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CONSTITUTIONAL LAW — SPECIAL ASSESSMENTS — PROPERTY OWNER'S RIGHT TO HEARING UNDER DUE PROCESS CLAUSE — LEGISLATIVE DETERMINATION OF BENEFITS — The California legislature created the Los Angeles Flood Control District, empowered a board of supervisors to construct

improvements and acquire property necessary or useful for carrying out the purposes of the act, and provided for the organization of drainage districts within the flood control district. An amendatory act provided that the board of supervisors might accept a transfer of "all, but not less than all," improvements of defined classes lying within the flood control district, whereupon the district should become liable for principal and interest of bonds afterward maturing which had been issued by any drainage district to cover the cost of the transferred improvements; and in order to finance the bonds the board of supervisors was authorized to levy a special tax each year on all taxable real estate within the flood control district. Pursuant to the amendatory act, eleven drainage districts which had previously been organized within the flood control district transferred improvements to the board of supervisors. Appellant, who owned taxable real estate which was in the flood control district but situated outside all eleven drainage districts, presented to the highest court of the state a petition for a pre-emptory writ of mandamus to require the board of supervisors to levy assessments in accordance with the statutes prior to the amendatory act, and to refrain from levying assessments under the amendatory act. Appellant claimed that assessments levied under the amendatory act would be laid upon real estate within the flood control district but outside the drainage districts; that there had been no legislative determination that the improvements in the eleven drainage districts would benefit that property, and no provision had been made for the owners to be heard on the question; that a levy of assessments upon that property would therefore deprive the owners of their property without due process of law. The state court ruled that though there had been no express finding by the legislature that all land in the flood control district would be benefited by the acquisition of improvements in the drainage districts, such a finding was implied by the particularity of the legislature's description in the amendatory act of the improvements authorized to be transferred. *Held*, affirmed; that whether there had in fact been a legislative determination that all land within the flood control district would be specially benefited by the acquisition of improvements in the several drainage districts was a federal question and conferred jurisdiction for review of the state court's decision; that a legislative determination of benefits was implied in the amendatory act. *Chesebro v. Los Angeles County Flood Control District* (U. S. 1939) 59 S. Ct. 622.

The state has power to order the construction and maintenance of local improvements necessary to the health, safety, and prosperity of any community within its borders, and within its discretion to levy taxes to finance the cost either by general taxation or by assessments upon property specially benefited.[1] When the legislature itself determines both the necessity of the improvements and that land within a defined district will be specially benefited by the improvements, its determination is conclusive and it is not necessary to the validity of

[1] Hagar v. Reclamation District, 111 U. S. 701 at 704-705, 4 S. Ct. 663 (1884); Spencer v. Merchant, 125 U. S. 345 at 355, 8 S. Ct. 921 (1888); French v. Barber Asphalt Paving Co., 181 U. S. 324 at 342, 21 S. Ct. 625 (1901); Houck v. Little River Drainage District, 239 U. S. 254 at 262, 36 S. Ct. 58 (1915).

assessments upon land within the district that the owners be afforded opportunity to be heard on either question.[2] A legislative determination that described land will be specially benefited may take the form of an express declaration to that effect,[3] or it may be implied by the fact alone that the legislature has charged the described land with the cost of the improvements.[4] The legislature may, however, delegate to an administrative body the power to authorize the improvements and to apportion the cost against land benefited. Where this power is delegated, though the property owner is not entitled to be heard on the question of the necessity of the improvements,[5] due process of law requires that, at some stage of the proceedings before the tax becomes irrevocably fixed, he shall have an opportunity to be heard on the question whether his land is benefited.[6] The

[2] Parsons v. District of Columbia, 170 U. S. 45 at 52, 18 S. Ct. 521 (1898); Wagner, Inc. v. Baltimore City, 239 U. S. 207 at 218, 36 S. Ct. 66 (1915); Withnell v. Ruecking Const. Co., 249 U. S. 63 at 69, 39 S. Ct. 200 (1919); Branson v. Bush, 251 U. S. 182 at 189-190, 40 S. Ct. 113 (1919); Valley Farms Co. v. Westchester County, 261 U. S. 155 at 164, 43 S. Ct. 261 (1923); Milheim v. Moffat Tunnel District, 262 U. S. 710 at 721, 43 S. Ct. 694 (1923). A determination by a municipal corporation of the question of necessity for the improvements and of the question of benefits is likewise conclusive upon the property owner. Londoner v. Denver, 210 U. S. 373 at 379, 28 S. Ct. 708 (1907) (question of necessity); Hancock v. City of Muskogee, 250 U. S. 454 at 458, 39 S. Ct. 528 (1919) (question of benefits).

