

1959

Moon Lake Electric Association Inc. et al v. Utah State Tax Commission : Brief of Defendant

Utah Supreme Court

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Walter L. Budge; Raymond W. Gee; John G. Marshall; Attorneys for Defendant;

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In the
Supreme Court of the State of Utah

FILED

1959

MOON LAKE ELECTRIC ASSOCIA-
TION INCORPORATED, a corpora-
tion, and UINTAH BASIN TELE-
PHONE ASSOCIATION, INC., a cor-
poration,

Plaintiffs,

vs.

THE UTAH STATE TAX COMMIS-
SION,

Defendant.

Clerk, Supreme Court, Utah

Case No.
9010

BRIEF OF DEFENDANT

WALTER L. BUDGE,
Attorney General,

RAYMOND W. GEE,
Assistant Attorney General,

JOHN G. MARSHALL,
Assistant Attorney General,

Attorneys for Defendant.

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MOON LAKE ELECTRIC ASSOCIA-
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BRIEF OF DEFENDANT

STATEMENT OF FACTS

The defendant is in substantial agreement with the statement of facts as set forth by the plaintiffs. There is no significant issue of fact. Defendant concedes that if Sections 16-6-16, U. C. A. 1953 and 16-6-17, U. C. A. 1953, as amended, are constitutional, the plaintiffs are entitled to the advantages therein contained. The constitutionality

of these statutes being the sole issue we here set forth the sections for analysis.

Section 16-6-16, U. C. A. 1953, provides:

“Property of cooperative nonprofit electric corporations organized under this chapter and operating facilities financed pursuant to the Rural Electrification Act of 1936, shall not be valued for the purpose of ad valorem taxation in excess of \$50 times the number of miles of primary distribution of transmission lines.”

Section 16-6-17, U. C. A. 1953, as amended, provides:

“Property of cooperative nonprofit telephone corporations organized under this chapter and financed pursuant to the United States Rural Electrification Act of 1936, as amended, shall not be valued for the purpose of ad valorem taxation in excess of \$10.00 times the number of circuit miles of line constituting the telephone system.”

STATEMENT OF POINTS

POINT I.

SECTION 16-6-16, U. C. A. 1953 AND SECTION 16-6-17, U. C. A. 1953, AS AMENDED, VIOLATE SECTIONS 2 AND 3 OF ARTICLE XIII OF THE CONSTITUTION OF UTAH.

POINT II.

SECTIONS 16-6-16, U. C. A. 1953, AND 16-6-17, U. C. A. 1953, AS AMENDED, VIOLATE SEC-

TION 11, ARTICLE XIII, OF THE CONSTITUTION OF UTAH.

POINT III.

SECTIONS 16-6-16, U. C. A. 1953, AND 16-6-17, U. C. A. 1953, AS AMENDED, VIOLATE SECTION 26, ARTICLE VI, OF THE CONSTITUTION OF UTAH.

ARGUMENT

POINT I.

SECTION 16-6-16, U. C. A. 1953 AND SECTION 16-6-17, U. C. A. 1953, AS AMENDED, VIOLATE SECTIONS 2 AND 3 OF ARTICLE XIII OF THE CONSTITUTION OF UTAH.

Section 2, Article XIII of the Constitution of the State of Utah provides in part:

“All tangible property in the state, not exempt under the laws of the United States, or under this constitution, shall be taxed in proportion to its value, to be ascertained as provided by law. * * *”

Section 3, Article XIII of the Constitution of the State of Utah, provides in part:

“The Legislature shall provide by law a uniform and equal rate of assessment and taxation on all tangible property in the State, according to its value in money, and shall prescribe by law such regulations as shall secure a just valuation for taxation of such property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its tangible property, * * *.”

