

1961

Gerald Kay Merkley v. State Tax Commission of Utah : Brief of Defendants and Respondents

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

FILED

GERALD KAY MERKLEY, a taxpayer,
for himself and all others similarly
situated,
Plaintiff and Appellant,

vs.

STATE TAX COMMISSION OF UTAH,
SALT LAKE COUNTY, a body politic
and corporate, and SALT LAKE CITY,
a municipal corporation of the State of
Utah,
Defendants and Respondents.

1961

Clerk, Supreme Court, Utah

Case No.
9393

BRIEF OF DEFENDANTS AND RESPONDENTS

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BRIEF OF DEFENDANTS AND RESPONDENTS

STATEMENT OF FACTS

Defendants agree with the statement of facts set forth by plaintiff and further state that this is an action brought by plaintiff to test the validity of Chapter 114, Laws of Utah, 1959. Plaintiff urges the invalidity and unconstitutionality of the act. Defendants claim that the act is in all respects valid

and constitutional. For the convenience of the court a brief resume of the act is set forth herewith:

Section 1 of the said act sets out its title as "the uniform local sales and use tax law of Utah."

Section 2 of the act is a declaration of the legislative purpose that the revenues derived from taxation under the act be used to finance capital outlay requirements and service bonded indebtedness of local taxing units.

Section 3 provides that counties, cities, and towns may levy sales and use taxes in accordance with the terms of the act and prohibits cities and towns from levying such tax unless the county has first levied such tax.

The first section numbered 4 provides that the tax shall be $\frac{1}{2}\%$ upon retail sales within the counties, cities and towns; provides that the levy shall conform to the state sales tax act; provides that the local taxing unit shall contract with the state tax commission to perform the services incident to the administration and operation of the sales or use tax; and further provides for an exemption from the $\frac{1}{2}\%$ sales and use tax if a like amount has already been paid to another local taxing unit within the state.

The second section numbered 4 provides that the local taxing unit must maintain its ordinances in accordance with the provisions of the state sales and use tax law and must change the local law as the state law is changed.

Section 5 provides for a county use tax similar to first section numbered 4 relating to sales taxes.

Section 6 provides for collection by the state tax com-

mission and further provides that the state tax commission may charge a fee not to exceed 2½% of the amount collected.

Section 7 provides that the tax commission may determine the situs of the consummation of retail sales where the retailer has not a single definite fixed place of business and further provides that it may establish a formula whereby the revenues collected by public utilities may be apportioned to the local taxing units.

Section 8 provides for a presumption that intrastate retail sales are consummated at the place of business of the retailer.

Section 9 provides that the act is inseparable and the invalidity of one provision voids all.

Section 10 provides for an effective date of the local tax levy.

STATEMENT OF POINTS

POINT I.

CHAPTER 114, LAWS OF UTAH, 1959, DOES NOT VIOLATE ARTICLE VI, SECTION 29 OF THE UTAH CONSTITUTION.

POINT II.

CHAPTER 114, LAWS OF UTAH, 1959, CONFORMS TO ARTICLE XIII, SECTION 5 OF THE UTAH CONSTITUTION.

POINT III.

CHAPTER 114, LAWS OF UTAH, 1959, DOES NOT UNLAWFULLY DELEGATE LEGISLATIVE AUTHORITY, NOR DOES IT UNLAWFULLY INTERFERE WITH THE GOVERNMENTAL FUNCTIONS OF COUNTIES OR MUNICIPALITIES.

POINT IV.

CHAPTER 114, LAWS OF UTAH, 1959, IS NOT VOID FOR LACK OF UNIFORMITY.

POINT V.

CHAPTER 114, LAWS OF UTAH, 1959, IS SUFFICIENTLY DEFINITE AND REASONABLE.

ARGUMENT

POINTS I, II, III

I. CHAPTER 114, LAWS OF UTAH, 1959, DOES NOT VIOLATE ARTICLE VI, SECTION 29 OF THE UTAH CONSTITUTION.

II. CHAPTER 114, LAWS OF UTAH, 1959, CONFORMS TO ARTICLE XIII, SECTION 5 OF THE UTAH CONSTITUTION.

III. CHAPTER 114, LAWS OF UTAH, 1959, DOES NOT UNLAWFULLY DELEGATE LEGISLATIVE

AUTHORITY, NOR DOES IT UNLAWFULLY INTERFERE WITH THE GOVERNMENTAL FUNCTIONS OF COUNTIES OR MUNICIPALITIES.

