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Sherman Carter v. Beaver County Service Area No. One : Brief of Appellant

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 NUMBER ONE, a body corporate and politic, JAMES G. WILLIAMS, PAUL K. NIELSON, EVAN C. NIELSEN, ALLEN C. REYNOLDS, and ARLO MESSINGER, as Trustees of said Service Area,
Defendants and Respondents

Case No. 10136

APPELLANT'S BRIEF

Appeal from the Judgment of the
FIFTH DISTRICT COURT FOR BEAVER COUNTY
Hon. C. Nelson Day, *Judge*

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STATEMENT OF FACTS

The Beaver County Service Area Number One was created in 1959 under authority of Title 17, Chapter 29, of the Utah Code Annotated, 1953, as amended, for the purpose of building a hospital. There are about 3700 people in Beaver County and approximately 2,000 live in Service Area Number One. Service Area Number One consists of the Eastern one-half of Beaver County and includes only one third class city, which is Beaver City, and several unincorporated and rural communities. Service Area Number Two is the Western one-half of Beaver County and the two service areas combined cover all of Beaver County. Service Area Number One has assessed and collected taxes

for three years, has acquired property for a building site for a hospital and has expended funds for architect's fees, attorney's fees, and other purposes. The validity of the act which allowed the creation of such a service area is questioned.

ARGUMENT

POINT I

SAID ACT VIOLATES ARTICLE VI, SECTION 29 OF THE UTAH STATE CONSTITUTION IN THAT IT DELEGATES TO A SPECIAL COMMISSION, A PRIVATE CORPORATION OR ASSOCIATION POWER TO MAKE, SUPERVISE OR INTERFERE WITH MUNICIPAL IMPROVEMENTS, MONEY, PROPERTY AND TO LEVY TAXES AND TO PERFORM MUNICIPAL FUNCTIONS.

Article VI, Section 29 of the Utah Constitution provides as follows:

> "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, whether held in trust or otherwise, to levy taxes, to select a capitol site, or to perform any municipal functions.

The most recent case to discuss this question is *Backman vs. Salt Lake County,* 375 P2d. 765, 13 Utah 2d. 412. There the Civic Auditorium Act, which was patterned upon the water district act was held to be unconstitutional

in that it was a delegation to a special commission. The Court held that three provisions or conditions are necessary to violate this section of the Constitution. They are:

1. Delegation to a private commission of power to

2. Interfere with municipal property, or

3. To perform a municipal function.

The commission created under 17-29, UCA, 1953, as amended, is no different than the commission created under the Civic Auditorium Act. Under the Civic Auditorium Act there are more members, the County Commissioners select only part of the Commission, but there is no difference in substance. If the County Service Area Act had been amended to provide for the building of a civic auditorium and sports arena could one hold that the result of the Backman case would have been different? Sound reasoning says No.

Sections 10-8-90 and 17-5-45, UCA, 1953, give to cities and towns of the third class and to counties respectively the right to construct, own and operate hospitals jointly with other cities, towns and counties. This meets the second and third requirements set forth by the Supreme Court in the Backman case.

Other comparisons between the Civic Auditorium Act and the County Service Area Act show this to be a special commission in violation of the Constitution.

The Civic Auditorium and Sports Arena Act provides the district is authorized to:

(a) Make, construct and supervise a civic auditorium (which is a "municipal improvement") (11-11-2, 11-11-13).

(b) Control money for and from the operation thereof (so the district "supervises money" (11-11-13).

(c) Levy Taxes (11-11-13).

The County Service Area Act provides the district is authorized to:

(a) Provide hospital services (which is a "municipal improvement") (17-29-3).

(b) Control money for and from the operation thereof (so the district "supervises money") (17-29-10.2 [41]).

(c) Levy Taxes (17-29-13, 14).

In the case of *Lehi City vs. Meiling,* 48 P. 2d 530, 87 Utah 237, the question of a "special commission" was raised. The majority opinion (p. 535) gave no reason but merely said the district was not a special commission.

Speaking of the Lehi case the court said in the Backman case (p. 419):

> "Here is a distinction between this case and the Metropolitan Water District Act, as interpreted in *Lehi vs. Meiling* . . . With somewhat tortous reasoning, punctuated by two dissents and a special

concurring opinion, that case obviously was predicated on the assumption that because of a *magnitude* of *water projects which could not have been accomplished by a single municipality* coupled with statewide concern and interest in *water* consumption and conservation, together with the fact that that act was not only general and uniform, calling for such promotion not coterminous with any city or county, but available for many cities and counties, overlapping or non-contiguous, there was no special commission performing a municipal function."

POINT II

THE 12 PER CENT DEBT LIMITATION WOULD VIOLATE ARTICLE XIV, SECTIONS 3 and 4 OF THE STATE CONSTITUTION.

Said Sections provide, in part, as follows:

"Section 3. No debt in excess of the taxes for the current year shall be created by any county or subdivision thereof, or by a school district therein, or by any city, town or village, or any subdivision thereof in this state; unless the proposition to create such debt, shall have been submitted to a vote of such qualified electors as shall have paid a property tax therein, in the year preceding such election, and a majority of those voting thereon shall have voted in favor of incurring such debt."

