Buffalo Law Review

Volume 13 | Number 2 Article 19

1-1-1964

Civil Procedure—Taxpayer Suits—New York Continues Refusal To Recognize Standing For Challenging Fiscal Matter.

Anthony S. Kowalski

CASE NOTES

CIVIL PROCEDURE—TAXPAYER SUITS—NEW YORK CONTINUES REFUSAL TO RECOGNIZE STANDING FOR CHALLENGING FISCAL MATTER.

St. Clair bet eighteen dollars at various harness tracks in New York State. Then, as a taxpayer and a bettor in his own behalf and on behalf of others, he brought an action against the Yonkers Raceway and other harness tracks as well as the New York State Harness Racing Commission, the State Tax Commission, the Comptroller and Attorney General. St. Clair sought to have the tracks account and return to the state various betting pool moneys which he claimed were unconstitutionally placed in the tracks' construction fund accounts rather than paid to the State Tax Commission. This money was retained pursuant to section 45-a of the New York Pari-Mutuel Revenue Law.[1] He also sought to enjoin state officials from complying with this allegedly unconstitutional statute. The tracks moved to dismiss the complaint on the ground that petitioner lacked legal capacity to sue. The Supreme Court dismissed the action and the Appellate Division affirmed the dismissal.[2] On appeal to the Court of Appeals, *held*, affirmed. The Constitutionality of a statute may be challenged only by a person personally aggrieved. *St. Clair v. Yonkers Raceway, Inc.*, 13 N.Y.2d 72, 192 N.E.2d 15, 242 N.Y.S.2d 43 (1963), *cert. denied*, 84 Sup. Ct. 488 (1964).

In the event that a citizen-taxpayer wishes to challenge the constitutionality of a legislative act, he must show that there is an invasion of his individual rights.[3] This doctrine is derived from the public nuisance cases.[4] Just as an individual would not be allowed to enjoin a nuisance which is common to many people without showing special damages, an individual could not test the constitutionality of a legislative act affecting the political community unless his legal rights were invaded.[5] It has been indicated that the courts have not been given jurisdiction to declare unconstitutional an act of an independent or coordinate branch of the government unless the individual rights of a party are involved "as distinguished from the rights in common with the great body of people."[6] Because of the harshness of this rule, the Legislature enacted a statute which gave individual taxpayers standing to challenge acts of municipal officials which cause waste of public funds.[7] But this statute has not been extended to allow suit against state officials.[8] Taxpayers may sue to prevent moneys in the

1. N.Y. Unconsol. Law § 8020 (McKinney 1961).
2. St. Clair v. Yonkers Raceway, Inc., 17 A.D.2d 899 (4th Dep't 1962).
3. Doolittle v. Supervisors of Broome County, 18 N.Y. 155, 162-63 (1858). See also Kilbourne v. St. John, 59 N.Y. 21 (1874).
4. Jaffe, *Standing to Secure Judicial Review: Public Actions*, 74 Harv. L. Rev. 1265, 1277 (1961).
5. Doolittle v. Supervisors of Broome County, 18 N.Y. 155, 161 (1858).
6. Schieffelin v. Komfort, 212 N.Y. 520, 530, 106 N.E. 675, 677-78 (1914).
7. N.Y. Munic. Law § 51.
8. County of Albany v. Hooker, 204 N.Y. 1, 19, 97 N.E. 403, 408 (1912); Ahern v. McNab, 7 A.D.2d 546, 548, 185 N.Y.S.2d 664, 667 (2d Dep't 1959) (local official acting in behalf of state government).

possession of a state officer or belonging to a state fund or depository from being expended without audit if the Appellate Division of the Supreme Court consents.[9] But, this method was not available to a taxpayer who attempted to challenge the construction fund accounts provided under section 45-a of the Pari-Mutuel Revenue Law[10] because those moneys were never considered state moneys.[11] If these were state moneys, the taxpayer would have standing to restrain them from being used without audit, but he would be unable to challenge the statute on grounds other than auditing grounds if he relied only on section 111 of the State Finance Law.[12] As far as adherence to the strict rule of standing in state taxpayer suits is concerned, the lower courts will undoubtedly follow it until there is either a modification by the Court of Appeals or a legislative enactment.[13]