In *State v. Thomas*, 16 U. 86, 50 P. 615, this Court gave meaning to these sections as follows:

“* * * The real intent, however, of the framers of the constitution, is made more manifest in section 3 of article 13, which contains this language: ‘The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money, and shall prescribe by general law such regulations as shall secure a just valuation for taxation of all property; so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property.’ This provision is closely related to the one in section 2, and directs the legislature not only to provide a uniform and equal rate of assessment and taxation, so that every subject owning property shall pay the same rate of tax as every other such subject, but also declares that all property shall be assessed at a basis which shall be ‘according to its value in money.’ *It is evident that the term ‘according to its value in money’ means that all property shall be valued, for the purposes of assessment, as near as is reasonably practicable, at its full cash value; in other words, that the valuation for assessment and taxation shall be, as near as reasonably practicable, equal to the cash price for which the property valued would sell in open market, for this is doubtless the correct test of the value of property.* The manifest intention is that all taxable property shall bear its just proportion of the burdens of taxation. These two sections of the constitution harmonize with each other; and, by reading and considering them together, it becomes clear that all taxable property within this state must be assessed and taxed on a valuation fixed at its actual cash value, or as near such value as is reasonably practicable.
* * *” (Italics added.)

Heretofore we have set forth Sections 16-6-16, U. C. A. 1953, and 16-6-17, U. C. A. 1953, as amended. Analysis of those statutes in light of the case authority cited evidences a violation of the foregoing constitutional provisions in these respects:

1. Regardless of the full cash value of its property, or the cash price for which the property valued would sell on the open market, and despite the principle that *all* tangible property shall bear its just burden of taxation, a cooperative identified in the statutes in question enjoys a fixed ceiling or limitation on the valuation of its property, quite unknown to other persons, associations or corporations. Can all property be taxed in "proportion to its value", or "according to its value in money" if the valuation cannot be "in excess of \$50 times" the number of miles of transmission lines, or cannot be "in excess of \$10 times the number of circuit miles" of telephone lines? Obviously the answer is in the negative. Property cannot truly be taxed "according to its value in money" if a monetary limitation is placed on the extent of valuation. The Constitution of Utah is clearly violated in this respect by Section 16-6-16, U. C. A. 1953, and Section 16-6-17, U. C. A. 1953, as amended. *State v. Thomas*, *supra*.

2. Even though the Utah constitutional provisions heretofore quoted make "*all* tangible property" subject to assessment and taxation, with certain exceptions not material here, Sections 16-6-16, U. C. A. 1953, and 16-6-17, U. C. A. 1953, as amended, subject the cooperatives thereunder to ad valorem taxation only to the extent a specific type of property is owned by the cooperative. In the one

case property of certain cooperative nonprofit electric corporations shall not be valued for the purpose of ad valorem taxation in excess of \$50 times *the number of miles of primary distribution of transmission lines*. Section 16-6-16, U. C. A. 1953. A limit of ten dollars times *the number of circuit miles of line constituting the telephone system* is basic to valuation of the property of the cooperative nonprofit telephone corporations under Section 16-6-17, U. C. A. 1953, as amended. Now, by what magic in taxation logic and experience may the required assessment of *all* tangible property be conditioned on the extent of ownership of a peculiar species of property?

There is no necessary correlation between the peculiar property basic to the formulae in Sections 16-6-16, U. C. A. 1953 and 16-6-17, U. C. A. 1953, as amended, and all tangible property owned by the cooperatives in question. Ownership of the former gives no certain indication of the value of the latter. Cooperatives may have equal line mileage, yet vary in tangible property valuation depending on density of customer population, geographical conditions, and the type and extent of service required by the customers. Quite contrary to producing the true cash value of all tangible property of the cooperatives in question, assessment of a specific type of property of the cooperative results in (a) a valuation of *that* specific property only for taxation purposes or (b) if a limit on the valuation of the specific property is embraced in the valuation formula, as is the case here, the resulting assessment may be only a fraction of the full cash value of the specific property, and a fortiori, a smaller fraction of the full cash value of all tangible property.

