1964

Sherman Carter v. Beaver County Service Area No. One : Brief of Defendants and Respondents

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

SHERMAN CARTER, a Taxpayer for himself and all others similarly situated,
Plaintiff and Appellant,

vs.

BEAVER COUNTY SERVICE AREA NO. ONE, a body corporate and politic, JAMES G. WILLIAMS, PAUL K. NEILSON, EVAN C. NIELSEN, ALLEN C. REYNOLDS and ARLO MESSINGER, as Trustees of said Service Area,
Defendants and Respondents.

Case No.
10136

BRIEF OF DEFENDANTS AND RESPONDENTS

Appeal from the Judgment of the
Fifth District Court for Beaver County
Hon. C. Nelson Day, Judge

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TABLE OF CONTENTS

TABLE OF CONTENTS (Continued)

TABLE OF CONTENTS (Continued)

CONSTITUTIONS CITED

STATUTES CITED

CASES CITED

TABLE OF CONTENTS (Continued)

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BRIEF OF DEFENDANTS AND RESPONDENTS

STATEMENT OF THE KIND OF CASE

This is an action for Declaratory Judgment seeking a declaration that the Defendant Service Area is unconstitutional and that the bond election held by said service area is invalid.

DISPOSITION IN LOWER COURT

The Honorable C. Nelson Day, Judge of the District Court for Beaver County, sitting without a jury, entered judgment declaring said Service Area to be constitutional

and the said bond election to be valid, from which Judgment Plaintiff appeals:

RELIEF SOUGHT ON APPEAL

Defendant seeks affirmance of the Judgment entered by the lower court.

STATEMENT OF THE FACTS

This action arises out of Title 17, Chapter 29, U.C.A., 1953 as passed in 1957 and as amended in 1959, and 1961, which provides for the creation of County Service Areas. The Defendant Service Area was created in 1959 pursuant to the above statute by a resolution of the County Commissioners of Beaver County. The Defendant trustees are the duly appointed trustees of said Service Area.

Since the creation of Beaver County Service Area No. One, taxes have been assessed and collected, a site for a hospital has been chosen, purchased and approved. The Service Area has expended various funds of money for architect's fees, attorney's fees and other miscellaneous expenditures in addition to the purchase of the site. Funds have been applied for under the Hill-Burton Act and monies have been committed to the Defendant Service Area for the building of a hospital in the approximate amount of $115,000.00, with the stipulation that if the Service Area has not raised their share of the funds and does not have the contract for the construction of the hos-

pital let by June 30, 1964 then said commitment will terminate.

The Defendants have been negotiating with Housing and Home Finance Agency, a federal agency, and other financing institutions, all of whom have refused to purchase the Defendant Service Area's bonds because of the possible unconstitutionality of the County Service Area Act.

The Plaintiff, a taxpayer within the Defendant Service Area brought an action in this case for Declaratory Judgment alleging that the provisions of the County Service Area Act (Title 17, Chapter 29, U.C.A., 1953) are unconstitutional in the following respects:

1. That said act violates Article VI, Section 29 of the Utah Constitution in that it provides for the delegation of power to a "special commission" to perform or interfere with municipal functions.

2. That 17-29-21, U.C.A., 1953 violates Article XIV Sections 3 and 4 of the Utah Constitution in that it permits the Service Area to exceed the debt limitation found in the above article and sections.

3. That the Act violates Article XIII, Section 5 of the Utah Constitution in that it permits the legislature to impose a tax for purposes of a municipal corporation.

The Plaintiff also contended that the Defendants had not complied with the law with respect to the holding of a bond election.

The Defendants denied the above allegations and alleged in substance the arguments set forth herein.

The evidence produced at the trial of the matter showed that there was an urgent need for hospital services in the area.

After taking the matter under advisement, the Lower Court entered its Memorandum Decision and subsequently its Findings of Fact, Conclusions of Law and Judgment in favor of the Defendants. From this Judgment the Plaintiff appeals.

ARGUMENT

POINT I

COUNTY SERVICE AREAS, IMPROVEMENT DISTRICTS, AND WATER AND SEWER DISTRICTS AS SUCH ARE SEPARATE ENTITIES OF GOVERNMENT, AND ARE QUASI MUNICIPAL CORPORATIONS AND NOT SPECIAL COMMISSIONS, PRIVATE CORPORATIONS, OR ASSOCIATIONS, AS CONTEMPLATED BY ARTICLE VI, SECTION 29, UTAH CONSTITUTION.

