

1964

Murray City v. Board of Education of Murray City School District : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Murray City v. Board of Education*, No. 10060 (Utah Supreme Court, 1964).
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IN THE SUPREME COURT

of the

STATE OF UTAH

MURRAY CITY, A Municipal
Corporation of the State
of Utah,

Plaintiff-Respondent,

v.

BOARD OF EDUCATION OF
MURRAY CITY SCHOOL
DISTRICT, a
Municipal Corporation of the
State of Utah,

Defendant-Appellant.

Case No.
10060

APPELLANT'S BRIEF

Appeal from the Judgment of the Third District
Court for Salt Lake County, Utah
Hon. A. H. Ellett, Judge

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Defendant-Appellant.

Case No.
10060

BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

This is an action to recover delinquent sewer service charges. The defendant counterclaimed seeking a declaratory judgment that it was exempt from the payment of the charges.

DISPOSITION IN LOWER COURT

The case was tried to the court. From a judgment for the plaintiff, defendant appeals.

RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of the judgment and judgment in its favor as a matter of law that it

is exempt by law from the payment of sewer service charges.

STATEMENT OF FACTS

In this case appellant and respondent in the lower court stipulated to the following agreed Statement of Facts:

“The plaintiff is a municipal corporation and a second class city owning and operating a sewer system within its corporate limits. Defendant is a body corporate with its boundaries coinciding with those of the plaintiff. Prior to September, 1952, the plaintiff’s sewer system served only approximately one-third of the city’s homes and businesses. Plaintiff had no treatment plant, but treated the sewage in city owned septic tanks. On September 5, 1962, the electors of the city at a special election authorized the issuance of \$1,300,000 of water and sewer revenue bonds to provide for the construction of extensions and improvements to the city’s water plant and sewer system. The sewer system was thereafter greatly expanded to serve most of the city’s dwellings and commercial buildings, and a sewage treatment plant was constructed to treat sewage collected from the entire system.

After the system was extended, persons making connections thereto were charged a connection fee in accordance with a schedule adopted by city ordinance (See Section 3 of Ordinance 56 as amended for the connection fees being currently charged).

(R. 6) Persons who were already connected to the system paid no such fee, but new and old connectors alike were and are presently required to pay a monthly service charge, the current rates being shown in Section 2 of Ordinance 56 as amended. (R. 6) Defendant now has 10 school buildings and one administrative building connected to the plaintiff's sewer system. The defendant paid the monthly service charge of five cents per child until the Attorney General of Utah in an opinion issued on or about November 8, 1960, ruled that the State of Utah was not obligated to pay fees for connecting a State owned building to a municipal sewer system. Upon the authority of that opinion the defendant refused to pay for the service charges and connection fees, and the plaintiff brought suit to recover all delinquent charges.

The service charges and connection fees collected by the plaintiff are placed in a separate fund and used for the payment of operation and maintenance costs and the payment of principal and interest falling due on the revenue bonds issued to finance construction of the extension to the system in 1952. The balance remaining after the payment of those costs has been used in recent years to help finance capital improvements to the system, including expansion of the capacity of the treatment plant. However, in some former years the balance in the fund at the end of the year was transferred to the general fund of the city.

A copy of the plaintiff's ordinance (#50) authorizing issuance of revenue bonds to defray the costs of extending the city's sewer and water system is made part of this statement of facts. Also, the pleadings of the parties hereto are incorporated herein and made part of this statement of facts."

ARGUMENT

POINT I.

THE SEWER SERVICE CHARGES IMPOSED BY THE PLAINTIFF ARE "TAXES" OR "LOCAL ASSESSMENTS", WHICH THE DEFENDANT SCHOOL DISTRICT IS EXEMPT FROM PAYING UNDER THE CONSTITUTION AND STATUTES OF THE STATE OF UTAH.

Art. XIII, Sec. 2 of the Constitution of Utah provides in part:

"* * * The property of the state, counties, cities, towns, *school districts*, municipal corporations and public libraries, lots with the buildings thereon used exclusively for either religious worship or charitable purposes, and places of burial not held or used for private or corporate benefit, shall be exempt from taxation. * * *" (Italics added)

Implementing the above Constitutional provision, the Legislature has provided in Sec. 59-2-1, U.C.A. 1953 as follows:

"The property of the United States, of this state, counties, cities, towns, *school districts*, municipal corporations and public libraries, lots with the buildings thereon used exclusively for either religious worship or charitable

purposes, and places of burial not held or used for private or corporate benefit, shall be exempt from taxation. * * *” (Italics added)

Again, in Sec. 53-4-12, U.C.A. 1953, the Legislature reiterated that school districts are exempt from taxation of any nature:

“All property real and personal held by any board of education shall be exempt from general and special taxation, and from all local assessments for any purpose, and no such property shall be taken in any manner for debt.”

