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Statutory Interpretation--State Welfare Program--Federal Enclaves

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requisite to inspection of records is rejected, what rule should be adopted? Since these records have uses which are common to every member of the public, there is no reason to require the petitioner to exhibit a special interest. Accordingly, the best rule is to allow inspection by every member of the public without requiring any interest to be shown in the records. It is true that if the rule requiring a special interest were followed—and a newspaper publisher were deemed to have this interest—the public could be kept informed by the press on matters contained in the records. However, this would preclude any first-hand inspection. The public would be enlightened only after the information, which is subject to the publisher's interpretations, had been transmitted through the newspaper. Furthermore, there is no assurance that the press would even trouble to inspect the records. If unrestrained access is allowed, on the other hand, every member of the public will be given an opportunity to personally inspect the records and still the newspaper company will have the right to inspect the records for its news articles. The only plausible objection against this position is that an undue burden may be placed on the official in charge of the records due to excessive requests to inspect. Since, as a general rule, only interested persons will take the trouble and time to inspect the records, the possibilities of this happening are highly remote.

It may appear that adherence to the proposed rule will make inspection of these records an absolute right. However, as the writ of mandamus is not issued as a matter of right but is granted in the sound discretion of the court,[15] the court will still retain the means of regulating this right to inspect public records. The net effect, nevertheless, is that since the requirement of a legal or special interest will not have to be satisfied, more petitioners will be given the right to inspect these records for reasons beneficial to them.

Frank N. King, Jr.

STATUTORY INTERPRETATION—STATE WELFARE PROGRAM—FEDERAL ENCLAVES—Through cession[1] and purchases[2] the United States acquired land lying totally within the geographical boundaries of Arapahoe County, Colorado for use as a military installation (Fort Logan). The state granted the federal government "exclusive jurisdiction" but re-

15 United States Fid. & Guar. Co. v. Steele, 241 Ky. 848, 45 S.W.2d 469 (1932); Daniel v. Warren County Court, 4 Ky. (1 Bibb) 496 (1809).

1 Colo. Rev. Stat. Ann. § 142-1-22 (1953) (originally enacted in 1887).
2 Colo. Rev. Stat. Ann. § 142-1-24 (1953) (originally enacted in 1909).

tained the right to serve civil and criminal process within the area.[3] Forty-six years after federal acquisition a civilian resident of the Fort, Hester Donoho, applied to the County Welfare Board of Arapahoe County for relief under Colorado's "Aid to the Needy Disabled" statute.[4] The board denied the claim on the ground that Mrs. Donoho did not reside in the county. After conducting a hearing, the State Board of Public Welfare ordered the County Board to accept the application. The County Board protested, without success, to the district court. On appeal, Affirmed. Article 1, section 8, clause 17[5] of the federal constitution does not preclude a state from conferring benefits upon inhabitants of federal military reservations. Furthermore, the county is not "precluded by the laws of Colorado from paying benefits to the applicant." *Board of County Comm'rs v. Donoho*, 356 P.2d 267 (Colo. 1960).

The Federal Issue

The Colorado court, after commenting that "these are questions of first impression in Colorado and elsewhere,"[6] dealt at great length with clause 17. Although this comment is primarily directed toward the question of state statutory interpretation, a brief discussion of clause 17 is necessitated by the fact that the court, after considering the relevance of the clause, decided the local issue "in the light of *all* the foregoing. . . ." (Emphasis added.)[7]

Clause 17 empowers Congress "to exercise exclusive legislation in all cases whatsoever . . . over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts. . . ." This also applies to areas ceded to the United States.[8] Clause 17 has been applied strictly[9] except in three situations: (1) where the state law in force at the time of federal acquisition must continue in order to fill the legal vacuum that would otherwise exist;[10] (2) where Congress has re-vested certain powers in the state;[11] and (3) where the cession is limited by its own terms.[12] The decision of the Colorado court suggests a fourth exception;

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[3] This reservation is found almost universally in statutes consenting to federal acquisition of property within a state. Lowe v. Lowe, 150 Md. 592, 133 Atl. 729 (1926).

[4] Colo. Rev. Stat. Ann. §§ 119-1-1 through 119-5-4 (1953).

[5] Hereinafter referred to as clause 17.

[6] Board of County Comm'rs v. Donoho, 356 P.2d 267, 270 (Colo. 1960).

[7] *Id.* at 274.

[8] See Annot., 74 L. Ed. 761, 766 (1929).

[9] Pacific Coast Dairy v. Department of Agriculture of Cal., 318 U.S. 285 (1943).

[10] *Ibid.*, James Stewart & Co. v. Sadrakula, 309 U.S. 94 (1940).

[11] Offutt Housing Co. v. County of Sarpy, 351 U.S. 253, 256-57 (1956).

