Michigan Law Review

Volume 39 | Issue 6

1941

CONSTITUTIONAL LAW-APPROPRIATION FOR A PUBLIC PURPOSE

Michigan Law Review

CONSTITUTIONAL LAW — APPROPRIATION FOR A PUBLIC PURPOSE — A Wisconsin statute [1] authorized the appropriation of state funds to the American Legion 1941 Convention Corporation of Milwaukee, for the purpose of paying the expenses attendant upon obtaining and holding the national convention in Milwaukee during 1941. The national organization of the American Legion was allowed to decide whether a deposit should be made with them to secure the payment of the expenses, and if so, how much the deposit should be. The Legion required that the city extending an invitation tender to the national organization a certified check for $27,050 to insure payment of estimated expenses. At the request of the Convention Corporation of Milwaukee the secretary of state issued his warrant to the state treasurer. The treasurer refused to honor the warrant on the ground that the act appropriating the money was unconstitutional. The corporation sought a writ of mandamus to compel the treasurer to comply with the warrant. *Held*, that the writ should be denied on the ground that, although the statute was constitutional as an appropriation of funds for a public purpose in so far as it provided for paying the expenses of the convention, it was unconstitutional (1) in allowing the expenditure of public funds to induce the Legion to hold its convention in Milwaukee, and (2) in permitting the national organization to exercise discretion in determining the necessity for an extent of a deposit to secure payment of expenses. *State ex rel. American Legion 1941 Convention Corporation of Milwaukee v. Smith*, 235 Wis. 443, 293 N. W. 161 (1940).

Although there is some question as to the precise constitutional foundation for the rule that an appropriation of state funds may be made only for a public purpose [2] the rule is, nevertheless, well established.[3] What constitutes a public purpose is largely within the discretion of the legislature, and the courts will not interfere unless there is clearly an appropriation of public funds for a private

[1] Wis. Laws (1939), c. 451.

[2] McBain, "Taxation for a Private Purpose," 29 POL. SCI. Q. 185 (1914). It is a violation of the due process clauses of the national and state constitutions to take a citizen's money from him under the guise of taxes for any other than a public purpose. Robbins v. Kadyk, 312 Ill. 290, 143 N. E. 863 (1924); Green v. Frazier, 253 U. S. 233, 40 S. Ct. 499 (1920); Water Co. v. Wade, 59 N. J. L. 78 35 A. 4 (1896). "It is also well settled that taxes cannot be levied and collected, or an appropriation made, for other than a public purpose or in furtherance of the public welfare, and that any attempt so to do is a violation of the implied limitations of the Constitution." State ex rel. Walton v. Parsons, 58 Idaho 787 at 793, 80 P. (2d) 20 (1938). ". . . the validity of an appropriation must be judged by the validity of any tax which might be levied to support it, and . . . for the state to appropriate for a private purpose money raised or to be raised by taxation would be to take the property of one citizen or group of citizens without compensation and to pay it to others, which would constitute a violation of the equality clause as well as a taking of property without due process of law." State ex rel. Wisconsin Development Authority v. Dammann, 228 Wis. 147 at 175, 277 N. W. 278, 280 N. W. 698 (1938).

[3] ". . . taxes can be levied for public purposes only. . . ." 1 COOLEY, TAXATION, 4th ed., § 174 at p. 381 (1924); Citizens' Savings & Loan Assn. v. Topeka, 20 Wall. (87 U. S.) 655 (1874); Lowell v. City of Boston, 111 Mass. 454 (1873); Washingtonian Home of Chicago v. City of Chicago, 157 Ill. 414, 41 N. E. 893 (1895); Deering & Co. v. Peterson, 75 Minn. 118, 77 N. W. 568 (1898).

