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Ludvig v. Mikkelsen, Marie Mikkelsen and Charles
L. Johnson v. Utah State Tax Commission and
Weber County Board of Equalization, William S.
Moyes, Chairman : Brief of Respondent

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In The Supreme Court of the State of Utah

LUDVIG V. MIKKELSEN, MARIE MIK-
KELSEN and CHARLES L. JOHNSON,

Plaintiffs-Appellants,

-v-

UTAH STATE TAX COMMISSION and
WEBER COUNTY BOARD OF EQUALI-
ZATION, WILLIAM S. MOYES, Chair-
man.

Defendants-Respondents.

Case No.
11,040

BRIEF OF RESPONDENT

Appeal from judgments of the Second Judicial District Court
for Weber County, Honorable John F. Wahlquist presiding.

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BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

Appellants initiated action in the Second Judicial District Court of Weber County as follows:

(1) Petition for a permanent injunction against the Weber County Board of Equalization to restrain said Board from applying Senate Bill 30; and

(2) A class action for a declaratory judgment to have Senate Bill 30 declared unconstitutional, or in the alternative, that the bill be clarified in its application to appellants.

The Utah State Tax Commission moved for dismissal of both the petition and the class action or in the alternative, that if said Motion fail, that Senate Bill 30 be sustained constitutional. The Weber County Board of Equalization sought clarification of Senate Bill 30.

DISPOSITION IN THE LOWER COURT

The case was tried to the court, Honorable John F. Wahlquist presiding on the 19th day of June 1967. The court sustained the constitutionality of Utah Code Ann. § 59-7-2 (Supp. 1967), hereinafter referred to as Senate Bill 30; dissolved the temporary restraining order, declared Senate Bill 30 operative in 1967 while using the June 7th filing date of the former law; and ordered that the \$1500.00 income limitation applied to an individual and the total income should be apportioned between husband and wife where the property is jointly owned.

The court signed its Findings of Facts and Conclusions of Law and Decree on September 23, 1967, which documents were entered in the records of the Weber County Clerk on September 27, 1967.

RELIEF SOUGHT ON APPEAL

Respondents submit that the decision of the lower court in respect to Senate Bill 30 be affirmed if the appeal is not dismissed as requested in Point I, *infra*.

STATEMENT OF FACTS

Respondents accept appellants' statement of facts in regard to age of appellants, the income of appellants, and the statute under which appellants applied for their abatement. Respondents also agree with appellants' statements concerning the findings made by the trial court and the subsequent action of the Weber County Board of Equalization.

ARGUMENT

POINT I

THE APPEAL IS IMPROPERLY BEFORE THE COURT FOR THE REASON THAT THE APPELLANTS HAVE NOT COMPLIED WITH THEIR STATUTORY ADMINISTRATIVE REMEDY.

The action for declaratory judgment should have been dismissed by the lower court on the basis of appellants' failure to exhaust the administrative remedy provided for by statute.

The Utah State Legislature has taken considerable effort to provide relief for taxpayers who feel that their property has been unfairly treated by the various county assessors, and who feel that their protestations have been ignored by the various administrative bodies.

Utah Code Ann. § 59-7-1 (1963) provides that the county board of commissioners of each county shall constitute a county board of equalization which shall meet at specified times for the purpose of equaliz-

ing the assesment of all property within a county and for the purpose of hearing complaints and making the necessary adjustments. Utah Code Ann. § 59-7-2 (1963) provides that this board of equalization may increase or lower the assessment and may also abate the taxes of an indigent person. It is further provided in Utah Code Ann. § 59-7-10 (1963) that any person aggrieved or dissatisfied with the decision of the county board of equalization may appeal to the Utah State Tax Commission for review.

Should the taxpayers make a proper application to the Utah State Tax Commission, they would then have an opportunity to present their argument, asking for a determination of their liability for taxes assessed in view of apparent indigency, and then receive a decision from the Utah State Tax Commission which has appellate power from the various county boards of equalization. Utah Code Ann. § 59-7-10 (1963). Should they be dissatisfied with this appellate determination, they could then file a writ of certiorari to the Utah State Supreme Court asking to have the determination of the Utah State Tax Commission reviewed. **County Board of Equalization of Kane County v. State Tax Comm'n**, 88 Utah 219, 50 P.2d 418 (1935).

