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The State of Utah v. Spring City et al : Brief of Spring City Respondents

Utah Supreme Court

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1913

**IN THE SUPREME COURT
of the
STATE OF UTAH**

THE STATE OF UTAH by and through
its Treasurer,

Plaintiff and Appellant,

vs.

SPRING CITY, an municipal corporation,
and HYRUM JENSEN, its Mayor,
CLAUD ACORD, ROYAL ALLRED,
CUTLER SCHOFIELD, HENRY SCHOFIELD and VIRGUS OSBORNE, its Councilmen, and CHARLES THOMPSON, ROYAL ALLRED, VIRGUS OSBORNE, MAX BLAIN, LOWELL HANSEN, ALLEN BECK and HENRY BLAIN,

Defendants and Respondents.

CIVIL

No. 7942

BRIEF OF SPRING CITY RESPONDENTS

DON V. TIBBS

**Attorney for Respondents, Spring
City and it's Councilmen**

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No. 7942

BRIEF OF SPRING CITY RESPONDENTS

STATEMENT OF POINTS

POINT 1

THE BONDS, SERIES OF JANUARY 15, 1948, ISSUED BY THE DEFENDANT SPRING CITY, ARE UNCONSTITUTIONAL AND VOID BECAUSE THE DEBT LIMIT IMPOS-

ED BY ARTICLE XIV, SECTION 3, CONSTITUTION OF UTAH, WAS EXCEEDED.

POINT II

IF THE BONDS, SERIES OF JANUARY 15, 1948, BE VOID IN AN ABSENCE OF AN ELECTION AUTHORIZING THE ISSUE, PLAINTIFF IS NOT ENTITLED TO RECOVER UPON THE THEORY OF MONEY HAD AND RECEIVED.

ARGUMENT

POINT 1

THE BONDS, SERIES OF JANUARY 15, 1948, ISSUED BY THE DEFENDANT SPRING CITY, ARE UNCONSTITUTIONAL AND VOID BECAUSE THE DEBT LIMIT IMPOSED BY ARTICLE XIV, SECTION 3, CONSTITUTION OF UTAH, WAS EXCEEDED.

The Appellant, the State of Utah, has in its brief, set out the facts, pleadings, proceedings and evidence in an able and satisfactory manner. The Respondent, Spring City, will address itself to the problem whether or not Section 3, Article 14, of the Constitution of the State of Utah has been violated, and if the said violation makes the bonds issued by Spring City and purchased by the State of Utah void. Section 3 of Article 14, is set out as follows:

No debt in excess of the taxes for the current year shall be created by any county or subdivision thereof, or by any school district therein, or by any city, town, or village, or any subdivision thereof in this State; unless the proposition to create such debt, shall have been submitted to a vote of such qualified

electors as shall have paid a property tax therein, in the year preceeding such election, and a majority of those voting thereon shall have voted in favor of incurring such debt.

The Respondent, Spring City, agrees with the Findings of Fact of the Court and is willing to rely upon them in determining the law question involved.

There are two constitutional limits of indebtedness, one which the city can incur without a bond election, which bonds must be paid for from the revenues of the current year in which issued, and another limitation on the amount the city can become indebted if the indebtedness is authorized by a bond election.

It is very clear that the purpose of Section 3 and Section 4 of Article 14, is to serve as a limit to taxation and as a protection to taxpayers. (Barnes v. Lehi City, 74 U. 321, 340. 279 P. 878.). At the time the Constitution was framed, the history of the country and of the people in this territory afforded examples of municipal corporations which had become bankrupt through the reckless and extravagant management of their governing bodies. The framers of the Constitution had undoubtedly considered the evils which resulted to both the taxpayers and the creditors of municipal corporations from the unlimited power in creation of debts. They must have agreed that the policy to follow was that the municipalities must pay as they go, and that they should go only so far as they can pay.

In a Utah case entitled Fritsch v. Board of Com'rs. of Salt Lake County et al, 15 U. 83, 47 P. 1026, this Court

construed Section 3, of Article 14, and stated in effect that no debt shall be created by any county during the year, without a vote of the taxpayers, which the revenues of the year will not pay. The Court also said:

“2. The language of Section 3, Art. 14, Const., that ‘no debt, in excess of the taxes of the current year, shall be created,’ cannot be held to mean that the county may expend the entire revenue of the year, and in addition thereto create indebtedness equal to the tax levy of the year. A debt cannot be incurred in one year, floated over into the next, and paid out of its revenues, without a vote. The indebtedness of the year must be paid out of its revenues.

“4. The language of the constitutional provision, ‘no debts in excess of the taxes for the current year shall be created’ (Article 14, Sec. 3) means all debts which cannot be paid out of the revenues of the year. In determining when the limit is reached, liabilities imposed by the law should be taken into consideration, as well as by those created by contract.

