

1964

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

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

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SEP 8 - 1964

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

Plaintiff-Respondent,

vs.

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

Defendant-Appellant.

rk, Supreme Court, Utah

Case No.

10060

APPELLANT'S REPLY BRIEF

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

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UNIVERSITY OF UTAH

OCT 7 1966

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REPLY BRIEF OF APPELLANT

ARGUMENT

POINT I.

THE CASES AND STATUTES BY, ^{cited} RESPONDENT ^{in its}
~~IN THIS~~ BRIEF ARE NOT DECISIVE OF THE QUES-
TION INVOLVED IN THIS ACTION.

Since the respondent has in its brief relied en-
tirely upon the Attorney General's opinion of March
12, 1962, the appellant thinks that it would be help-
ful to this Court to analyze the authorities cited
therein. While that opinion cites many adjudicated
cases in support of its conclusion, a close inspection
of them will disclose that none of them are decisive

of the question involved in this case, viz. when a constitution or statute exempts a school district from the payment of "taxes and local assessments" are sewer service charge included in that exemption? Some of the authorities cited in the Attorney General's opinion in fact support the position of the appellant in this case that such charges are taxes or local assessments.

Respondent first cites sec. 17-6-3.8, U.C.A. 1953 and argues that the Legislature in enacting that section must have intended that sewer improvement districts could enter into contracts with school districts and charge them sewer service charges. That section provides, so far as is pertinent here:

"(c) [Each sewer improvement district shall have] the power to enter into such contracts as are considered desirable by the board to carry out the functions of the district, including specifically the power to enter into contracts with municipal corporations, or other public corporations, or districts, and any county, any municipal corporation, or any other public corporation or districts, shall have the power to enter into contracts with districts created under this act *for the purpose of constructing, acquiring or operating all or any part of a system for the collection, treatment and disposition of sewage;* * * * (Italics added)

In the first place, that section deals with powers of sewer improvement districts, and not with the

powers of a second class city such as the plaintiff in this action. Nothing contained therein can in any way enlarge the powers of Murray City in this action. Secondly, the above section does not specifically mention school districts. It does not provide, as respondent seems to argue, that sewer districts can contract with school districts. It merely gives sewer districts the right to contract with other sewer districts or other improvement districts or with municipal corporations such as a city or town, and it allows the two contracting parties to jointly construct, acquire or operate sewer systems. Sec. 17-6-3.8 was not intended to enlarge the powers of school districts and put them in the business of owning and operating sewer systems. It clearly has no application to school districts, but only to those improvement districts and corporations which have previously been given by the Legislature power to construct and operate sewer systems. It would allow a city or town to contract with a sewer improvement district and jointly operate such a system.

Thirdly, sec. 17-6-3.6 relating to the powers of sewer improvement districts provides that in case a user of the system does not pay his sewer charges, they shall be:

“certified by the clerk of the district to the treasurer or assessor of the county in which the delinquent premises are located, in which case such delinquent charges, together with interest and penalties, shall immediately upon

such certification, become a lien on the delinquent premises on a parity with and collectible at the same time and in the same manner as general county taxes are a lien on such premises and are collectible. All methods of enforcement available for the collection of such general county taxes, including sale of the delinquent premises, shall be available and shall be used in the collection of the delinquent sewer charges."

This statute clearly denominates sewer charges as taxes since, when unpaid, they can become a lien against the property served. One of the tests in determining whether a certain charge is a "tax" or not, is whether it can become a lien against property. If it can become a lien, it is in fact a "tax". Furthermore, if the respondent is correct in its argument that a school district must pay service charges to a sewer improvement district, then it would seem that under sec. 17-6-3.6 the school property could be liened and sold if the district became delinquent. Such a conclusion flies in the face of sec. 53-4-12, U.C.A. 1953 which prohibits school property from being taken in any manner for debt.

Therefore, it is submitted that the only reasonable conclusion to be reached regarding sewer improvement districts is that they do not have power to contract with school districts and do not have the power to impose their service charges upon them.