"Sec. 4. When authorized to create indebtedness as provided in Section 3 of this Article, no county shall become indebted to an amount, including existing indebtedness exceeding two per centum. No city, town, school district or other municipal corporation, shall become indebted to an amount, including existing indebtedness, exceeding

four per centum of the value of taxable property therein. . ."

The act provides for a limitation on the district debt of 12 per cent (17-29-21).

District area is part of a county area (17-29-5). If the Legislature by the mere subterfuge of saying that the county constitutes a district, or a part of the county constitutes a district, can avoid the 2 per cent limitation of indebtedness upon counties, then the above sections are emasculated. The Legislature could then declare that the county or parts thereof constituted any number of districts and thereby create enough taxing units that the result could be any amount of indebtedness even up to 100 per cent. If these constiutitonal sections are given effect, the total of authorized indebtedness of the county and any district therein should not exceed 2 per cent of that of a town or city of the third class should not exceed 4 per cent.

The majority opinion in the Lehi case (supra) (p. 541) solved this problem by the simple expedient of declaring that a district was a "quasi municipal" body. The decision then reasoned that it has some attributes of a municipal corporation but does not have to comply with the limitations placed by the constitution on such corporations. The concurring opinion of Judge Wolfe (p. 549) concludes that the function of the district is proprietary, not governmental. He somehow concludes therefrom that this takes the district out of the classification of a "municipal corporation. "The dissent (p. 553) logically argues that:

> "The Constitution of Utah provides for the organization, management, and operation of two classes of corporations, viz., municipal corporations, and private corporations. For the Legislature or the courts by supplying a different adjective modifier to the word 'corporation,' and thereby bring about a new hybrid entity that is neither municipal nor private within the purview of the terms of the Utah Constitution, appeals as a refinement. It is an easy method to avoid the plain terms of the State Constitution. If constitutional limitations may thus by a process of definition be eliminated, evaded, or evaporated out of the Constitution, the stabilizing purposes and restraints of Constitutions intended to tide the people over periods of emergency, excitement, or trouble until calm reflection may analyze and measure the needs, will cease to accomplish the purposes for which they are intended."

The memorandum decision by the Honorable C. Nelson Day, District Judge, says that this is controlled by the cases of *Tygeson vs. Magna Water Company,* 226 P 2d. 127; *Lehi City vs. Meiling,* 48 P 2d. 530, 87 Utah 237; and *Patterick vs. Carbon Water Conservancy District,* 106 Utah 55, 145 P 2d. 503. All three of these cases can be distinguished from the present case in that each of them concerned water which has been given special treatment by the courts. In the Backman case this court held in a majority opinion "that case was obviously predicated on the assumption that because of the magnitude of the water project which could not have been accomplished by a single municipality, coupled with statewide concern and interest in water consumption and conservation," was the reason the court decided that case.

In the matter now before the court a single municipality, Beaver, County, can and in reality is building two hospitals. The two service areas combined include all of Beaver County and nothing else. No good reason has been advanced why Beaver County can not and should not build hospitals rather than dividing into service areas. It was to prevent this very thing that the constitutional limitations were placed upon the legislature.

POINT III

IF THE DISTRICT IS NOT A "SPECIAL COMMISSION" THEN IT MUST BE A MUNICIPAL CORPORATION, OTHERWISE ARTICLE XIII, SECTION 5 OF THE CONSTITUTION IS VIOLATED.

Article 13, Section 5, 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."

This section allows the powers of taxation to be exercised only by certain bodies. The only classification, under which the water district could fall is the classification of municipal corporation. In order to exercise the powers of taxation it must be a municipal corporation. If it is a municipal corporation, then the debt limitation of a municipal corporation set out under Article 14, Sections 3 and 4 discussed in Point II would be violated.

Furthermore, the levying of taxes for county purposes is limited by this constitutional provision to the corporate authorities of the county as pointed out in *State v. Standford*, 24 Utah 148, 66 Pac. 1061, wherein the court said:

> "Under the Constitution of the State of Utah the state has no power to make a disposition of county funds, and require that they be appropriated for other and different purposes than those for which by authority of the county they were collected. *San Louis Obispo Co. v. Graves,* 84 Cal. 71, 23 Pac. 1032. In our opinion Section 5, Article 13, of the Constitution not only limits local or county taxation to local county purposes, but it was also intended as a limitation upon the power of the legislature to grant the right or impose the duty of creating a debt or levying a tax to any person or body other than the corporate authorities of the county."

The building and operation of hospitals is a municipal function which Beaver County could undertake without the creation of separate districts to accomplish the same purpose.

CONCLUSION

This is an attempt by a single municipality, Beaver County, to divide itself and then perform functions as two units which it would just as well perform as a single unit.

By so dividing the county, the county and cities within it are attempting to place themselves in a position to by pass the debt limitations placed upon them by the Constitution.

Neither the respondents in their presentation to the District Court nor the Honorable C. Nelson Day in his memorandum decision have answered the question as to why the County cannot build hospitals rather than divide the County into Service Areas and then tax the same people for the same services.

Respectfully submitted,

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