This issue has been decided and there are numerous decisions by the Utah Supreme Court, construing Title 17, Chapter 6, U.C.A., 1953 (Water and sewer districts) and Title 73, Chapter 8, U.C.A., 1953 (Metropolitan Water District Act), which are in all material respects identical to Title 17, Chapter 29, U.C.A., 1953, which provides for the creation of County Service Areas.

The Utah Supreme Court has pointed out in a land-

mark decision that numerous types of service districts have been held constitutional. *Lehi City vs. Meiling,* 87 Utah 237, 48 P.2d 530, (1935). The court specifically referred to the following types of districts: Irrigation Districts, Flood Control Districts, Reclamation Districts, Utility Districts, Sanitary Districts, Tunnel Districts, Health Districts, Water Improvement Districts, Highway Districts, Port Districts, Bridge Districts, Mosquito Abatement Districts and Sewer Districts.

The Lehi case involved the creation of a Metropolitan Water District governed by a board of directors, appointed by the governing authorities of the participating municipal corporations, for the purpose of supplying water to the persons residing within the district. The court held that the statute did not violate the provisions of Article VI, Chapter 29 in the following language (P. 535):

> "This contention cannot be sustained for the reason that the board of directors to whom the management and control of the district has been entrusted, and which is to exercise the powers and perform the functions of the public agency thus created, does not come within the designation 'special commission, private corporation or association' to which inhibitions of this section apply."

The court further stated on page 541:

> "A Metropolitan Water District is not a "municipal corporation" within contemplation of the constitution, but it is a public agency or entity created for beneficial and necessary public purposes. Its corporate structure is substantially the same as that of the Metropolitan Water District of Cali-

> fornia and other agencies of that state which have been held valid as public and quasi municipal corporations or districts. *Wheatly vs. Superior Court in and for Napa County,* 207 Cal. 722, 279 P. 989.
>
> "The characterization 'quasi municipal' we think accurate, the water district is not a true municipal corporation having powers of local government, but is an agency of the state vested with some of the powers and attributes of a municipal ity; hence, it is not a municipal corporation but is quasi municipal."

In another Utah case the same issue was raised as to Article VI, Section 29 of the Utah Constitution and was disposed of by the court.*Tygesen v. Magna Water Co.,* 119 Utah 274, 226 P.2d 127 (1950). This case involved the creation of a water and sewer district under Title 17, Chapter 6, U.C.A., 1953, as amended. The District, comprising only a small portion of Salt Lake County, was initiated by the County Commissioners for the purpose of supplying water services to the residents of the district. The court held in that case with respect to the same point as follows (p. 130):

> ". . . once the District is actually organized the county has no further connection with the District except the ministerial one of levying any taxes certified to it by the Board of Trustees, a duty of the county which is similar to that performed by it for Boards of Education under the provisions of Section 75-12-10, U.C.A. 1943. Once the District is formed the Board of Trustees have full control and supervision of the property and the conduct of affairs of the District. The District must have its own seal and its Board of Trustees may sue and be sued. Also the taxes which are certified by the Board to the county commissioners can be levied only on proper-

> ty within the District. If a District were merely an arm of the county then the general taxes levied whether used for benefits inuring to the District or not should be levied against all residents of the county rather than on those only within the District, just as they are for other county functions. It being the duty of this court where possible to uphold the validity of an act rather than declare it unconstitutional see *Lehi City v. Meiling,* City Recorder, supra, and *Patterick v. Carbon Water Convervancy District,* supra, we are of the opinion that an Improvement District is a separate arm of the government and not a mere adjunct of a county performing county functions."

The case of *Freeman v. Stewart,* et al, 2 Utah 2d 319, 273, P.2d 174, (1954) involved the creation under Title 17, Chapter 6, U.C.A., 1953 of an Improvement District known as the Salt Lake Suburban Sanitary District. The creation of the District was initiated by the Board of County Commissioners of Salt Lake County for the purpose of constructing and operating a sewer system in a small portion of the unincorporated area in Salt Lake County. In that case, the court, at page 176, said:

> "These contentions have been dealt with and given extensive consideration by this court in a number of cases in which we have held that improvement districts are a separate entity of government and not 'municipal corporations' as contemplated by the constitution. Therefore, the above constitutional provisions do not apply to the sanitary district involved in the instant case."