The sewer service charges imposed by the plaintiff city against the defendant board of education are “taxes” or “local assessments” within the meaning of the above statutory and constitutional provisions. So held this court in 1910 in the case of *State ex rel. Board of Education of Salt Lake City v. McGonagle*, 38 Utah 277, 112 Pac. 401. In that case Salt Lake City extended and constructed a public sewer along one of its public streets. In order to defray the abutters’ portion of the costs and expenses thereof, it levied an assessment or tax on the lands abutting the street along which the sewer was constructed. The Board of Education of Salt Lake City owned land abutting that street which was used for school purposes, and upon which a school building was maintained by it. The City levied a tax or assessment against the land of the Board amounting to \$98.00. An ordinance of Salt Lake City provided that whenever property had been previously assessed

for a sewer or a sewer extension, and any portion of such assessment remained due and delinquent at the time of an application for a permit for a connection, no permit should be issued until such delinquent assessment was paid.

The Board made application to the City Engineer for a sewer connection to its property, and made payment of all the required fees. The Engineer, however, refused to issue the Board a permit to connect because it had not paid the special assessment levied against the school property sought to be connected with the sewer system.

This court issued a writ of mandamus requiring the Engineer to grant the permit for the connection, and held that under Section 1933 Comp. Laws 1907 (Now Sec. 53-4-12, U.C.A. 1953, set out above) the assessment made by the City against the Board's property was void.

In that case the City further contended that even though the assessment was void, it could lawfully make a reasonable charge for the connection to its sewer by the Board. This Court rejected that argument stating:

“It, however, is urged, that though the property was exempt and the assessment invalid still, the city being the owner of the sewer, could lawfully impose the payment of a reasonable charge before it was required to permit the board to connect with or use the sewer, and that the payment of ninety-eight dollars,

the amount of the assessment, by the board for the use of the sewer was a reasonable charge. The legislature has seen fit to exempt all property of the board, both real and personal, from special taxation and all local assessments, for any purpose. Since the property was not subject to the assessment, and the levy for that reason invalid and the assessment unenforceable, to then permit the municipality to impose as a condition of tapping and making a connection with the public sewer the payment of a charge for the use of the sewer, is to allow the municipality to do indirectly what it cannot do directly. (State ex rel. Dunner v. Graydon, 6 Ohio Cir. Ct. R. 634; Meyler v. Meadville, 23 Pa. Co. Ct. R. 119.)”

In the case now before the court, it is true, no special assessment was made by Murray City against the property of the defendant School Board. The sewers were financed instead by revenue bonds which are paid by the connection fees and monthly sewer service charges paid by users of the system. However, under holding of the McGonagle case, Murray City should not be allowed by the use of service charges to do indirectly that which they could not do directly by the use of a local assessment against the School Board's property. This court wisely struck down in the McGonagle case all attempts to exact connection fees from the School Board regardless of the form or name of the “charge” — whether called a “tax” by the city or whether called a “reasonable charge” for the use of the sys-

tem. This court looked beyond the form to the substance. It should do so again in the instant case, and strike down the attempt of Murray City to exact "charges" which are tantamount to "taxes" or "local assessments".

While the McGonagle case is conclusive authority for the exemption of the defendant School Board from the payment of sewer service charges imposed by the plaintiff City, it is helpful and interesting to examine cases from other jurisdictions where this question has arisen. In the Opinion of the Justices, 93 N. H. 478, 39 A. 2d 765, (1944) the Court advised the Governor of New Hampshire that it would be permissible and lawful for the State to pay the City of Concord service charges for the use of a City owned sewer serving the State House and other state-owned buildings. However, this advice was given by the court only because (1) connection to the sewer system was optional with the State and (2) because the charges collected could only be used for the construction, maintenance and operation of the system, and could not be used for the payment of the general expenses of the City. (As will be later noted, both these elements are lacking in the case now before this court).

The New Hampshire court quoted with approval and placed strong reliance on the following excerpt from Sec. 6 of Page & Jones', "TAXATION BY ASSESSMENT":

"A number of cases exist which present facts

very much like those of a regular local assessment, but which differ from the local assessment in one essential fact. This essential difference is that in these cases it is optional with the party so charged to incur the liability by acceptance of the benefit for which the charge is made, or to abstain from such benefit and thus be free from liability. Common examples of this are ordinances providing for furnishing water to part or all of the City to those who wish to take it, at a price fixed by ordinance, where the persons who make use of the water are charged an amount, sometimes estimated at a lump sum, and sometimes based upon the amount consumed. Whichever form the charge may assume, the person who makes use of such commodity is under no legal obligation to do so, and does so voluntarily. Such a statute does not impose an assessment in the proper sense of the term, though the charge is often spoken of as a "tax". The transaction really amounts to an offer by the municipal corporation and an acceptance by the party who takes the water, thus forming a contract. The transaction then is substantially a contract sale.

* * * Another form of a charge which is in substance a contract is to be found where a municipality, under authority conferred by statute, imposes a charge upon property owners who connect their land with a sewer system constructed by the city, *the owner being free to avoid liability by refraining from making such connection*. Such charges may be a fixed sum for the privilege of such connection, or it may be a charge based upon the amount of sewerage discharged from the

premises into the sewer. Such a charge is not ordinarily regarded as a local assessment". (Italics added)

The necessary implication in the Opinion of the Justices was that if the State were compelled to connect its building to the City sewer system, or if the charges could find their way into the general funds of the City, the charges would then be regarded as local assessments which the State was exempt from paying.