The Legislature has also provided an alternative remedy. Utah Code Ann. § 59-11-11 (1963) permits any taxpayer objecting to the "demands for public revenue" to pay said demanded revenue under protest and file an action in any court of com-

petent jurisdiction to recover those taxes he considers unlawfully assessed or paid.

That these administrative or other statutory remedies must be complied with before filing an action for declaratory judgment as was done in this instance is clear:

Declaratory relief is frequently denied in tax cases either on the ground that other adequate remedies exist or that special statutory remedies provided for tax cases are exclusive. The remedy in the state courts is ordinarily considered adequate if the taxpayer may pay his taxes under protest and obtain an enforceable judgment for a refund. Declaratory relief has also been denied where the taxpayer is afforded a complete remedy by a state **statute providing for appeal from an assessment**, where he has a remedy by mandamus, **where the statute provides for review by certiorari of the tax commission's determination**, where there is a specific statutory proceeding for testing tax statutes, . . . (Emphasis added.) 22 Am. Jur. 2d, Declaratory Judgment § 38.

This court in **Shea v. State Tax Comm'n**, 101 Utah 209, 120 P.2d 274 (1941) has stated its agreement with this philosophy:

It is not for the tax commission to determine question of legality or constitutionality of legislative enactments. In cases in which legality or illegality of tax sought to be recovered by taxpayer necessarily involves determination of questions of law calling for exercise of strictly judicial functions, **payment under protest and compliance with other provisions of the statutes afford the exclusive remedy** (Emphasis added.)

POINT II

THE INTERPRETATION BY THE LOWER COURT OF THE APPLICABILITY OF SENATE BILL 30 TO THE YEAR 1967 SHOULD BE AFFIRMED.

The lower court determined that the Legislature intended the filing limitation of Senate Bill 30 to apply only after the bill became law on May 9, 1967; and that the substantive provisions of Senate Bill 30 should be coupled with the filing provisions of the former statute in granting relief. (T. 69)

Appellants state on page 13 of their brief that the application denied under Senate Bill 30 must be reconsidered under Utah Code Ann. § 59-7-2 (1963), which appellants claim was in force in June. That section was in effect repealed on May 9, 1967, when the new amendment became effective. The provisions of the former act could not have had any efficacy after May 9, 1967, and no abatement of any type could have been granted under the repealed section.

The lower court, therefore, was faced with a serious dilemma. The repealed section obviously could not be applied. However, if the May 1st filing date of the present law were strictly applied, no persons seeking abatement under the new provision could be granted relief. The result would be to eliminate abatement of property tax for the indigent for the 1967 calendar year.

The lower court reasoned that such a result

could not have been intended by the Legislature but rather that that body intended the filing limitation to apply after the new provision became law. (T. 69)

Thus the May 1st filing deadline would become applicable in the 1968 calendar year.

Respondents submit that the lower court's interpretation is based on sound reasoning and that said holding should be affirmed.

POINT III

THE HOLDING OF THE LOWER COURT THAT SENATE BILL 30 IS NOT IN VIOLATION OF THE CONSTITUTIONAL REQUIREMENT OF EQUAL PROTECTION OF THE LAW SHOULD BE AFFIRMED.

The principles stated in the United States Supreme Court cases cited in appellants' brief can be found in the decision of this Court in **State v. Mason**, 94 Utah 501, 198 P.2d 920 (1938). As the **Mason** case has been almost uniformly cited as authority in subsequent Utah State Supreme Court decisions considering equal protection questions, it can rightfully be called a landmark decision.

This Court in **State v. Mason**, supra, set forth certain criteria for determining whether or not a statute challenged on equal protection grounds is constitutional:

1. Any law of necessity discriminates against one group or another in that it includes some within

its application and excludes others from its application;

2. The differentiation between those included and those excluded must not be unreasonable or arbitrary in nature;

3. The reasonableness of the differentiation or discrimination must be directly related to the purpose to be accomplished by the statute.