[12] James v. Dravo Contracting Co., 302 U.S. 134, 142 (1937).

where a state confers a *benefit* on an inhabitant of a federal area.[13] Its reasoning is not convincing. It would seem that its conclusion that clause 17 was intended to protect federal areas from *regulatory action only*[14] is rebutted by a quotation from Madison found within the opinion: "Nor would it be proper, for the places . . . to be in any degree dependent on a particular [state]. . . ."[15] The court's reliance on a federal statute[16] prohibiting states from making citizenship a prerequisite to the payment of welfare benefits[17] evidences a failure to recognize any distinction between citizenship and residence.[18] Its inference of constitutionality from the fact that the legislatures of other states have opened their divorce courts[19] and granted suffrage rights[20] to residents of federal enclaves suggests that it would allow legislators to be the sole judges of constitutionality. Furthermore, the court seems to treat a dissenting opinion from the Supreme Court as compelling authority.[21]

The Local Issue

As intimated previously, the Colorado court relied on the foregoing reasoning to sustain its result not only in regard to the constitutional issue, but in regard also to the non-federal question. Except for the showing of a legislative tendency to confer certain rights on residents of federal enclaves, there is nothing in the discussion of clause 17 that would indicate an intent on the part of the Colorado legislature to benefit the inhabitants of Fort Logan. While this "legislative tendency" may reflect the policy of a few states to benefit residents of military reservations, that policy has always been effectuated by a *specific* provision.[22] It would seem that if

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[13] But *cf.* Opinion of the Justices, 42 Mass. (1 Met.) 580, 582 (1841); McMahon v. Polk, 10 S.D. 296, 73 N.W. 77 (1897) (benefits of schooling and right to vote).

[14] Board of County Comm'rs v. Donoho, 356 P.2d 267, 271 (Colo. 1960).

[15] *Ibid.*

[16] 64 Stat. 555 (1950), as amended, 67 Stat. 631 (1953), as amended, 70 Stat. 850 (1956), 42 U.S.C. § 1352 (b)(2) (1958).

[17] Board of County Comm'rs v. Donoho, 356 P.2d 267, 273 (Colo. 1960).

[18] *Cf.* Travis v. Yale & Towne Mfg. Co., 252 U.S. 60, 78 (1920); Jeffcott v. Donovan, 135 F.2d 213, 214 (9th Cir. 1943). The Colorado court would have stood on firmer ground had it cited 64 Stat. 555 (1950), as amended, 67 Stat. 631 (1953), as amended, 70 Stat. 850 (1956), 42 U.S.C. § 1352 (b)(1) (1958), which does set up certain residence requirements, but it would still have to face the problem of defining residence in these circumstances.

[19] Ga. Const. art. 6, § XIV, ¶ I (1945); Kan. Gen. Stat. Ann. ch. 60, § 1502 (1949); Ky. Rev. Stat. § 403.035 (1960); Md. Ann. Code Gen. Laws art. 16, § 23 (1957).

[20] Board of County Comm'rs v. Donoho, 356 P.2d. 267, 273 (Colo. 1960).

[21] Mr. Justice Frankfurter in Pacific Coast Dairy v. Department of Agriculture of Cal., 318 U.S. 285, 296 (1943).

[22] See statutes cited note 19 *supra.*

Colorado were disposed to adopt a similar policy, it too would have said so specifically.

The controlling statute[23] in the *Donoho* case provides that the "county department of public welfare shall be charged with the administration of all forms of public assistance *in the county. . . .*" (Emphasis added.)[24] Although the statute makes no provision for federal enclaves, the court held that Fort Logan was "in the county" and that Mrs. Donoho was a resident of the county for purposes of the statute. Its statement of the issue may have influenced its ultimate result: "whether the County of Arapahoe *is precluded* by the laws of Colorado from paying benefits to the applicant." (Emphasis added.)[25] The question is leading and misleading, for it assumes that an administrative agency[26] has inherent powers when in fact it may exercise only those powers delegated to it.[27] It would seem that "whether the county is empowered to pay benefits" would be more nearly accurate than "whether it is precluded from paying benefits." It should be noted that the issue involves statutory interpretation exclusively.[28]

"The term 'county' may have different meanings according to the relation in which it is used."[29] The Colorado statute could have been intended either to encompass the entire land area originally designated as the county, or to include only that part of this area which is not under federal control. It is arguable that Colo. Rev. Stat. Ann. section 34-1-4, which sets out certain physical boundaries to be established "as a county" (Arapahoe), indicates the Colorado legislature—to be consistent throughout its statutes—must have intended to adopt the "total land area" approach.[30] On the other hand, it could be argued that an enactment establishing counties is sui generis, and is not readily comparable to any other statutory provision. Further-

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[23] Kentucky has a similar provision: Ky. Rev. Stat. § 205.200 (1960).

[24] Colo. Rev. Stat. Ann. § 119-1-13 (1953).

[25] Board of County Comm'rs v. Donoho, 356 P.2d 267, 273 (Colo. 1960).

[26] The County Commissioners were here acting as an administrative agency, the County Welfare Board.

[27] Reliance Mfg. Co. v. Board of Prison Comm'rs, 161 Ky. 135, 142, 170 S.W. 941, 943 (1914); Vermejo Club v. French, 43 N.M. 45, —, 85 P.2d 90, 93 (1938); Railroad Comm'n v. Highway Ins. Underwriters, 124 S.W.2d 413 (Tex. Civ. App. 1939).

