4(1)(b) (1953), as amended, is a special law in that it operates exclusively upon one insurer, indistinguishable from the entire class, to which the general law would, but for such law, be applied. Such a law clearly violates Article VI, Section 26 of the Utah Constitution and is therefore void.

POINT III

RESPONDENT'S MOTION FOR SUMMARY JUDGMENT
WAS PROPERLY GRANTED IN THE TRIAL COURT.

Appellant contends that the trial court erred in its granting of defendant's Motion for Summary Judgment because genuine issues of fact existed which needed to be resolved before a summary judgment could be granted in favor of the Department of Finance.

A Motion for Summary Judgment is properly granted when there is no genuine issue as to any material fact and the moving party is entitled to such a judgment as a matter of law. Morris v. Farnsworth Motel, 259 P.2d 297, 123 Utah 289 (1953). Respondent asserts that its Motion for Summary Judgment was properly granted as there was no genuine issue as to any material fact.

This Court is thoroughly familiar with the laws relating to the State Insurance Fund having recently examined extensive briefs and heard considerable argument from the Fund, the Industrial Commission and from various employers who filed briefs as amicus curiae in Gronning v. Smart, supra. The essential question presented in the instant case is whether the Legislature can impose a 1% premium tax only upon the State Insurance Fund. This is a question of law which was properly resolved in a summary proceeding in the trial court.

Appellant now attempts to argue that genuine factual questions exist and that it could show facts under which it would be entitled to judgment. Respondent notes that plaintiff motioned the trial court for summary judgment in its favor at the same time defendant did. Appellant cannot now, on appeal, object to the relief granted defendant in the trial court when it sought the exact same type of relief through an identical motion. By motioning the trial court for summary judgment, plaintiff asserted that no material factual questions existed. Obviously, if there were no substantial issues of fact then, there are none now.

This court has consistently prohibited litigants from raising objections on appeal which were not raised in the trial court. To entertain appellant's argument concerning the propriety of summary judgment would run directly contrary to this notion, considering the fact that summary judgment was the same motion it sought in the trial court.

CONCLUSION

In Groning v. Smart, *supra*, the Supreme Court held that a legislative appropriation of State Insurance Fund assets for the payment of obligations incurred by the State in the discharge of its police power denied the Fund and its members due process of law. In Groning, the Court found it unnecessary to consider the issue of equal protection, but this case squarely puts that issue. In addition, this case raises the issue of the constitutionality of a special law.

In Groning, this Court refused to permit a legislative "raid" of Fund assets for non-insurance purposes. Through the artful use of language, the Legislature now seeks to put the Fund into a separate classification in order to grasp part of its premiums, thus imposing a tax penalty upon these employers who choose or who are compelled to insure with the Fund. Respondent argues that the Fund cannot constitutionally be placed in a class separate from other "mutual insurance companies" in that no intrinsic differences separate it therefrom. To allow such a fictitious classification is arbitrary and a denial of equal protection on the law.

Utah Code Ann. §31-14-4(3) (1953) taxes all workmen's compensation insurers at a uniform rate, yet subsection (1) (b)

provides an additional tax applicable only to a single insurer, the State Insurance Fund. Utah Code Ann. §31-14-4 (1)(b)(1953), as amended, is a special or private law and is prohibited by Article VI, Section 26 of the Utah Constitution.

This Court should protect the Fund from unconstitutional levies as it has heretofore protected the Fund from unlawful confiscation and depletion.

Respectfully submitted,

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