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Administrative Law—Standing to Sue

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THE COURT OF APPEALS, 1953 TERM

I. ADMINISTRATIVE LAW

Standing to Sue

The ability of the sovereign retroactively to alter "rights" given by previous acts of the sovereign was reaffirmed in *Black River Regulating District v. Adirondack League Club.*[1] It was there held that a river regulating district, organized pursuant to article seven of the Conservation Law, which had made considerable expenditures preliminary to financing a bond issue to pay for the construction of a dam for the purpose of stream regulation, had no standing to challenge an act of the State Legislature which in effect prohibited the building of the dam.[2]

Regulation of streams and rivers by means of dams and reservoirs is a matter of State concern in the interest of public health, safety and welfare.[3] Though regulating districts are public corporations,[4] they are State agencies in the carrying out of a State function, and their powers are within the absolute discretion of the State, subject to alteration, impairment or destruction as the State sees fit.[5] That such powers do not constitute property and are not protected by the due process clause of the Fourteenth Amendment has been established by a long line of Federal and New York decisions.[6]

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1. 307 N.Y. 475, 121 N.E. 2d 428 (1954).

2. L. 1950, c. 803, eff. Apr. 20, 1950, amending Conservation Law, § 445. Before 1913, the State Constitution forbade the sale or lease of any portion of the Forest Preserve for any purpose. N.Y. CONST. Art. 7, § 7 (1894). In that year this provision was amended to allow up to three percentum of the Forest Preserve to be used for construction and maintenance of reservoirs for municipal water supply and to regulate the flow of streams. L. 1913, p. 2229. It was under this provision that the plaintiff District was organized in 1919 and formulated its plans for the construction of the dam now in controversy, which construction would have required the use of 1500 acres of the Forest Preserve. In 1950, the State Legislature passed the Stokes Act, L. 1950, c. 803, providing that no reservoirs for any purpose other than municipal water supply were to be constructed in the area where the District planned its dam. This suit is an attack on the constitutionality of that statute. However, in 1953, the Ostrander Amendment was adopted which cancelled the exception in favor of stream regulation and which in effect covered the ground of the Stokes Act, at least at far as this case is concerned, making consideration of that Act largely irrelevant. Under the Constitution as it now reads, up to three percentum of the Forest Preserve may be utilized for the construction of dams *only for municipal water supply.* N.Y. CONST. Art. 14, § 2.

3. CONSERVATION LAW Art. 7; *Board of Black River Regulating District v. Ogsbury,* 203 App. Div. 43, 196 N.Y. Supp. 281 (4th Dep't 1922), *aff'd* 235 N.Y. 600, 139 N.E. 751 (1923).

4. CONSERVATION LAW § 431.

5. *Black River Regulating District v. Adirondack League Club,* see note 1 *supra.*

6. *Williamsburg v. New Jersey,* 130 U.S. 189 (1889), *Hunter v. City of Pittsburg,* 207 U.S. 161 (1907), *City of Pawhuska v. Pawhuska Oil & Gas Co., et al.,* 250 U.S. 394 (1919), *City of Trenton v. State of New Jersey,* 262 U.S. 182 (1923), *People v. Morris,* 13 Wend. 325 (1835), *County of Albany v. Hooker,* 204 N.Y. 1, 97 N.E. 403 (1912), *City of New York v. Village of Lawrence,* 250 N.Y. 429, 165 N.E. 836 (1929).

The Regulating District attempted to show that it had interests separate from those of a public, State nature in that it had obligated itself to pay preliminary expenses by issuing certificates of indebtedness. The Appellate Division unanimously held that this fact took the District out of the operation of the general rule and gave it independent contracts which could not be constitutionally impaired.[7] The Court of Appeals unanimously rejected this, holding that whatever contracts creditors had with the District were also "subject to legitimate governmental power, exercised on behalf of the public welfare."[8] Also rejected was the claim that the District had an individual as well as a State character which gave it private rights.[9] Only public rights are involved and these plaintiffs have no property interest in them.[10] Only the State's interests are involved and the State cannot challenge the constitutionality of its own statute.[11]

Thus it is held that these plaintiffs have no standing to sue since they have no interests other than public, State interests. The court also says that it "holds" that the Stokes Act[12] is constitutional, though this statement is undoubtedly dictum in view of the holding that the District has no standing to challenge it in the first place.

It is somewhat surprising that the court did not dispose of the whole case merely by citing the effect of the Ostrander Amendment.[13] Plaintiffs admitted the Stokes Act prohibited its intended construction and the case got this far only because the constitutionality of that statute was challenged. The Ostrander Amendment is equally dispositive of the District's plan and puts it beyond redemption by any means, save another constitutional amendment.

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7. *Black River Regulating District v. Adirondack League Club*, 282 App. Div. 161, 170, 121 N. Y. S. 2d 893, 902 (4th Dep't 1953).

8. 307 N. Y. at 489, 121 N. E. 2d at 434, citing *Norman v. Baltimore & Ohio R. R. Co.*, 294 U. S. 240 (1935), *People ex rel. Durham Realty Corp. v. La Fetra*, 230 N. Y. 429, 130 N. E. 601 (1921).

9. Citing *Bull v. Stichman*, 273 App. Div. 311, 78 N. Y. S. 2d 279, *aff'd* 298 N. Y. 516, 80 N. E. 2d 661 (1948).

10. *Hodges v. Snyder*, 261 U. S. 600 (1923).

11. *Sweeney v. State of New York*, 251 N. Y. 417, 167 N. E. 519 (1929). *But see First Construction Co. of Brooklyn v. State of New York*, 221 N. Y. 295, 310, 116 N. E. 1020, 1024 (1917).

12. See note 2 *supra*.

13. See note 2 *supra*. Even though this amendment was not yet in existence at the commencement of the suit and the appeal before the Appellate Division, the issue must be decided in accordance with present law. *United States v. The Schooner Peggy*, 1 Cranch 103 (1801), *Boardwalk & Seashore Corp. v. Murdock*, 286 N. Y. 494, 36 N. E. 2d 678 (1941).