[3] See, for example, Wagner, Inc. v. Baltimore City, 239 U. S. 207 at 212, 36 S. Ct. 66 (1915); Branson v. Bush, 251 U. S. 182 at 189, 40 S. Ct. 113 (1919); Milheim v. Moffat Tunnel District, 262 U. S. 710 at 713, 43 S. Ct. 694 (1923).

[4] This point—that a legislative determination of benefits may appear otherwise than by express declaration, and that a description in the statute of the land to be charged with the cost of the improvements implies a legislative finding that that land will be benefited—seems too obvious for argument. It seems to have been taken for granted in the cases. For example, in Fallbrook Irrigation District v. Bradley, 164 U. S. 112 at 174, 17 S. Ct. 56 (1896), the Court said: "The legislature, when it fixes the [taxing] district itself, is supposed to have made proper inquiry, and to have finally and conclusively determined the fact of benefits to the land included in the district. . . ." See also Parsons v. District of Columbia, 170 U. S. 45, 18 S. Ct. 521 (1898); Withnell v. Ruecking Const. Co., 249 U. S. 63, 39 S. Ct. 200 (1919); Valley Farms Co. v. Westchester County, 261 U. S. 155, 43 S. Ct. 261 (1923).

[5] Parsons v. District of Columbia, 170 U. S. 45 at 56, 18 S. Ct. 521 (1898).

[6] Fallbrook Irr. District v. Bradley, 164 U. S. 112 at 167, 17 S. Ct. 56 (1896); Londoner v. Denver, 210 U. S. 373 at 385, 28 S. Ct. 708 (1907); Embree v. Kansas City Road District, 240 U. S. 242 at 247, 36 S. Ct. 317 (1916). In Browning v. Hooper, 269 U. S. 396, 46 S. Ct. 141 (1926), a statute provided that fifty or more persons in a proposed road district might present a petition to the commissioner's court, setting forth the boundaries of the proposed district and the amount of bonds to be issued to finance the cost of the improvements; thereupon the commissioner's court should call an election, and if the proposal was accepted by two-thirds of the taxpayers in the proposed district, assessments should be levied on property in the district in the manner of general taxes, and bonds should be issued. The commissioner's court had no power to grant a hearing on the question whether land included in the district would be benefited by the improvements, and no power to modify the boundaries of the district set forth in the petition. Held, the issuance and sale of

fact that due process requires notice and hearing on one question and not on the other may perhaps be put on the ground that the question of necessity of the improvements is a question of policy and its determination a legislative function, while the question whether particular land is benefited is a question of fact and its determination a judicial function.[7] The other half of the picture—the fact that while a legislative determination of benefits is conclusive upon the property owner, yet a determination by the administrative body is not conclusive, even though the power to determine the question is delegable—is probably to be explained in terms of expediency; i.e., (1) the fact that the legislature has neither the time nor the machinery to allow each property owner an opportunity to be heard on the question, while an administrative body has both, and (2) the fact that the courts are probably wary of the delegation to an administrative body of so important a legislative power as the power to tax. The question in the principal case was not whether a legislative determination of benefits was conclusive—that was settled—but whether there had in fact been such a determination. The legislative determination did not have to take any particular form, the court said, and it concluded that "the essential features of the challenged statute necessarily imply special benefits to the lands in question." But more particularly, it would seem that a legislative finding of benefits was implied by the fact alone that in the amendatory act all lands within the flood control district were charged with the cost of transferred improvements. The case is hardly distinguishable from other cases where that point was decided *sub silentio*.[8]

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bonds could be enjoined because the property owners in the district were not afforded opportunity to be heard on the question of benefits.

Even where the legislature has delegated to an administrative body the power to determine the question of what property will be benefited by the improvements (and a fortiori where the legislature determines the question itself), the legislature may provide that assessments shall be apportioned on the basis of area, frontage, position or market value, and the property owners are not entitled to notice and hearing on the question whether their respective properties will be benefited in proportion to the assessments so measured. Hancock v. City of Muskogee, 250 U. S. 454 at 459, 39 S. Ct. 528 (1919); Embree v. Kansas City Road District, 240 U. S. 242 at 250, 36 S. Ct. 317 (1916). Cf. Norwood v. Baker, 172 U. S. 269, 19 S. Ct. 187 (1898). But presumably, where an administrative body adopts a rule as the basis for apportioning assessments, the property owners are entitled to an opportunity to be heard on the question whether their respective properties will be benefited in proportion to the assessments so measured.

[7] On the general question of the necessity of notice and hearing in administrative proceedings, see 80 UNIV. PA. L. REV. 96 (1931); 34 COL. L. REV. 332 (1934).

[8] See note 4, supra.