See also the following cases: *Patterick v. Carbon Water Conservancy District,* et al, 106 Utah 55, 145 P.2d 504

(1944); *Provo City v. Evans,* 87 Utah 292, P.2d 555 (1935); *City of Pasadena v. Chamberlain,* 204 Cal. 653, 269 P.630 (1928).

The recent case of *Backman v. Salt Lake County,* 13 Utah 2d 412, 375 P.2d 756 (1962) can be distinquished from the instant case in that the court specifically held in that case there was no necessity for a sports arena while in this case there exists an urgent and compelling need for hospital services in an area of the state where adequate hospital facilities are not available to provide the barest of any type of hospital care to insure health and safety of residents and which hospital facilities cannot be accomplished otherwise than by a service area. In the Backman case, it was indicated that there were various other methods of building the Civic Center. That case is also distinguished by the fact that the statute providing for the Civic Center was deemed to be a special law applying only to the Salt Lake Metropolitan area.

It is also submitted that health being of such importance so as to make it of state concern, the providing of a hospital cannot be said to be a purely municipal function.

The constitution of the State of California contains the same prohibition (see Article XI, Section 13) against delegation of power as is contained in Article VI, Section 29 of our Constitution. A situation very similar to the instant case was presented to the California Court in *Paso Robles War Memorial Hospital District v. Negley,* California, 173 P.2d 813 (1946).

In that case a hospital district was created under the Local Hospital District Law and a bond election was held in which 2/3 of the residents of the district voted for the bonding. The secretary of the district refused to attest the bonds, claiming the above law to be unconstitutional. The California Court said in this regard (p. 814):

> "No provision of the Constitution of the State of California or of the Constitution of the United States prohibits the Legislature from authorizing a public corporation to build and operate a hospital as a business, (cases cited)."

The Court held that a district created under the law is a separate entity and may or may not include an entire county. It was pointed out that the larger cities of California had hospital facilities but that many rural areas were without them. The Court further held that this "lack of hospitals is a threat to health and safety."

Many other states have provided for and allowed setting up hospital districts to provide hospital services to the residents of the district, not necessarily coterminous with the boundaries of any city or county. See *Ecorse v. Peoples Community Hospital Authority,* 336 Mich. 490, 58 N.W. 2d 159 (1953); *Royal v. Cain,* 410 Ill. 39, 101 N.E. 2d 74 (1951); *McLure v. McElroy,* 211 S.C. 106, 44 S.E. 2d 101 (1947); *Hickman v. Lunden,* Idaho, 300 P.2d 818 (1956), *Baldwin v. McFadden,* So. Car., 109 S.E. 579 (1959); *State v. Southeastern Palm Beach County Hospital District,* Fla. 90 So. 2d 809 (1956).

POINT II

THE CREATION OF THE DEFENDANT SERVICE AREA UNDER TITLE 17, CHAPTER 29, UTAH CODE ANNOTATED, 1953, IS NOT IN VIOLATION OF ARTICLE XIII, SEC. 5 OF THE UTAH CONSTITUTION, SINCE SUCH A SERVICE AREA IS NOT A COUNTY, CITY, TOWN OR OTHER MUNICIPAL CORPORATION AS CONTEMPLATED BY THIS PROVISION OF THE CONSTITUTION. FUTHERMORE ALL TAXES PROVIDED FOR IN THE COUNTY SERVICE AREA ACT ARE IMPOSED BY THE SERVICE AREA AND THE COUNTY COMMISSIONERS AND NOT BY THE LEGISLATURE AS CONTEMPLATED BY THIS PROVISION OF THE UTAH CONSTITUTION.

In *Freeman v. Stewart,* supra, the Plaintiff claimed that the statutes authorizing the creation and maintenance of the Sanitary District violated the interdiction against the legislative imposition to taxes for the purpose of a municipal corporation under Article XIII, Section 5 of the Utah Constitution and the court disposed of this contention by holding that the Improvement Districts are separate entities of government and not "municipal corporations" as contemplated by the constitution, and therefore the constitutional provisions referred to do not apply. The court in that decision referred to a number of cases in which it said it had given "extensive consideration" to this problem.

