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Miscellaneous—Practical Construction of Statute by County Clerk Controlling

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the Court answered the same objections interposed by the defendants in the present case by referring to the public policy evidenced by the Interstate Commerce Act.

The majority of the Court was of the opinion that even though the carrier in the *Riddle* case may have known the value of the shipment, while here it did not, it was immaterial since it deviated from the tariff in accepting the shipment in a different classification.

"It matters not that the real party in interest is the plaintiff's insurance carrier and that a reduced tariff was sought with the knowledge and consent of the insurer. It cannot be argued that the shipper was given just what it bargained for, because in order to maintain uniform rates and restrain the abuses and discriminations that might otherwise flourish, the statute has prescribed the framework within which the shipper may make his bargain. There cannot be an estoppel that would work against the shipper because of the supervening public policy above enunciated and individual indignation must yield to it."[6]

PRACTICAL CONSTRUCTION OF STATUTE BY COUNTY CLERK CONTROLLING

In *Lockport Union-Sun and Journal v. Preisch*,[7] petitioner, a newspaper, brought an action to compel defendant, the clerk of the Board of Supervisors of Niagara County, to post in a conspicuous place and to publish in petitioner's newspaper a complete and detailed list of all tax exempt and partially exempt real property located within the City of Lockport.

For fifty years, until 1954, the clerk of the Board of Supervisors of Niagara County has published in petitioner's newspaper a detailed list of the tax exempt and partially exempt real property in Lockport.[8] In 1955, however, defendant submitted to petitioner a summary statement listing tax exempt categories such as Fraternal, Church, Veteran, etc. by groups. A subtotal was given for each individual group and the total listed of all tax exempt real property. This change in policy was not due to any statutory changes but rather to a new interpretation of the words "tabulated statement" by the State Board of Equalization and Assessments.

6. Id. at 463, 162 N.Y.S.2d 320.
7. 8 N.Y.2d 54, 201 N.Y.S.2d 505 (1960).
8. N.Y. Real Property Tax Law § 496:
1. It shall be the duty of the assessors of each city . . . to furnish to the clerks of the boards of supervisors of their respective counties . . . a complete list of all property situated within their respective assessing units exempt or partially exempt from taxation. 2. It shall be the duty of the clerk of the board of supervisors . . . to transmit such completed lists . . . to the state board . . . and the state board shall . . . cause to be published in their annual report to the legislature, a *complete tabulated statement* . . . of all real property . . . in the state which is exempt or partially exempt from taxation. 3. . . . the various clerks of the boards of supervisors . . . shall prepare a *tabulated statement* of the returns received and shall post a copy thereof in a conspicuous place, and in all cities of the state cause a copy thereof to be published in the official paper . . . of such city . . . (emphasis supplied).

On January 23, 1957, the Attorney General of the State of New York construed the statute as requiring the publication of a detailed list of all owners and individual properties which were exempt from taxation.[9]

The petitioner founded its action upon this formal opinion issued by the Attorney General. The Supreme Court granted petitioner's motion but the Appellate Division reversed.[10] On appeal, the Court of Appeals reversed the Appellate Division and ordered the relief demanded in the petition to be granted.

The dissent in the Court of Appeals, and the Appellate Division, demanded a literal interpretation of the statute. They reasoned that it was not logically permissible to ascribe different meanings to the same words when they appeared in different sentences of the same statute. They argued that since the state officials are only required to submit a summary statement to the Legislature of all tax exempt and partially exempt real property in the state, a fact which petitioner conceded, then the clerk in this case should only be required to publish a summary statement in the newspapers. In fact, they said that the words "complete tabulated statement" (which the state officials are supposed to furnish to the Legislature) requires a more complete and detailed statement than is required by the words "tabulated statement" (which is to be published by the county clerk).

This argument appears to have merit if you do not look to the intent of the Legislature and the purpose of the statute. For then it becomes obvious that something more than a literal reading is required. The words have to be examined first in their context and then for their purpose. Here the Court of Appeals relied heavily upon the Attorney General's determination of the purpose of the statute and the more than fifty years of the same construction of the statute by the defendant's predecessors. Not only are the purposes of the two statements entirely different, but there are also different administrative officers involved—officers who serve different interests.