purpose.[4] The legislative tendency seems to be constantly to broaden the interpretation of the phrase. While no other cases involving the problem are factually identical with the instant case, the reasoning applied in them logically justifies the present extension of the meaning of the phrase "public purpose." It has been held generally that an expenditure for anything that stimulates sentiments of patriotism is an expenditure for a public purpose; [5] for example, appropriations for bonuses for ex-soldiers,[6] memorials, statues and buildings in honor of those who have served their country,[7] and payment for meals of the legislature while attending in a body a patriotic celebration.[8] The principal case may be considered an additional example of what the courts are willing to regard as a stimulation of patriotism, and it has a substantial background in Wisconsin statutes.[9] In the light of these statutes, the constitutionality of which has never been questioned, it is perhaps surprising that the principal case should even arise. Since the present statute was upheld in so far as it was similar to these prior statutes, the decision is chiefly valuable as a guide to future legislation in respect to the limitations upon the manner in which funds appropriated for a public purpose can be applied to accomplish that end. While it has been held that "The means and methods of promoting a public purpose by legislative enactment are

[4] State ex rel. Wisconsin Development Authority v. Dammann, 228 Wis. 147, 277 N. W. 278, 280 N. W. 698 (1938). ". . . what is for the public good, and what are public purposes, 'are questions which the legislature must decide upon its own judgment, in respect to which it is vested with a large discretion which cannot be controlled by the courts, except, perhaps, where its action is clearly *evasive*. . . .' " Daggett v. Colgan, 92 Cal. 53 at 57, 28 P. 51 (1891), quoting COOLEY, CONSTITUTIONAL LIMITATIONS, 5th ed., 155 (1883).

[5] "It is settled beyond question that the promotion of patriotism, involving as it does the sense of self-preservation, is not only a public purpose but the most elemental of public purposes." Allied Architects' Assn. of Los Angeles v. Payne, 192 Cal. 431 at 434, 221 P. 209 (1923); Veterans' Welfare Board v. Riley, 188 Cal. 607, 206 P. 631 (1922); People v. Westchester County National Bank of Peekskill, 231 N. Y. 465, 132 N. E. 241 (1921); In re Opinion of the Justices, 211 Mass. 608, 98 N. E. 338 (1912).

[6] People v. Westchester County National Bank of Peekskill, 231 N. Y. 465, 132 N. E. 241 (1921); Jones v. City of Portland, 245 U. S. 217, 38 S. Ct. 112 (1917); State ex rel. Atwood v. Johnson, 170 Wis. 251, 176 N. W. 224 (1920); Veterans' Welfare Board v. Riley, 188 Cal. 607, 206 P. 631 (1922).

[7] Allied Architects' Assn. of Los Angeles v. Payne, 192 Cal. 431, 221 P. 209 (1923); Hill v. Roberts, 142 Tenn. 215, 217 S. W. 826 (1919).

[8] Russ v. Commonwealth, 210 Pa. 544, 60 A. 169 (1905).

[9] Since 1918 five statutes have been passed in Wisconsin by which state funds have been appropriated for purposes similar to that in the present case: appropriation for annual encampment of the Wisconsin Department of the Grand Army of the Republic, Wis. Laws (1919), c. 19; appropriation for the annual encampment of the Wisconsin Department of the Spanish War Veterans Association, Wis. Laws (1921), c. 186; appropriation for the annual encampment of the Wisconsin Department of the American Legion, Wis. Laws (1927), c. 104; appropriation for the annual encampment of the Wisconsin Department of the Disabled American Veterans of the World War, Wis. Laws (1929), c. 124; appropriation for the national encampment of the Grand Army of the Republic, Wis. Laws (1935), c. 530.

ordinarily for legislative determination,"[10] the principal case places two restrictions on the use of that discretion. First, an expenditure made upon the mere possibility that a public purpose may be served thereby cannot be justified as an appropriation for a public purpose. Second, any provision in a statute which allows a body other than the legislature to determine the allocation of the sum appropriated for a public purpose will be invalid as a delegation of legislative power. It could be argued that where an appropriation ultimately serves a public purpose its character should relate back to make valid any expenditures necessary to bring about that end. The Wisconsin court ignores such liberal treatment of the statute, however, and views the situation as of the time the appropriation is made. To insure the validity of a statute of this type under the limitations established by the principal case, the legislature must specifically provide for the disbursement of the whole sum appropriated, and must not permit the funds appropriated to be expended in anticipation of some public purpose, but only upon its actual performance.[11]

[10] Allied Architects' Assn. of Los Angeles v. Payne, 192 Cal. 431 at 435, 221 P. 209 (1923).

[11] The principal case has also been noted in 25 MINN. L. REV. 118 (1940).