Notwithstanding the fact that this constitutional provision does not apply, it should be noted that with respect to Title 17, Chapter 29, U.C.A., 1953 as amended, a tax levy is made by the Board of Trustees of the Service Area

and the County Commissioners and not the legislature. The imposition of taxes is subject to several safeguards in that said taxes are determined and imposed locally and not by the legislature. See also *Lehi City v. Meiling,* supra.

POINT III

SINCE IMPROVEMENT DISTRICTS, COUNTY SERVICE AREAS AND WATER AND SEWER DISTRICTS AS SUCH ARE SEPARATE ENTITIES OF GOVERNMENT AND ARE QUASI MUNICIPAL CORPORATIONS AND NOT COUNTIES, CITIES, TOWNS OR VILLAGES, SUB-DIVISIONS THEREOF NOR OTHER MUNICIPAL CORPORATIONS AS CONTEMPLATED BY THE PROVISIONS OF ARTICLE XIV, SECTIONS 3 AND 4 OF THE UTAH CONSTITUTION, SAID PROVISIONS ARE NOT VIOLATED BY TITLE 17, CHAPTER 29, U.C.A., 1953, AS AMENDED.

In the *Tygesen v. Magna Water Company* case, supra, the Plaintiff contended that the act was unconstitutional because it authorized counties to exceed their debt limitations. The court said on page 135:

> "Since a district is not a county but a separate arm of the government distinct from counties or municipalities, the constitutional provisions as to counties do not apply."

In the Lehi City case, supra, the act involved provided that the district was permitted to become indebted in a sum not exceeding ten per cent of the value of the taxable property of the district. The Plaintiff contended that this was a violation of Sections 3 and 4 of Article XIV of the

Utah Constitution. After a discussion of the meaning of the phrase in Section 3 "or sub-divisions thereof" the court held on page 540 as follows:

> "we are satisfied the Metropolitan Water District is not a sub-division of either a city, town, or county within the meaning of the word sub-division as used in the constitution."

In the court's consideration of Article XIV, Section 4 it was further held that since the district was not a municipal corporation it was not subject to the four per cent debt limitation imposed by the Constitution on municipal corporations in this provision of the constitution.

In *Patterick v. Carbon Water Conservancy District,* 106 Utah 55, 145 P.2d 503 (1944) the Plaintiff raised the same contention, that these provisions of the Utah Constitution were violated and the court held on pages 511 and 512 that such contentions:

> "have no merits as these constitutional inhibitions apply only to cities, towns, and villages and subdivisions of said cities, towns, or villages and do not apply to water conservancy districts which are not municipalities within the contemplation of that term as used in the constitution. A water conservancy district is an arm of the government separate and distinct from any municipality, with powers and rules of its own, and the mere fact that its territorial boundaries may encompass the territorial boundaries of a municipality does not make it a part of the city. Its powers and objectives are distinct and separate."

POINT IV

EVEN IF THE COURT DETERMINES THAT THE DEFENDANT SERVICE AREA IS SUBJECT TO THE PROHIBITIONS OF ARTICLE XIV, SECTIONS 3 AND 4, THIS FACT WOULD NOT MAKE THE ACT VOID BUT RATHER THE LIMITATION OF DEBT WOULD BE THE CONSTITUTIONAL LIMIT INSTEAD OF THE STATUTORY LIMIT OF TWELVE PER CENT, SINCE THE ACT CONTAINS A SEPARABILITY CLAUSE.

In the Lehi City case, supra, the court held the Metropolitan Water District was not a municipal corporation and therefore did not come within the purview of the contitutional debt limit and the Court further said, on page 540:

> "If the district be a municipal corporation, it would not necessarily follow that the act is void but the limitation of debt would be the constitutional limit of four per cent instead of the statutory ten per cent."

Chapter 34, Section 3 of the Utah Session Laws for 1961 contains the following separability clause:

> "If any provision of this act, or the application of any provision to any person or circumstance is held invalid, the remainder of this act shall not be affected thereby."

In view of these provisions, even if 17-29-21, U.C.A., 1953 is deemed to violate the constitutional debt limitation, the defendant Service Area would not be in violation of the constitutional debt limitation as shown by the evidence adduced in the Lower Court.