[28] It appears that the Colorado court confused this issue with the constitutional issue.

[29] Greb. v. King County, 60 P.2d 690, 692 (Wash. 1936).

[30] *Cf.* Howard v. Comm'rs of the Sinking Fund, 344 U.S. 624, 626-627 (1953), in which the Supreme Court allowed city annexation of a federal area. The case lends little aid in resolving the problem of interpretation here, for the intent of the city was not in issue. Furthermore, taxation was envolved, and it would seem that the intent to tax wherever possible could be more readily inferred than the intent to pay out money.

more, consistency with this enactment (Colo. Rev. Stat. Ann. section 34-1-4(1953) has been abandoned in other statutes of the state. Colo. Rev. Stat. Ann. section 62-1-1 (1953), for example, is designed to introduce fish and wildlife regulations "within this state," and, necessarily, within the counties of the state, but if this statute were construed to include federal enclaves, it would be to that extent unenforceable.[31]

Undoubtedly there are instances in which the legislative use of the word "county", without more, clearly was meant to designate both federal and state lands. A state statute enacted in answer to a congressional grant of regulatory power over federal lands would probably fall within this category. Correct interpretation depends upon an understanding of the circumstances under which a given statute was passed and upon the context in which the word "county" was used.

It has been held that the word "counties" used in a home rule statute was not intended to include the towns within these counties.[32] It would seem that, absent some express provision to the contrary,[33] a federal enclave would no more likely be considered part of a county than would be a town, which shares with the county the distinction of being a creature of the state.[34] Similarly, statutes requiring residence have been held to preclude civilian inhabitants of federal enclaves from utilizing state courts for divorce proceedings.[34] However, the great bulk of the case law in this area is not helpful in the present case because of the courts' failure to delineate and separate the statutory and constitutional issues.

It seems unreasonable to impute to the Colorado legislature an intent to reach into the pockets of its constituents in order to fill the pockets of individuals whose property it may not tax, and whose welfare does not contribute to nor detract from the general welfare of the state. The welfare payments are supported by a property tax,[35] and hence Mrs. Donoho is getting a "free ride." As a matter of general policy it could be argued that the state is in a better position to determine the necessities of such persons as Mrs. Donoho, because of its knowledge of local conditions. On the other hand, it

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[31] Hunt v. United States, 278 U.S. 96 (1928).

[32] Robinson v. Broome County, 276 App. Div. 69, 93 N.Y. Supp. 662 (1940); *contra*, State *ex rel.* Ranz v. City of Youngstown, 140 Ohio St. 477, 45 N.E. 2d 767 (1942).

[33] See statutes cited note 19 *supra.*

[34] State *ex rel.* Great Falls Housing Authority v. City of Great Falls, 110 Mont. 318, —, 100 P.2d 915, 920 (1940).

[35] Chaney v. Chaney, 53 N.M. 66, —, 201 P.2d 782, 784 (1949); Lowe v. Lowe, 150 Md. 592, —, 133 Atl. 721, 733 (1926).

[36] Colo. Rev. Stat. Ann. § 119-3-6 (1953).

could be argued that conditions in a federal enclave, particularly a military post, are completely foreign to civil authorities, and should be the responsibility of the federal government. Since a state statute is being interpreted, general policy considerations must fall to state policies. Certainly one policy of a state is to conserve its funds—to use them only when the interests of its taxpayers can be served. The decision of the Colorado court is contrary to this policy.

CONCLUSION

In view of (1) the number of cases in which residents of ceded areas have been denied rights common to residents of the state in which the area is located, on both federal and non-federal grounds, (2) the adoption of specific provisions to effectuate a contrary policy found necessary in other states, (3) the absence of an avowed state policy which would be served by a strict geographical definition of the words "in the county," and (4) the unreasonableness of imputing an intent to the Colorado legislature to spend state money for persons not otherwise subject to its laws, it is submitted that the Colorado court erred in its interpretation of the statute in question.

Burke B. Terrell

TORTS—INFANTS—RIGHT OF ACTION IN NEGLIGENCE PERMITTED BY UNEMANCIPATED INFANT AGAINST HIS UNEMANCIPATED BROTHER—Plaintiff, a thirteen-year-old infant, was injured in a collision with another car while riding in a car owned and operated by his seventeen-year-old brother. An action was filed by plaintiff's next friend against the drivers of both vehicles as co-defendants. The plaintiff alleged that the gross negligence of his brother and the ordinary negligence of the other driver were the proximate causes of his injuries. The defendant-brother moved to dismiss on the ground that there can be no recovery in a tort action between unemancipated infant brothers. The circuit court continued the case against the co-defendant, but dismissed the action against the brother. From this ruling, the plaintiff appealed. *Held*: Reversed and remanded. An unemancipated infant can maintain an action against his unemancipated infant brother to recover damages for personal injuries resulting from the latter's negligence. *Midkiff v. Midkiff*, 113 S.E.2d 875 (Va. 1960).

The defendant argued that there is a common-law immunity barring recovery in such actions. The court answered by stating that it could find no cases supporting the defendant's argument, but to the contrary, that it is well settled that an infant is liable for his