Defendants for simplicity will combine their first three points for argument inasmuch as all three relate to the questions of unlawful delegation of power and unlawful interference with local self-government.

Article VI, Section 29 of the Utah Constitution provides:

“The Legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, . . . to levy taxes, . . . or to perform any municipal functions.”

Article XIII, Section 5 of the Utah Constitution provides:

“The Legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may, by law, vest in the corporate authorities, thereof, respectively, the power to assess and collect taxes for all purposes of such corporation.”

The obvious purpose of these two articles of the Utah Constitution is to provide for the municipalities and counties of this state the right to local self-government. Local self-government has historically been one of the bulwarks of American liberty and it was the intention of the constitution makers that the right to it be preserved and maintained inviolate. As was stated in *Best Foods v. Christensen*, 75 Utah 392, 285 Pac. 1001:

“There can be no doubt but that the framers of our state Constitution recognized the rights of the people

of Utah to local self-government. It was to preserve local self-government free from needless legislative interference that the power to levy taxes for local purposes was by the state Constitution vested exclusively in the proper authorities of counties, cities, towns, and other municipal corporations. The power to collect and control the revenues of a municipality is of the very essence of local self-government. The same reasons that may be urged against legislative interference with a levy of a general property tax for municipal purposes apply to the imposing of a license tax by the Legislature for purely municipal purposes. The levy of either tax by the Legislature interferes with local self-government. Upon principle and the great weight of authority, section 5 of article 13 of our state Constitution precludes the Legislature from imposing a license tax upon the inhabitants of a city, town or county for the sole purpose of raising revenue for such city, town, or county.”

This Honorable Court has always been zealous in preserving the right of municipalities and counties to local self-government. See *Logan City v. Public Utilities Commission*, 72 Utah 536, 271 Pac. 961, and *State Water Pollution Control Board v. Salt Lake City*, 6 Utah 2d 247, 311 P.2d 370. However, Chapter 114, Laws of Utah, 1959, does not interfere with local self-government. Counties and municipalities are given discretion as to whether or not they wish to adopt the tax. The tax is not imposed by the legislature for the benefit of local taxing units, but is imposed by the various counties and municipalities by their various duly elected and appointed representatives; viz, their boards of city commissioners and boards of county commissioners. The local citizenry, through their duly elected representatives, have the power to deter-

mine whether or not the tax will be imposed. The legislature has simply prescribed certain conditions which must take effect if the tax in question is levied. The most important of these is that the local authority must contract with the State Tax Commission to collect the tax. This is not a burdensome requirement for cities, nor is it burdensome upon the taxpaying citizen, for the Tax Commission is already collecting on behalf of the state a state-wide sales tax for state-wide purposes.

It will be readily seen that the only practical and inexpensive way to assess and collect a local sales tax is for the State Tax Commission to collect it at the same time it collects the state tax and then remit to the local taxing units. Historically, local taxing units have always found it necessary to employ collectors of taxes for the taxes that they have levied. Generally these are individuals, but quite often, may be other entities. McQuillin, in his work, *Municipal Corporations*, states:

Section 44.131: "Power to levy and collect taxes, it is commonly held, carries with it the implied power to employ the necessary and usual procedure to execute the power and collect the revenue contemplated by the grant of power to make the levy."

Section 44.132: "In many cities, taxes are collected upon behalf of municipalities by county officers, who become agents of the city for the purpose."

Section 44.133: "Except where such duty is imposed upon and restricted to particular municipal officers, a municipal corporation, unless forbidden by statute or charter, may make a contract with any person to collect its taxes, and authority to contract for collection of delinquent taxes may be authorized by legislative act. Thus a municipal corporation having full power in the premises may employ banks as collection agencies and agree with them concerning remittances."

In support of this last statement, McQuillin cites *Best Foods v. Christensen*, *supra*.