3. By adopting the formulae of Sections 16-6-16, U. C. A. 1953, and 16-6-17, U. C. A. 1953, as amended, the Legislature of Utah has extended exemptions to the cooperatives therein identified in that the full cash valuation is subject to a "ceiling", and only applicable to specific tangible property. We are of the conviction that the paramount law of this state precludes the escape from taxation of that property represented by, and to the extent of, the valuation over and above the maximum rate set forth in the foregoing statutes, and the exemption from taxation of tangible property other than that therein specified.

According to *State v. Armstrong*, 17 U. 166, 53 P. 981:

"* * * The meaning and intent manifest from the constitution are that no property shall be relieved from the burden of maintaining the government, except such as was defined and specified for exemption by that instrument. No one would contend for a moment that the legislature of this state has power in express terms to exempt property from taxation, other than that enumerated for exemption in the constitution; and yet in the enactment of the statute in question the legislature has undertaken to indirectly exempt property not so enumerated. This is an attempt to do indirectly that which could not be done directly, and the statute therefore is in violation of the constitution, and is void, as in excess of legislative authority. To prevent the legislature from exempting property not included within the exemptions of the constitution, express words of inhibition were not necessary. The positive direction that 'all property not exempt under the laws of the United States or under this constitution shall be taxed,' and that the rate of assessment and taxation shall be 'uniform and equal,' so that 'every person and cor-

poration shall pay a tax in proportion to the value of his, her, or its property,' with the enumeration of the property exempted, contains an implication against an exemption of any other property by the legislature. That direction itself operates as a restraint upon the legislative power. Cooley, Const. Lim. 209; *Konold v. Railway Co.*, 16 Utah 151."

It appears most fundamental that no exemption from taxation may be extended by the Legislature, unless authorized by the Constitution. That no such authority exists for the relief from the burden of maintaining the government accorded the plaintiffs, we respectfully submit.

4. As noted, Section 3, Article XIII of the Constitution of Utah, states:

"The Legislature shall provide by law a *uniform and equal rate of assessment and taxation* on all tangible property in the state according to its value in money. * * *" (Emphasis added.)

Violative of this provision are the statutes, Sections 16-6-16, U. C. A. 1953, and 16-6-17, U. C. A. 1953, as amended, which permit of taxation neither equally nor impartially laid on the taxpayers. The cooperatives identified by these statutes cannot be treated or classified for taxation purposes on a basis distinct and separate from other persons, associations, or corporations engaged in the same activity and owning property of an identical nature.

Plaintiffs apparently recognize one aspect of the "uniform and equal" principle when they write on page 23 of their brief as follows:

"* * * Whatever may be the justification of this practice with respect to highly profitable enter-

prises that have reached full earning power, it is abundantly clear, under court decisions of every state, that valuation based upon earning power is peculiarly appropriate to the enterprises here under discussion. This is not because they are cooperatives but because of the kind of territory in which they operate. *A stock corporation organized for profit and operating in similar territory, should of course be assessed on the same basis and with the same results.* * * *” (Emphasis added.)

Erroneously, plaintiffs seem to imply that the special advantage accorded them is not because of their cooperative status, but because of the geographical territory served. Sections 16-6-16, U. C. A. 1953, and 16-6-17, U. C. A. 1953, as amended, clearly specify the basis for the exemption as being the cooperative status, and at that, a particular genus of cooperative.

However, the plaintiffs do consider it but equitable that stock companies operating in like territory should be assessed on the same basis as the plaintiffs, and with the same results. Be that as it may, the Legislature was prompted by no such principle of equality when it enacted the legislation in question. The special exemptions and limitations therein are restricted to the few identified.