“8. County warrants or county bonds issued without authority of law are not valid in the hands of persons receiving them, or to whom they may have been assigned. Such persons in a legal sense, cannot be innocent holders.”

It is the respondent's (Spring City) position that the case in issue is the situation that the framers of our Constitution sought to prevent, by enacting into law Section 3. That

it is the situation the Court had in mind when it ruled in *Fritsch v. Board of Comr's*.

Spring City has now in force several bond issues where the council authorizing same ignored Section 3, Article 14, of the Constitution of the State of Utah, and borrowed money without the consent of the taxpayers, used it, and in the bonds evidencing the obligation, stated that a future administration would pay the obligation. The time finally came when the future administration did not have the funds to pay on the bonds, and had no way in which to get the money to pay off the indebtedness.

There is no question but that Spring City received the money under this bond proceeding. However, no way was provided for in the original bond proceedings for the money to be raised or taxed, and there being no way under the laws of the State of Utah to tax the people to pay it back, repayment became impossible. If Section 3, Article 14, of the Constitution of the State of Utah had been followed as construed by this Court in *Fritsch v. Board of Comr's*., the situation that Spring City is now in would never have occurred.

The appellant, by its argument would have the Court affirm this bond proceeding and this type of financing, basing its argument upon the Courts decision in the case of *Muir vs. Murray City*, 55 Utah 368, 186 Pac. 433. In that case the Court held in essence that the time of payment, even though in successive years, would not void an obligation under Section 3, Article 14, of our Constitution. It is our opinion that the court was correct in its ruling in that case, but that it, in no way, reverses the rules laid

down in the Fritsch case. In the Muir case there was no evidence to show that the moneys that could be reached were not from the revenues of the year in which the obligation was created, and also in the Muir case, there were moneys that could be reached. It is the opinion of the respondent that because of misconstruing the Muir case, bonds similar to the one in issue have been placed on the market, and such a practice is directly responsible for the financial break-down of Spring City.

It must be kept in mind that when this present Spring City obligation was created, there was no method provided in the bonds or the ordinance creating same for the repayment of principal and interest, and that on the face it was stated that payment was to be made in 1961 and thereafter, a time more than 10 years in the future. The proposition to create the indebtedness was never submitted to a vote of the taxpayers. At the present time, Spring City is taxing its citizens the maximum allowed under the law for the payment of indebtedness. All of the revenues from the power plant and water works are pledged to the payment of other obligations, which are in effect mortgages on the respective systems. That because of several obligations created in a like manner as the obligation in issue the city was and is in such a financial condition that to continue to operate, it became necessary to adopt a pay as you go policy, and to refuse payment on this illegal bond issue.

The appellant argues that the obligation was valid when it was created in that it was dated January 15, 1948, and as of that date the sum of \$13,498.67 was within the unexpended revenues for the year 1948. The appel-

lant refuses to take into consideration the necessary operating expenses of the City that were spent during the year 1948. *Fritsch vs. Board of Com'rs. of Salt Lake County* clearly holds that in determining the debt limit, the liabilities imposed by the law and by contract should be taken into consideration. It necessarily follows that the operating expense of the City should be allowed. There is no evidence before the court that the expenditures of Spring City in 1948, other than the funds received under the bond issue, were not the regular operating expenses, and the Court held that there are no funds from 1948 that are not now expended.

Financing municipalities based upon borrowing procedures, that the appellant, by inference, proposes in his brief, runs contrary to common sense. Pyramiding indebtedness for a future generation to pay, without providing a means of payment, is certainly not what was meant by Section 3, Article 14, Constitution of the State of Utah. It is therefore our position that in determining the debt limit the probable expenditures and operating expenses for the year must be taken into consideration. *Fritsch vs. Board of Com'rs.* . . .

The appellant, by refusing to recognize the expenses of the respondent during the year 1948, is able to assume that the Bonds here in issue are valid. It is then an easy matter to cite cases holding that the bonds should be paid by the City, especially where the City has funds or the ability to tax. Spring City is in neither of these situations.

Appellant also argues that to hold this bond issue void would be, in effect, placing in jeopardy what we call

the "tax anticipation" bond. This is not so. The "tax anticipation" bond is payable solely out of the revenues of the year for which it is borrowed, and, as such, is collectable only out of those respective revenues. The bond in issue is borrowing money to be paid by future generations, and there is no way that the said obligations are to be paid without a bond election.