POINT V

THE DOCTRINE OF STARE DECISIS REQUIRES THAT THE COURT DECLARE TITLE 17, CHAPTER 29, U.C.A. 1953, AS AMENDED, TO BE CONSTITUTIONAL.

Two acts, the Metropolitan Water District Act (Title 73, Chapter 8, U.C.A., 1953) and the Sewer and Water District Act (Title 17, Chapter 6, U.C.A., 1953) are very similar to the act in question here. For example, the districts under all three acts are initiated by local governing boards and the boundaries of said districts may include part or all of a county. The districts all constitute separate entities, governed by independent boards, which are generally appointed by local authorities and which have similar powers and duties. These boards all have the power to tax. All three acts authorize indebtedness in excess of constitutional debt limits imposed on municipal corporations. The purpose of the Districts created under the three acts are all very similar in that they are designed and created for necessary and beneficial public purposes.

It is again emphasized that the constitutionality of two of the above acts has long since been decided. The Metropolitan Water District Act was held constitutional in the cases of *Lehi v. Meiling,* supra, and *Provo City v Evans,* supra. The Water and Sewer District Act was held constitutional in the cases of *Tygesen v. Magna Water Co.,* supra, and *Freeman v. Stewart,* supra.

In the Freeman Case the Plaintiff contended that Title 17, Chapter 29, U.C.A., 1953, violated the constitutional provisions discussed in this brief.

The court held that these contentions had been given extensive consideration in other cases and further, on page 176, had this to say:

> "We are asked to review the correctness of those decisions. Even if we were inclined to do so, the doctrine of Stare Decisis now stays in our hands. It is one of the important principles in the structure of our law. In a well ordered society, it is important that people know what their legal rights are, not only under constitutions and legislative enactments but also as defined by judicial precedent, and having conducted their affairs in reliance thereon, ought not to have their rights swept away by judicial decree. And this is especially so where rights of property are involved. The law laid down in these decisions has been acted upon and numerous improvement districts created and financed, so that it must be said to be a rule of property with respect to which the doctrine should apply with all its force***. This universally accepted idea is illustrated by the expression of the Supreme Court of New Mexico speaking in respect to an irrigation project: 'In the nineteen years since that decision it may be assumed that many thousands of acres*** have been sold to purchasers who relied on that decision***. Whether it stated the correct rule of law***, it is now a rule of property that we will not disturb'."

In reliance upon these pronouncements by our Supreme Court numerous Service Areas, Improvement Districts, and Sewer and Water Districts have been created involving millions of dollars in bonded indebtedness throughout the state. As indicated in the Freeman case, the doctrine of stare decisis should apply "with all its force."

In the instant case, the Beaver County Service Area No. One has been duly created and has purchased property for the purpose of constructing a hospital thereon. There being no reason to distinguish this Service Area Act from the other acts above enumerated, the court should be required by the doctrine of stare decisis to hold the Service Area Act constitutional in all respects.

POINT VI

THERE IS A STRONG PRESUMPTION OF THE CONSTITUTIONALITY OF TITLE 17, CHAPTER 29, U.C.A., 1953, AS AMENDED.

There is a well recognized presumption that legislative enactments are constitutional. In discussing this presumption the court in the Lehi case, supra, said (p. 535):

> "In approaching the subject, we have in mind the rule that when an act of the legislature is attacked on grounds of unconstitutionality the question presented is not whether it is possible to condemn the act, but whether it is possible to uphold it. The presumption is always in favor of validity, and legislative enactment must be sustained unless clearly in violation of fundamental law."

See also *Patterick v. Carbon Water Conservancy District,* supra, and *Tygesen v. Magna Water Company,* supra.

CONCLUSION

For the reasons herein stated and particularly due to the prior pronouncements by the Supreme Court as dis-

cussed herein, we submit that the County Service Area Act, Title 17, Chapter 29, U.C.A., 1953, as amended is constitutional in all respects and does not violate the provisions of Article VI, Section 29; Article XIII, Section 5; and Article XIV, Sections 3 and 4 of the Utah Constitution and we therefore urge that the Court affirm the lower court decision which declared said act to be constitutional, and which declared the bond election held in the instant case to be conducted in accordance with the law.

Respectfully submitted,

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