At one point it appeared that the New York courts might relax the standing rule in state taxpayer suits.[14] But, the basis for this appearance was a case in which the issue of the taxpayer's ability to sue was not contested initially and the matter to be decided was one of great public importance.[15] Thirty-four states clearly permit state taxpayer suits,[16] and the present trend is to allow such suits.[17] State taxpayers have been permitted to challenge the action of a state agency on constitutional grounds where the public official who is authorized to challenge the action, refused to do so.[18] In another state, it has been reasoned that taxpayers have the right to enjoin the illegal or unconstitutional misuse of public funds because these taxpayers are responsible for replenishing the state treasury.[19] In another state where the courts had not recognized standing for state taxpayer suits, the Legislature provided therefor.[20] Even though the trend in most states is to allow state taxpayer suits, the Federal Courts do not allow Federal taxpayers to challenge Federal expenditures merely because the person is one of many taxpayers.[21]

The majority of the Court holds that the constitutionality of a state statute may only be challenged by a person who is aggrieved by the statute. Referring to precedent, the Court says that St. Clair, a citizen-taxpayer and bettor, does not fit into any class which may sue because he has not been aggrieved. Then,

9. N.Y. State Fin. Law § 111.
10. N.Y. Unconsol. Law § 8020 (McKinney 1961).
11. See Matter of Blaike, 11 A.D.2d 196, 202 N.Y.S.2d 659 (1st Dep't 1960).
12. *Id.* at 200-01, 202 N.Y.S.2d at 664.
13. See Bull v. Stichman, 273 App. Div. 311, 316, 78 N.Y.S.2d 279, 283 (3d Dep't 1948), *aff'd*, 298 N.Y. 516, 80 N.E.2d 661 (1948).
14. See Heim v. McCall, 165 App. Div. 449, 150 N.Y. Supp. 933 (1st Dep't 1914), *rev'd without opinion*, 214 N.Y. 629, 108 N.E. 1095 (1915), *aff'd*, 239 U.S. 175 (1915).
15. See Heim v. McCall, *supra* note 14, at 451-52, 150 N.Y. Supp. at 936.
16. Jaffe, *supra* note 4, at 1278; Comment, *Taxpayer's Suits: A Survey and Summary*, 69 Yale L.J. 895, 900-01 (1960).
17. Comment, *supra* note 16, at 902.
18. Chance v. Mississippi State Textbook Rating & Purchasing Bd., 190 Miss. 453, 200 So. 706 (1941).
19. Turkovich v. Board of Trustees of the University of Illinois, 11 Ill. 2d 460, 143 N.E.2d 229 (1957); Fergus v. Russell, 270 Ill. 304, 315, 110 N.E. 130, 135 (1915).
20. Mass. Ann. Laws ch. 29, § 63 (1952) (passed in 1937).
21. Massachusetts [Frothingham] v. Mellon, 262 U.S. 447 (1923).

the Court indicates that the basic reason why an unaggrieved taxpayer may not sue, is that the Court was not given jurisdiction to supervise an independent, coordinate branch of the government. The judiciary only has power to declare an act of the Legislature unconstitutional while determining a party's individual rights.[22] The minority of the Court stresses that most states permit state taxpayer suits, and emphasizes that the trend to allow these suits shows that there is no significant reason for prohibiting them. A state taxpayer should be allowed to sue where officials, authorized to raise the constitutional issue, refuse to sue, especially when the taxpayer is the one who has to replenish the public treasury. Then the minority repudiates two arguments against allowing standing. In answer to the objection that the Court should not supervise an independent Legislature, the dissent points out that it would merely be determining the validity of the legislation. The second objection is that allowing state taxpayer suits would cause a "flood of actions." This is answered with a convincing no by the dissenters. They point out that many states permit such actions without excessive litigation resulting. The Court may put checks on the actions. It may look to the importance of the issue raised, the authenticity of the controversy, and the refusal of an official to challenge, and require that all interested parties are before the court. On these grounds the minority reasons that the court-made rule of standing should be changed.