Appellant argues that because the bond proceedings stated that this was a required expenditure it wasn't to be a debt within the meaning of the Constitution. In *McNeil vs. Waco*, 89 Tex 83, 33 S.W. 322 .. See 90 A.L.R. 1240 ... The court said:

"We conclude that the word 'debt' as used in the constitutional provisions above quoted, means any pecuniary obligation imposed by contract, except such as were, at the date of the contract within the lawful contemplation of the parties, to be satisfied out of the current revenues for the year, or out of some fund within the immediate control of the corporation. Prima facie, every pecuniary obligation attempted to be created by contract is a debt, within the meaning of the constitutional provisions above; and a party attempting to recover against the city thereon must allege the facts showing a compliance with the Constitution and statutes necessary to bind the city, or must allege such facts as to bring the particular claim within the exception above stated in the definition of the word 'debt'. If it should appear from the pleadings or the face of the obli-

gation, that the subject of the contract was clearly a matter of ordinary expenditure, such as repairing streets or salary of an officer, this would be sufficient to bring it within the exception, for the prima facie presumption would be that such claim was intended to be paid out of the current revenues annually collected for the payment of such claims, and it would not be presumed the city has attempted to make contracts in excess of its revenues for the year; but where as in the case at bar, the subject of the contract is not one which the court can say, as a matter of law, is an item of ordinary expenditure, the petition, in order to bring it within the exception, must allege some additional fact, such as that there was, at the date of contract, a fund in the treasury, legally applicable thereto, out of which the parties contemplated that such claim should be paid."

This A.L.R. citation deals with failure to comply with statutory requirements that a municipality at or before incurring indebtedness provide for a tax for its payment as affecting validity of indebtedness or obligations issued therefore. In *Wilson vs. Shreveport*, 29 La. Ann. 673, it was held that under this type of statute, bonds issued without levying a tax to provide for their extinguishment were absolute nullities, unforceable even in the hands of a transferee in good faith for valuable consideration, before maturity. The court said:

"Those who contract with municipal corporations know that these bodies act validly only within the powers

conferred upon them by the special laws by which they are created; and the creditor of a corporation is bound to see that the contract or obligation of which he claims the benefit is within the power which the corporation may lawfully exercise. The fact that the obligation is in the shape of negotiable instrument, or that it was acquired in good faith, for a valuable consideration, before maturity, in no manner enlarges the power of the corporation, or gives any additional force or validity to its unauthorized acts."

We submit that the obligation was invalid when it was created, that the only argument for validity comes from misconstruction of the case of *Muir vs. Murray City*. Respondent calls the courts's attention to the Revised Statutes of Utah, 1933, Annotated, Title 15, Chapter 8, Section 6, Borrowing Power of Cities, where in the note to said section it is stated as follows:

Const. Art. 14, Sec. 3, prohibits a city from creating an indebtedness in excess of its revenues for the current year, unless the proposition is submitted to a vote and approved by the electors. But the inhibition only goes to the question of excess amount, not to the time of the payment. If the amount of indebtedness is limited to revenue for the current year, payment may be provided for after the year expires. If a city has no power to incur an indebtedness, it is not only justified but it is its duty to set up the defense of *ultra vires*. Taxes do not become due for a number of months after the fiscal year for cities commences

(15-8-86) and a city may borrow in anticipation of its revenues for corporate purposes. *Muir vs. Murray City*, 186 P. 433, 55 U. 368. *Dickinson vs. Salt Lake City*, 195 P. 1110, 57 U.530.”

POINT II

IF THE BONDS, SERIES OF JANUARY 15, 1948, SHOULD BE VOID IN AN ABSENCE OF AN ELECTION AUTHORIZING THE ISSUE, PLAINTIFF IS NOT ENTITLED TO RECOVER UPON THE THEORY OF MONEY HAD AND RECEIVED.

The appellant argues that if the bond issue is void because there was no bond election, then he is entitled to recover upon the theory of money had and received.

If the object of Section 3 of the Constitution of the State of Utah is the protection of the taxpayers, to prevent taxing the people without their consent, and to keep municipalities on a pay as you go principle, how can the constitutional inhibition be made effectual if the purchaser of the forbidden claim can come in the form of a suitor for money had and received rather than in the action of indebitatus assumpsit? Is it the cause of action, rather than the form of action, which determines the right? In either case, the municipality and the people residing therein would be required to pay the judgment. Such distinction would sacrifice substance to form, and its practical result inevitably would be a nullification of the Constitution. What the law forbids municipal bodies to do directly should not be permitted by indirect methods. *Morton vs. Nevada*. 41 Fed. 582.

It is the opinion of the respondent that *Fritsch vs.*

Board of Com'rs. also negatives such a view for setting at naught the provisions of the Constitution. The error of following such a view could only be based upon want of attention to the object and purpose of the constitutional restriction in question.

CONCLUSION

The respondent, Spring City, submits the decision of the Court, as based upon its Findings of Fact and Conclusions of the Law. There being only one question to decide; was section 3 of Article 14, of the Constitution of the State of Utah violated by the bond proceedings in issue? To hold that it wasn't violated, would be to set up a precedent for poor financing and to encourage other municipalities to make the same mistake that Spring City made. If the Court, however, rules that the bond issue is valid, the respondent respectfully requests the Court to tell us how to pay it.

Respectfully submitted,

DON V. TIBBS

Attorney for Respondent Spring
City and the City Council.

Manti, Utah