The purpose of the tabulated statement the State Tax Commission is to prepare is to present a summary report of tax exempt real property in the state to show its overall effect on the state's economy. A very comprehensive report listing in detail all of the different pieces of tax exempt real property in the state would only bog the Legislature down with a mass of unnecessary materials. This would serve to confuse rather than aid the Legislature in its consideration of economic policies.

On the other hand, the purpose of the tabulated statement that the clerk is required to publish is to show to local taxpayers what specific properties have been adjudged partially or fully tax exempt. In this way only does the taxpayer have a chance to guard against fraud, error, or discrimination in taxing policies. This purpose would be wholly defeated by the publishing of a sum-

9. Att'y Gen. Rep. 291 (1957).
10. 7 A.D.2d 502, 184 N.Y.S.2d 504 (4th Dep't 1959).

mary statement. The sum total of tax exempt property in his city means nothing to the interested taxpayer who is looking for a uniform application of tax laws to everyone.

The Court also determined that in construing an ambiguous statute, the construction of that statute over a long period of time by those towards whom the statute is directed should be given considerable weight.[11] Here the County Clerks preceeding the defendant have published a detailed list of all tax exempt properties for fifty years, and, to the Court, this indicated that a detailed list and not a summary statement is the best manner in which the purpose of the statute can be effected.

LITERAL WORDS OF STATUTE BINDING WHERE NO AMBIGUITY

In 1950 the State of New York took over exclusive control of residential rents.[12] In 1951, the State Residential Rent Law was amended and provided that the law should terminate on June 30, 1953.[13] Subsequently, every two years the rent control laws have been continued or eliminated by amendment.[14] In 1957, the State Legislature provided that rent controls in Erie County should terminate as of June 30, 1957, except that the governing body of a municipality, by resolution, could elect to be excluded from the operation of the termination, to the extent specified in the resolution.[15] The City of Lackawanna acting under this statute adopted a resolution to continue rent controls except as to certain dwellings, and the resolution was to remain in full force and effect until June 30, 1959. In *Bright Homes v. Wright*,[16] the Court of Appeals reversed the Appellate Division and reinstated the judgment of Special Term declaring that rent controls in the City of Lackawanna ended June 30, 1959 as provided in the city resolution. The issue in the case was the statutory interpretation of the provisions declaring that the resolution shall remain in full force and effect until June 30, 1959. The Appellate Division considered the termination date as surplusage and that it was not the legislative intent that rent controls in Lackawanna should end June 30, 1959.[17] The chief reason for the Appellate Division's holding was: 1. In interpreting a statute, courts will look at the contemporary history and the historical background thereof;[18] 2. That the legislative expression that a serious housing shortage exists conflicts with the provision that the resolution will be in effect only until June 30, 1959; 3. That the State Rent Administrator considered the terminal date as surplusage from the beginning, and when a

11. Grimmer v. Tenement House Dep't of N.Y., 205 N.Y. 549, 98 N.E. 332 (1912); City of New York v. New York City Ry. Co., 193 N.Y. 543, 86 N.E. 565 (1908).
12. N.Y. Sess. Laws, 1950, ch. 250.
13. N.Y. Sess. Laws, 1951, ch. 443.
14. N.Y. Sess. Laws, 1953, ch. 321; N.Y. Sess. Laws, 1955, ch. 685; N.Y. Sess. Laws, 1957, ch. 755; N.Y. Sess. Laws, 1959, ch. 695.
15. N.Y. Sess. Laws, 1957, ch. 755 § 12(3)(c).
16. 8 N.Y.2d 157, 203 N.Y.S.2d 67 (1960).
17. 10 A.D.2d 355, 199 N.Y.S.2d 931 (4th Dep't. 1960).
18. 2 Sutherland, Statutory Construction § 5002 (3d ed. 1943).