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Constitutional Law--West Virginia Better Schools Amendment--Legislative Extension Unconstitutional

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Appalachian Power Company, a Virginia corporation, suing in its own behalf and in behalf of all other taxpayers of Mercer County, West Virginia, sought a declaratory judgment in the Circuit Court of Mercer County in proceedings against the County Court of Mercer County and the individual members of the court to determine the validity of certain tax levies by the county court for airport improvement bonds. The circuit court held the levies invalid and respondents appealed. *Held,* judgment affirmed. The 1958 amendment to the state constitution authorizing additional tax levies, W. VA. CONST. art. X, § 10, commonly known as the Better Schools Amendment, relates only to levies for public school purposes. It does not authorize an airport bond levy in excess of maximum limits authorized by the 1932 Tax Limitation Amendment, W. VA. CONST. art. X, § 1. Thus W. VA. CODE ch. 13, art. 1, § 35 (Michie Supp. 1960), to the extent it undertook to confer additional levying power on the county courts, is unconstitutional, and levies made by a county court in pursuance thereof were invalid. *Appalachian Power Co. v. County Court of Mercer County,* 118 S.E.2d 531 (W. Va. 1961).

The genesis of the problem resolved in the instant case is found in the 1932 Tax Limitation Amendment, which limits the taxing power of local tax-levying bodies and places all property located in the state into one of four classes. The amendment provides that the legislature shall make provision for increasing the maximum rates on the four classes of property in a particular taxing unit when approved by the voters of that taxing unit. At least sixty per cent of the qualified voters must favor such an increase, the increase shall not continue for more than three years at a time, and it shall never exceed by fifty per cent the maximum rates provided by the amendment. See *Warden v. County Court of Taylor County,* 116 W. Va. 695, 183 S.E. 39 (1935). The legislature subsequently enacted W. VA. CODE ch. 11, art. 8 (Michie 1955) to implement this amendment. See *Wilson v. County Court of Clay County,* 114 W. Va. 603, 175 S.E. 224 (1934).

The court in the instant case points out that when the Tax Limitation Amendment was adopted, W. VA. CONST. art. X, § 8 remained unchanged. This latter section concerns the bonded in-

debtedness of counties, cities, school districts and municipal corporations. Subsequently it was held in *Finlayson v. City of Shinnston,* 113 W. Va. 434, 168 S.E. 479 (1933), that the term "aggregate of taxes" as used in the Tax Limitation Amendment plainly and unequivocally means "all the taxes." Thus, levies made for the purpose of paying interest and creating sinking funds for bonded indebtedness created subsequent to its adoption are required to be within the maximum levies as provided by the amendment.

In 1950 the section concerning bonded indebtedness was amended to permit levies outside the limits of the Tax Limitation Amendment ". . . to pay the interest and principal on bonds issued by any *school district.* . . ." (Italics added.) The court in the instant case states that clearly section 8 constitutes a limitation on all other bonded indebtedness, making it necessary that the levies for such indebtedness fall within the limits fixed by the Tax Limitation Amendment.

In 1956 the voters declined to ratify a proposed amendment to W. VA. CONST. art. X, § 1, which was designed to liberalize levies for public school purposes. In 1957 the legislature proposed W. VA. CONST. art. X, § 10, which was ratified by the voters on November 4, 1958. This new section was designated the Better Schools Amendment, and, as pointed out by the court, the official ballot used in voting on the amendment was designated "Ballot on 'Better Schools Amendment'." Under this amendment a one hundred per cent increase in "the maximum rates authorized and allocated by law" for levies "for the support of public schools" is allowed, and the increase may be for a period of not more than five years when the proposed increased levy is approved by at least sixty per cent of the qualified voters "of the school district."

In 1959 two enabling acts were passed by the legislature pursuant to the Better Schools Amendment. The first of these, as interpreted by the court in the instant case, deals only with bonds issued for school purposes by school districts. W. VA. CODE ch. 13, art. 1, § 4 and 34 (Michie Supp. 1960). These sections generally follow the letter and spirit of the Better Schools Amendment, and specifically provide that taxes levied thereunder may be outside the limits fixed by the Tax Limitation Amendment.