Respondent quotes from and cites with approval sec. 1805, 64 C.J.S., Municipal Corporations,

pg. 273. Appellant submits that this authority actually supports its position because the text of that section was taken from the holding in *In re Petition of the City of Philadelphia*, 340 Pa. 17, 16 A. 2d 32, which is cited and discussed at length in appellant's main brief. The rule of that case is that where an ordinance requires all property owners within a certain distance of the system to pay service charges, whether connected or not, the charge is in fact a tax. Such is the case here since Murray City's ordinance #56 (R. 6) requires all property owners within 200 feet to pay, whether connected or not, and irrespective of the use made.

We have no quarrel with the cases cited by respondent. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P. 2d 515, did not involve the question of exemption from payment of the sewer charges. It was concerned only with whether in a revenue bond election, the general laws governing municipal elections applied with regards to the giving of notice of election and qualification of voters, or whether the laws governing general obligation bond elections applied. The court simply held that the general municipal election laws applied.

In *Town of Port Orchard v. Kitsop County*, 19 Washington 2d 59, 141 P. 2d 151, no question of exemption from "tax" was raised. There was no contention made that the county did not have to

pay. The only question was the reasonableness of the charge imposed.

Grim v. Village of Lewisville, 54 Ohio App. 270, 6 N.E. 2d 998, was a suit by a private person and did not involve the exemption of a school district or other public body from the payment of sewer charges.

Louisville v. Joseph Seagrams, 307 Ky. 413, 211 S.W. 2d 122, involved only the question of "uniformity of taxation". No question of exemption by a public body was asserted or raised or discussed.

In *Louisville v. Barker, County Judge*, 307 Ky. 655, 212 S.W. 2d 122, there was no constitutional or statutory exemption raised. The plaintiff who was claiming an exemption relied solely upon the general principle that one governmental agency cannot impose burdens on another in the absence of a positively expressed right. The court simply held that this principle was insufficient to establish an exemption, and that the Legislature had not by statute exempted counties from payment of service charges. There was not in that case, like there is in our case, any express constitutional or statutory exemption which the county could rely upon. The case is further distinguishable because there the charges could be used solely for the maintenance and operation of the system. In the case now before this

court, Murray City can and has put surplus amounts in its general fund as it does other taxes collected by it.

In *Sanitation District No. 1 of Jefferson County v. Campbell*, Kentucky, 249 S.W. 2d 767, the only question was whether a statute was constitutional which compelled abutting property owners to connect to public sewer systems where they were disposing of their sewage through septic tanks originally installed in accordance with state health regulations. The court held the statute constitutional. No question of exemption was raised or discussed.

In *Veail v. Louisville, et al.*, 303 Ky. 248, 197 S.W. 2d 413, no question of exemption was raised. The only question involved "double taxation" and the court held that sewer charges were not taxes within the meaning of the rule against double taxation.

State v. Taylor, 149 Ohio S. 427, 79 N.E. 2d 127, did not involve an exemption from the payment of sewer charges. It involved only the interpretation of a contract between the city and the university. It was not contended that the university had any constitutional or statutory exemption.

In *Repperger v. City of Grand Rapids*, 338 Mich. 682, 62 N.W. 2d 585, the plaintiff contended that sewer charges should be collected by assess-

ment against the property served or by personal action against the consumer, and should not be collected by shutting off his water. No question of exemption was raised.

In *Oliver v. Water Works and Sanitary Sewer Board*, 261 Alabama 234, 73 So. 2d 552, no question of exemption was raised. The only matter decided was that sewer charges were not taxes within the meaning of a constitutional provision prohibiting the delegation of the power to tax.

In *Patterson v. City of Chattanooga*, 192 Tenn. 267, 241 S.W. 2d 291, no question of exemption was raised. The court held that sewer charges were not taxes within the meaning of a constitutional provision requiring taxes to be based upon the valuation of the property.

Laverents v. Cheyenne, 67 Wyoming 187, 217 Pd. 877, held that sewer charges were not taxes and did not create an indebtedness within the meaning of a constitutional debt limit provision. No question of exemption was ever raised.

Michelson v. City of Grand Island, 154 Nebraska 654, 48 N.W. 2d 769, held that sewer charges were not special assessments for a general improvement within the meaning of a constitutional prohibition. Again, no question of exemption was raised, argued or discussed.

CONCLUSION

The respondent's authorities really are not decisive of the question involved in this lawsuit. The McGonagle case decided by this court in 1910 is the only case directly in point and it bears out the position of the appellant that a school district of the State of Utah is exempt from the payment of sewer connection or service charges.

Respectfully submitted,

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