Insofar as unlawful delegation of power to the State Tax Commission is concerned, it will at once be noted that the act in question does not give power to the State Tax Commission to determine whether or not the tax will be imposed, but merely gives it the power to determine facts. The tax is imposed by the municipalities and the counties, and the State Tax Commission is simply given the duty and the right to determine whether or not the tax is to be paid by a particular individual and where it is to be paid in order to determine to whom it will be remitted. In other words, rather than delegating legislative power, the act simply delegates to the Tax Commission the power to determine the facts upon which the act will operate. Under modern-day standards of delegation, this type of delegation is not unlawful. In *Revne v. Trade Commission*, 113 Utah 155, 192 P.2d 563, this court said:

“We recognize, of course, that the legislature may properly delegate to some administrative body the duty of ascertaining the facts upon which the provisions of a law are to function, . . . The question of an improper delegation of legislative authority lies imbedded in the extent of the power granted to the administrative body.”

If the counties and municipalities think too much power has been delegated to the tax commission, they have the option not to levy the tax in question. There is no law compelling them to impose the tax and delegate the power to collect the same to the State Tax Commission unless they wish to do so. However, in view of the fact that in this action the city and

the county are not complaining of an unlawful delegation but are rather seeking to uphold the sales tax act, the Court should not be overly concerned with this question of the authority of the Tax Commission to interfere with the municipal monies, property or improvements. See *Bailey v. VanDyke*, 66 Utah 184, 240 Pac. 454. In that case, under authority of state statute, defendant Weber County made an agreement with the U.S.A.C. and the director of the U. S. Extension Service to cooperate with these agencies and to assist in certain basic research. Defendant County agreed to assume some cost. Plaintiff contended that the legislation authorizing this type of agreement was unconstitutional and void, because the legislature had imposed taxes for county purposes. The court rejected this contention, saying:

“This claim is wholly insupportable because the statute in question does not impose any obligation whatever upon the county. The county is merely given legal power to enter into the contract and provide the funds or not, as its duly constituted officers may elect. There is no imposition of taxes, direct or indirect, by legislative authority upon the county, and no interference with local self-government by the county.”

The act in question is similar to the legislation in the *Bailey v. VanDyke* case in that it gives the local taxing unit the power to determine whether or not it will levy the tax and there can be no possible interference with local self-government unless the tax is levied and even then there is no unlawful interference with county or municipal government.

Plaintiff also contends that the act delegates certain municipal powers to the county in that it authorizes cities to

enact the tax only after counties have done so. Plaintiff states that after enactment by the county, cities are forced to enact the legislation or their citizens will suffer taxation without benefit. This is not correct, for the citizens of cities within a county are also citizens of the county and it must be assumed that county levies are spent for the benefit of all citizens of the county. Therefore there is not taxation without benefit. The act does not delegate the power to the county to determine whether or not the city will levy the tax, but simply prohibits the levy by the city in the first instance unless a county-wide tax has been imposed. There are good economic reasons justifying the insertion of these provisions into the act by the legislature and this is purely a matter for legislative discretion with which the court will not interfere.

POINT IV.

CHAPTER 114, LAWS OF UTAH, 1959, IS NOT VOID FOR LACK OF UNIFORMITY.

Plaintiff devotes a good portion of his brief to arguing that the act in question allows some municipalities and counties to levy a tax and allows other municipalities and counties not to levy a tax. This is true, but does not render the law invalid, for nowhere in the statutes or constitution is there any requirement that all counties, municipalities or local taxing units must have the same tax rates. The only constitutional requirement is that the operation of a statute must be uniform throughout the state. Certainly, the operation of this statute is uniform throughout the state. All counties have the option

provided for in the statute and once the county has enacted an ordinance in accordance therewith, all municipalities within the county have likewise the same option. If a uniform tax levy were required throughout the state, the tax levy of every local taxing unit would be faulty, for it is common knowledge that each taxing unit within the state imposes taxes at a different rate and that even within Salt Lake County there are numerous separate and distinct taxing units which allow the imposition of one tax upon a resident of the county and a different tax upon other residents of the county located in a different taxing unit.

Uniformity of taxation means uniformity within a local taxing district as was stated by the court in the *Town of Palm Beach v. City of West Palm Beach, Florida*, 55 So. 2d 566:

“It is quite true that Section 1 of Article IX of the Constitution requires the Legislature to provide for ‘a uniform and equal rate of taxation.’ This provision of the Constitution has been construed many times to mean that the rate of taxation for state purposes shall be uniform throughout the state, for county purposes uniform throughout the county, for municipal purposes throughout the municipality and for district purposes throughout the district.