In addition to these criteria, the **Mason** decision also provides guidelines for judicial perusal of a statute challenged on the grounds of unreasonable and arbitrary classification:

1. In regard to reasonableness, the court cannot substitute its judgment for the judgment of the legislative body.

2. If the court finds a reasonable basis for differentiation, the law must be upheld.

3. There is a difference between a statute's wisdom and its constitutionality.

Respondents do not deny that the purpose of Senate Bill 30 is to provide a relief for certain "indigent" persons. However, it cannot be denied that the Legislature is not required to provide the same type of relief for all persons. The Legislature has been given the power to determine who needs relief and in what form so long as there is some basis for granting a certain type of relief to certain persons classified in need of that type of relief.

A reading of the statute clearly indicates that the Legislature intended to offer a certain monetary boon to persons it considered in need of assistance but who were not presently receiving a monetary boon in the form of welfare grants constituting 50 per cent or more of their income.

It appears that the Legislature concluded that said persons, i.e., those receiving 50 per cent or more of their income from welfare grants, would be placed in a favored position if they were also granted the type of relief contemplated by Senate Bill 30. Respondent submits that such a conclusion is based on sound reasoning and that such conclusion can properly be made by the Legislature.

Respondents fail to see that the definition of an indigent person as one whose income is less than \$1500.00 is an unreasonable or arbitrary classification within the framework of Senate Bill 30.

If it could be shown that all persons over 65 years of age with an income of over \$1500.00 were indigent, the Legislature's determination could probably be declared capricious. That, however, is not the case.

Whether or not the Legislature would have been "wiser" to fix an amount other than \$1500.00 bears little relationship to the constitutional validity of the amount in question.

Appellants' strongest argument would appear to be that in some instances the application of the law might work a hardship on some welfare recipi-

ents whose grants constitute the major portion of their income. Nevertheless, respondents submit that the Legislature was attempting to achieve a balance among persons it deemed indigent by granting a certain type of relief to those not already receiving relief in another form. That the balance achieved may not always be perfect is not a basis for declaring the statute invalid.

POINT IV

THE DETERMINATION BY THE LOWER COURT THAT THE \$1500.00 INCOME LIMITATION APPLIED TO AN INDIVIDUAL AND THAT INCOME MUST BE APPORTIONED WHERE THE PROPERTY IS JOINTLY OWNED SHOULD BE AFFIRMED.

Utah Att'y. Gen. Op. No. 67-058, issued August 15, 1967, and concerning Senate Bill 30 stated as follows:

It is the opinion of this office that the \$1500.00 limitation applied to each individual making application for the abatement. The county board of equalization should examine the facts to determine the actual owners of the property and, if it appears that both husband and wife are the owners, then allow an abatement where each have an income less than \$1500.00.

An earlier opinion dealing with the veteran's exemption determined that a veteran applying for an exemption was entitled to the full exemption even if the property were jointly owned by the veteran and his or her spouse. Utah Att'y. Gen. Op. No. 64-012, Feb. 25, 1964. Respondents submit that the

veteran exemption situation is analogous to the instant case and the reasoning of the cited opinion should be persuasive.

The above opinions appear to be the only guides to interpreting the language of Senate Bill 30.

Respondents submit that the language of the statute is clear and the interpretation of that language by the lower court is correct and should be affirmed.

CONCLUSION

Initially, respondents reiterate the contention that the appeal is not properly before this Court. If, however, the appeal is not dismissed, respondents submit that Senate Bill 30 is not violative of the constitutional requirement of equal protection of the law; therefore, the decision of the lower court on that question should be affirmed.

Based on Point II, respondents urge this Court to affirm the decision of the lower court regarding the application of the June 7th filing date to the 1967 calendar year.

Respondents submit that the language of Senate Bill 30 clearly directs an apportionment of the income with regard to property jointly owned by husband and wife and ask that the lower court's decision on that point be affirmed. Respondents join

appellants in seeking an order from this Court directing the Weber County Board of Equalization to comply with the order of the Second District Court.

Respectfully submitted,

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