In *Stillman v. Lynch*, 56 Utah 540, 192 P. 272, this Court held:

“* * * The power of classification is not precluded by a constitutional provision that taxation be equal and uniform, but the fact that a statute makes no distinction between those in a class does not of itself justify special exemptions, additional deductions, or lower rates to those within a particu-

lar class unless the Constitution provides that taxation shall be uniform 'upon the same class of subjects.' * * *

"This section [the Montana statute] provides one system for assessing the property of national banks and another for assessing the moneyed capital employed in any other bank. National bank stock is assessed at its market value, the full value of the real estate being deducted. This legislation was held constitutional and valid in *Hilger v. Moore* (Mont.) 182 Pac. 477, in an exhaustive and well-considered opinion. But the Constitution of Montana contains an important clause that the Constitution of this state does not contain. Section 11 of article 12 of the Montana Constitution provides: 'Taxes shall be levied and collected by general laws and for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.' Were a similar provision in the Utah Constitution, we should without hesitation uphold section 5869 as a valid act of classification. Many courts have upheld as valid and not repugnant to the Constitution similar statutory provisions, but an examination of the constitutional provisions upon which these decisions are based will, we think, disclose that they are invariably based upon a constitutional provision similar to that above quoted from the Montana Constitution. Our section 5869 operates with uniformity upon a class, but the difficulty of reconciling it with the Constitution of this state is that it is a special privilege, an added benefit, to one class which is accorded to no other. The section under consideration plainly gives to bank stockholders a deduction given to no other class of taxpayers. After provision is made for taxing bank stock, section 5869 says that in making such assessment there must also be deducted an additional sum to be ascertained in the manner therein provided.

This is an exception or deduction not accorded to other classes or groups of taxpayers, and is, therefore, beyond any question of doubt, repugnant to the Constitution, which provides for uniformity of taxation. Not only do we find no warrant in the Constitution that permits the deduction made by the Legislature, but, in our opinion, the deduction is prohibited by the Constitution. Suppose the Legislature had enacted a law putting farmers in a separate class for purposes of taxation, and had given them a flat 20 per cent reduction in the assessment of their property. Would any one question the invalidity of such a law? It would be rank and indefensible class legislation that could not possibly be harmonized with the Constitution. * * *

In the case at bar the plaintiffs have been placed in a separate class for taxation purposes and given limitations and exemptions on the assessment basis of their property. Is this not the rank, inequitable, indefensible, class legislation of the type referred to in the *Lynch* decision? Certainly, for the classification in this case results in discrimination, and the legislation permitting the exemption and deduction partakes of neither "uniformity" nor "equality," nor is the tax impartially laid on all taxpayers, who, absent the statute, would find themselves occupying the same status before the law.

At this point in our discussion we consider it appropriate to analyze the approach of the plaintiffs as set forth in their brief.

Plaintiffs' syllogism is: (1) Earning power is the primary element in ascertaining property valuation. (2) REA financed telephone and electric cooperatives have

low earning power because they serve rural areas. (3) Ergo, the property of a cooperative should not be valued for taxation purposes in excess of \$10 (\$50), times the wire miles of its system.

The defendant acknowledges earning power as one element in ascertaining property value, recognizes that the plaintiff cooperatives serve rural areas, but questions the conclusion as being a non sequitur. Fixing a maximum for valuation purposes does not reflect a formula wherein earning power, or any of the other elements necessary to ascertain full cash value, is applied. What if the earning power justifies a valuation in excess of the statutory ceiling? If anything, the statutes in question preclude full consideration of earning power as a factor in valuation. Logic and reason give no comfort to the position of plaintiffs.

POINT II.

SECTIONS 16-6-16, U. C. A. 1953, AND 16-6-17, U. C. A. 1953, AS AMENDED, VIOLATE SECTION 11, ARTICLE XIII, OF THE CONSTITUTION OF UTAH.

Section 11, Article XIII, of the Constitution of Utah, provides in part:

“* * * It [the State Tax Commission] shall assess mines and public utilities and adjust and equalize the valuation and assessment of property among the several counties. * * *”

In *State ex rel. P. S. C. v. Southern Pacific Co. et al.*, 95 U. 84, 79 P. 2d 25, this Court stated:

“We conclude therefore the Constitution has conferred on the State Tax Commission the power

of assessment of utilities, which includes fixing of valuations on utility property, and that this duty and power cannot be directly exercised by the Legislature or by it conferred on any other officer or board, * * *."