“It was clearly the legislative intent and mandate that the taxes to be levied should be levied by the respective municipalities and that the rate of taxation in each municipality should be uniform.”

It is equally clear that in this case it was the clear intent of the legislature that the rate of tax throughout each respective municipality should be uniform.

The Legislature in this instance has required more uniformity than is generally required of taxing acts, since it required uniformity of the sales tax within a county. This is accomplished through the provisions which provide that a city may not levy the tax until the county has first levied it and then that the citizen may have a credit against his county tax if he owes a tax to a municipality. It is difficult to comprehend how the legislature could have enacted a more uniform tax act which would have given local governments needed tax revenues, since the legislature could not, in view of Article XIII, Section 5 of the Utah Constitution, impose a state-wide tax for local purposes.

Plaintiff's argument that the tax statute gives a free rein to the municipalities to impose any sort of tax that they wish without limit is certainly a strained and unreasonable interpretation of the act. The statute in its title provides that the taxes shall be integrated "In order to establish uniformity of taxation within a county," and Section 3 of the act provides that the county's, city's and town's levy of a sales tax must be in accordance with the provisions of the act. It is clear beyond any doubt that statutes attacked upon constitutional grounds must be construed if possible so that they will be constitutional and not unconstitutional. As was succinctly pointed out in the case of *Leatham v. Reger*, 54 Utah 491, 182 Pac. 187:

"It is elementary doctrine universally applied in this country that, if an act is open to two interpretations or constructions, one of which creates a conflict with some constitutional provisions, while the other makes the act harmonious with the Constitution, it is the

duty of the courts to adopt the latter interpretation and construction.”

Another rule of construction that has universal application to taxing statutes is that the constitution is a limitation only upon the taxing power of the legislature and is not a grant of such power thereto. In *Garrett Freight Lines v. Tax Comm.*, 103 Utah 390, 135 P.2d 523, the court quotes from *Kimball v. Grantsville City*, 19 Utah 368, 57 Pac. 1, in part as follows:

“ ‘The taxing power of the state is lodged absolutely in the legislature, and, as the responsibility of enacting laws devolves exclusively upon that branch of the government, whether the right of taxation has been exercised justly or unjustly, wisely or unwisely, it is not for the judiciary to inquire . . .

“ ‘The people of a state therefore give to their government a right of taxing themselves and their property, and, as the exigencies of government cannot be limited, they prescribe no limits to the exercise of this right, resting confidently on the interest of the legislator, and in the influence of the constituents over their representative, to guard them against its abuse.”

Consequently, if the proper rules of statutory and constitutional construction and limitations are followed, the claims of plaintiff that the statute lacks state-wide uniformity and that cities and towns have been given a license to enact sales taxes without regard to the one-half per cent limit should be disregarded by this honorable court, since these claims are based upon strained and unreasonable constructions of the statute and the Utah Constitution.

Plaintiff’s contention that the act allows double taxation is also a strained and unreasonable construction of the act.

Since all taxes are remitted through the state tax commission, the credit must likewise be given by them. Consequently, the tax commission is allowed to offset for the individual taxpayer who is making remittance to the tax commission the amount of his city tax against what would otherwise be charged him under the levy of his county tax. Both taxes are indeed "due" and payable at the same time upon the remittance to the state tax commission and consequently, the taxpayer is allowed a credit against his county tax for the payment of taxes "due" the city.

POINT V.

CHAPTER 114, LAWS OF UTAH, 1959, IS SUFFICIENTLY DEFINITE AND REASONABLE.

The act is entirely clear, certain and reasonable in its operation and application. Counties, cities and towns of the state have been receiving revenue therefrom from collections by the state tax commission without a scintilla of reportable dispute, discussions or differences. The act has functioned well for the time it has been in operation and neither the county, city, or tax commission are having difficulty with the interpretation or enforcement of the act.

CONCLUSION

From all that appears herein, it is clear from a reasonable construction of the statute in question and the Utah Con-

stitutional provisions that the statute is in all respects a valid and constitutional exercise of the legislative power of the state, and is in all respects a valid and enforceable enactment. The trial court's decision should be sustained.

Respectfully submitted,

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