In the case before the court, the balance remaining at the end of the year in the fund in which connection fees and service charges are placed can be and has been transferred to the general fund of the City. (R. 5) Under Sec. 11 of Ordinance #50 (page 10 of Ordinance attached to Stipulation of Facts) all owners of improved property within two hundred (200) feet of the sewer line are compelled to connect and pay the connection fee and monthly service charges. Thus the two elements relied upon by the New Hampshire court in granting permission for payment of service charges are clearly lacking in the case before the court.

It should be noted that under Ordinance #56 of Murray City (R. 6) sewer service charges are imposed when there are structures which can be served by the sewer, irrespective of whether the structures are actually connected to the sewer. "Service charges" imposed under those circumstances are in reality "taxes", held the Supreme Court of

Pennsylvania in the case of *In re Petition of City of Philadelphia*, 340 Pa. 17, 16 A. 2d 32. There the court considered annual sewer rents or charges imposed by the City of Philadelphia against owners of property abutting a sewer line irrespective of whether the property was connected to the system. The court pointed out that when connection to a sewer system is voluntarily made by one seeking service, the connector by using the facility impliedly contracts and agrees to pay the rates, and that his obligation to make payment rests upon contract rather than upon any exercise of the taxing power. But, said the court:

“There is, however, a clear distinction to be drawn between rents paid for actual use of municipally owned utility facilities and charges such as the city here seeks to impose. * * *”

“* * * it is manifest that the charges here in question cannot be sustained on the theory by which sewer and water rentals have heretofore been upheld by this court and the Superior Court in cases already referred to; the burden of this charge being imposed in invitum, (against one not assenting) no implied assent to its payment can possibly be deduced.”

“* * * Being imposed without any regard whatever to the extent or value of the use made of the sewer facility or *whether any use is made*, the charge provided for by the ordinance is, in legal effect, undoubtedly a tax, and the obligation to pay it could be created only by the City's exercise of its gen-

eral taxing powers.” (Citing cases) (*Italics added*)

Thus it is manifest that Murray City’s Ordinance #56 requiring payment of service charges by non-connectors as well as by connectors cannot be upheld on any theory other than that the charges are “taxes” or “local assessments” within the meaning of Art. XIII, Sec. 2 of our Constitution, and Sections 59-2-1 and 53-4-12, U.C.A. 1953. The wisdom of this court in the McGonagle case in striking down all attempts to exact charges regardless of the name affixed to them is substantiated by the New Hampshire and Pennsylvania cases above discussed.

The operation of a sewer system by a municipality is a governmental function. *Louisville v. Barker*, 307 Ky. 655, 212 S.W. 2d 122 (1948). If Murray City is here allowed to impose and collect a “service charge” from the Board of Education, what is to prevent it from imposing and collecting “service charges” for other governmental functions such as garbage collecting, fire fighting, etc. The end result could well be that the Board of Education would wind up paying “service charges” for many governmental functions. This was the very evil condemned by this court in the McGonagle case, i.e. a city imposing a “service charge” where it could not impose a “tax”.

It should be stressed in this case that the boundaries of the defendant School District are exactly the same as those of the plaintiff City. The same

taxpayers support the School District and the City. No taxpayer will suffer any detriment if the School District is exempted from payment of the service charges. The exemption will save the School District from having to pay annually several thousand dollars which may find their way, in part, to the general coffers of the City.

This court in the case of *State v. Salt Lake City Public Board of Education*, 13 Utah 2d 56, 368 P. 2d 468, held that the State Road Commission could not take by condemnation the land of the Salt Lake City School District without compensating it. The court there noted that the taxpayers of the two governmental agencies involved were not identical and implied that if there had been this identity, the decision of the court might have been different. Regardless of that fact, however, it would seem that if one state agency cannot condemn the property of another state agency without paying compensation, it neither should be allowed to impose burdens and charges against it, irrespective of whether the burdens and charges are denominated "taxes" or "service charges".

CONCLUSION

The decision of the lower court that the defendant School District must pay service charges for the use of the plaintiff's sewer will have far reaching effect if not reversed by this court. If permitted to stand, it will require the State of Utah to pay

service charges and connection fees on all of its state owned buildings in Salt Lake City and throughout the State, as well as requiring all counties, school districts, and other political subdivisions to pay. This court in the McGonagle case foresaw this problem and wisely struck down all attempts to collect service charges. Any other result would have emasculated our constitutional and statutory provisions exempting the State and its subdivisions from the payment of "taxes" and "local assessments" of any nature. The exemption granted to school districts in Sec. 53-4-12, U.C.A. 1953, is broad in that it encompasses "taxes" and "local assessments" of any nature. This court should not narrow the definition of "local assessments".

Respectfully submitted,

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