By enacting Sections 16-6-16 and 16-6-17, supra, the Utah Legislature has attempted to exercise the power of assessment of plaintiff utilities, including the fixing of the valuations of utility property, all in contravention of the Constitution and precedent of this court.

POINT III.

SECTIONS 16-6-16, U. C. A. 1953, AND 16-6-17, U. C. A. 1953, AS AMENDED, VIOLATE SECTION 26, ARTICLE VI, OF THE CONSTITUTION OF UTAH.

Section 26, Article VI, of the Constitution of Utah, provides in part:

"The Legislature is prohibited from enacting any private or special laws in the following cases:

"* * *

"8. Assessing and collecting taxes.

"* * *

"16. Granting to an individual, association or corporation any privilege, immunity or franchise.

"* * *

"In all cases where a general law can be applicable, no special law shall be enacted. * * *"

A law is special when it is not founded on natural, intrinsic, or constitutional distinctions which reasonably

justify difference in treatment, or where a classification is unrelated to a legitimate object to be accomplished. See 50 Am. Jur., Statutes, Sec. 7; 82 C. J. S., Statutes, Sec. 166 and cases cited therein; 2 Sutherland Statutory Construction, 3rd Ed., Sec. 2104. Although the form of the Utah laws under consideration is general, the result is "identification" rather than legitimate classification. The statutes, by a process of selection through counter generalizations, have eliminated what might otherwise be natural classifications. For example:

(a) The classification is not broad enough to apply to all cooperatives. A cooperative must be financed under the REA Act of 1936 before it is entitled to benefit of the statutes in question.

(b) The classification is not broad enough to apply to all nonprofit associations financed pursuant to the REA Act of 1936. Loans for rural electrification under the REA Act of 1936 may be made to "persons, corporations, states, territories, and subdivisions and agencies thereof, municipalities, peoples' utility districts and cooperative, nonprofit, or limited dividend associations, * * *." See 7 U. S. C. A., Section 904, as amended. Loans for rural telephone service under the REA Act of 1936 may be made to "persons now providing or who may hereafter provide telephone service in rural areas and to cooperative, nonprofit, limited dividend, or mutual associations." See 7 U. S. C. A., Sec. 922.

The fact that cooperatives have been segregated from the numerous other participants under the REA program,

for purposes of state taxation, can only add to the conclusion that the Utah tax statutes in question constitute special legislation.

(c) The classification is not broad enough to include all associations, for profit or otherwise, which serve similar territory, own property of an identical nature, enjoy the same net profit, or even adopting plaintiffs' theme, have the same earning power.

We are convinced that the equality so fundamental to general legislation finds no part in Sections 16-6-16, U. C. A. 1953, and 16-6-17, U. C. A. 1953, as amended. The classifications therein are arbitrary. An underlying legitimate object to be accomplished thereby:—enumerate, the Legislature did not; and imagine, we can not.

CONCLUSION

Sections 16-6-16, U. C. A. 1953, and 16-6-17, U. C. A. 1953, as amended, are unconstitutional. The legislation:

- (1) Does not permit taxation of all tangible property.
- (2) Does not permit of property valuation in money.
- (3) Relieves certain property of the burden of taxation, not otherwise exempted by the Constitution.
- (4) Does not provide a uniform and equal rate of assessment and taxation.
- (5) Usurps the power of assessment of utilities conferred by the Constitution upon the State Tax Commission.

(6) Arbitrarily classifies, constituting special legislation.

If taxation can be termed one of the most offensive powers of government, how much more repulsive is tax legislation which breeds partiality, inequality, special privilege and exemption, and creates a complex wherein all property does not bear its just proportion of the burdens of taxation, and every person and corporation does not pay a tax in proportion to the value of his, her, or its tangible property.

The writ should be denied.

Respectfully submitted,

WALTER L. BUDGE,
Attorney General,

RAYMOND W. GEE,
Assistant Attorney General,

JOHN G. MARSHALL,
Assistant Attorney General,

Attorneys for Defendant.