The second enabling act is the one with which the instant case is concerned. W. VA. CODE ch. 13, art. 1, § 35 (Michie Supp. 1960).

This enactment purported to authorize levies outside the limits fixed by the Tax Limitation Amendment, whereby counties, magisterial districts and municipal corporations might pay off the principal and interest of their bonded indebtedness "now or hereafter contracted." The court noted at least two controlling reasons why the Better Schools Amendment can not be held to apply to these governmental units. The first is implicit in the title of the amendment itself. When the people of West Virginia voted on the amendment, the title of it undoubtedly conveyed to them that they were voting only for "better schools," a term which is certainly not synonymous with "better airports." Secondly, nowhere in the amendment is there an express reference to counties, magisterial districts or municipal corporations. Rather there are numerous phrases expressly refering to "school districts" and "public schools." Clearly, then, the amendment is clear and unambiguous. When this is evident, the court must apply and not interpret the amendment. Since this 1959 enactment clearly violates the West Virginia Constitution, it became the duty of the court to declare the provision unconstitutional and void. *State ex rel. Trent v. Sims,* 138 W. Va. 244, 77 S.E.2d 122 (1953).

The court did not find it necessary in its decision to detail the legislative history of the amendment as proposed at the 1957 session of the West Virginia Legislature. As initially approved and passed by the Senate, the language of the proposed amendment was obviously more strongly limited to public school levies. Journal of House of Delegates, W. Va. Legislature, 1957, page 768, Senate Joint Resolution No. 8. When amended by the House of Delegates, Journal, pages 1257-1259, some language more precisely indicating the school levy intent gave way to more general language, but the resolution remained the "Better Schools Amendment." The same intent was manifest in the act of the legislature submitting the constitutional amendment to the voters for ratification or rejection at the 1958 general election. W. Va. Acts 1957, ch. 17.

Additional levying powers and additional taxes may be urgently needed by the local governmental units, but such objectives must be accomplished within constitutional limits. The solution of the problem rests with the legislature and the people, not with the courts. If it is felt that excess levies for such projects as airports are necessary, the legislature may propose to the voters a constitutional amendment which will adequately allow these governmental

bodies to lay excess levies. Less than thirty years ago the voters constitutionally limited tax levies. Their disapproval of a liberalizing amendment in 1956 indicated a reluctance to vest additional tax levying powers in governmental units. In the instant case the court squarely points out that the voice of the people must be expressed through constitutional language before the legislature may effect such tax levy increases.

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Damages—Torts—Punitive Damages Denied Against Joint Tort-Feasors

P brought an action for libel against a newspaper publishing company and two individual defendants. During the course of the trial *P* offered evidence which shed light on the financial worth of the individual defendants, but *P* did not show the worth of the publishing company. Two jury verdicts were returned for *P,* one of $50,000 compensatory damages, and one of $50,000 punitive damages. *Held,* although in such a case *P* would ordinarily be able to recover punitive damages, when more than one party is made defendant, *P* waives his right to punitive damages. *Dunaway v. Troutt,* 339 S.W.2d 613 (Ark. 1960).

The principal case adheres to what is called a majority rule in deciding this case. This majority is said to hold that since a judgment for punitive damages against more than one party might actually result in greater punishment for one joint tort-feasor than another who is equally liable, plaintiff waives his right to punitive damages when he sues more than one party. The leading case adhering to this view apparently is *Washington Gas Light Co. v. Lansden,* 172 U.S. 534 (1898), which held in effect that there was no justice in allowing a recovery of punitive damages based on evidence of the ability to pay of only one of a number of defendants. However, the principal case failed to point out the Court's own reservations in the *Lansden* case when it was pointed out that the rule did not prevent the recovery of punitive damages in all cases involving joint defendants. The Court further said: "What the true rule is in such a case is not . . . certain." 172 U.S. 534, 553.

There are courts which unhesitatingly hold in accordance with the views expressed in the principal case, an example being the