The most appealing underlying reasons why courts are reluctant to allow taxpayer suits challenging the constitutionality of an expenditure of state funds are the fear that there will be excessive litigation concerning the validity of state statutes and that the Court will stand as another governor to veto the legislation. Probably the strongest reason for allaying the fear is the fact that the majority of the states have accepted state taxpayer suits. "This trend reflects the absence of significant reasons for distinguishing municipal taxpayer suits . . . from their state counterparts."[23] Frivolous taxpayer suits may be prevented by both court-made and built-in limitations on the bringing of such suits. The built-in checks would exist because a taxpayer has to expend money in litigation—his own costs, disbursements and legal fees. This will lead people with frivolous claims to avoid litigation. The checks which the court may put in are the ones suggested by the dissent. The importance of the issue in this case is general. The tracks, instead of paying taxes on pari-mutuel revenues are putting these moneys into construction fund accounts. The sum involved to date is over $42,000,000, and since the tracks are not paying their share of the tax burden, this means that there is over $42,000,000 less in the state tax cache. The taxpayers throughout the state may have the burden of making this up to their own detriment. Here the sum is so large that the Court need not worry about excessive litigation if it allows standing in this particular case. The Court could easily set down jurisdictional amounts below which it will

22. Schieffelin v. Komfort, 212 N.Y. 520, 530, 106 N.E. 675, 677 (1914).
23. Comment, *supra* note 16, at 902.

not hear taxpayers' claims. Also, there was a genuine dispute present. The petitioner actually was seeking relief. All interested parties presented arguments to the Court. This would have been an opportunity to make an exception to the long established court-made rule of standings, *i.e.*, allow a taxpayer capacity to bring an action under these circumstances, especially where such a large fiscal matter is involved. But even though the Court does not choose to overrule the standing doctrine, it is still within the power of the Legislature to pass a statute permitting standing for constitutional issues of great public importance.

Anthony S. Kowalski

CONSTITUTIONAL LAW—PRIVATE BILL TO NEGATIVE STATUTE OF LIMITATIONS HELD UNCONSTITUTIONAL.

On September 21, 1954, the State of New York issued its check for $6,053.29 to the Homer Engineering Company. This check represented full payment for certain work performed by the company on a state hospital building. While the offices of Homer Engineering Company were being moved from one city to another, this check was inadvertently lost.[1] More than six years elapsed before the check was discovered. Due to this extensive lapse of time, the state comptroller would not have honored the check.[2] Thereafter, the State Legislature passed a private bill[3] conferring jurisdiction on the Court of Claims to hear the Homer Engineering Company's claim even though it might be barred by lapse of time. The Court of Claims heard the claim and granted Homer Engineering Company judgment in the sum of $6,053.29. Judge Scileppi, speaking for a unanimous Court of Appeals, overruled the Court of Claims. An enabling act purporting to grant jurisdiction for a claim against the state which would have been barred had it been a claim between private citizens, violates the New York State Constitution. *Homer Engineering Co., Inc. v. State of New York* 12 N.Y.2d 508, 191 N.E.2d 455, 240 N.Y.S.2d 973 (1963).

At common law, in the absence of a specific statute, there was no fixed time in which a cause of action had to be brought.[4] The first such statute was passed in 1623.[5] At present it is the policy of the State that there shall be a fixed limit to the time in which any legal or equitable cause of action can be brought.[6] The statutes are founded, at least partially, on the policy of preventing litigation which may be commenced long after records relating thereto are lost and the memories of the parties have grown vague.[7] There is also a notion that failure to

1. Record, vol. 1, p. 20.
2. N.Y. Fin. Law § 102.
3. N.Y. Sess. Laws 1961, ch. 537.
4. Hart v. Deshong, 40 Del. (1 Terry) 218, 8 A.2d 85 (1939).
5. An Act for Limitation of Actions, 1623, 21 Jac. 1, c. 16.
6. Glover v. National Bank of Commerce, 156 App. Div. 247, 141 N.Y. Supp. 409 (1st Dep't 1913).
7. Schmidt v. Merchants Despatch Transp. Co., 270 N.Y. 287, 200 N.E. 824 (1936).