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Injunction - Actions for Injunctions - Taxpayer's Right to Enjoin Public Official

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sounding in tort may not be maintained between spouses. The common law reason for preventing such suits has been abrogated by the statutes, and the reasoning of courts upholding the common law view seem to be lacking a sound foundation. Where jurisdictions have already allowed the wife to sue her husband in tort, it cannot logically be held that the husband does not have the same right,²¹ unless the statute involved clearly denies him such right.

RICHARD A. RAHLFS

INJUNCTION — ACTIONS FOR INJUNCTIONS — TAXPAYER'S RIGHT TO ENJOIN PUBLIC OFFICIAL. — Plaintiff, a resident citizen taxpayer of the City of Los Angeles, brought this action to obtain an injunction against defendant as Chief of Police of the City of Los Angeles, to enjoin him from the illegal expenditure of public funds to conduct police surveillance by means of hidden microphones. Defendant had been installing such instruments in places of occupancy without the consent or knowledge of the property owners. The Supreme Court of California *held*, two justices dissenting, that a taxpayer can restrain a public official from expending tax money for activities which violate federal and state constitutional provisions.¹ *Wirin v. Parker*, 313 P.2d 844 (Cal. 1957).

The illegal expenditure of public funds can be restrained by a taxpayer under California law.² A taxpayer has a right to sue, when public money raised by taxation is being illegally spent, based upon his equitable interest in such funds and his liability to replenish the treasury when they are misappropriated.³ This right will lie only where the funds being misappropriated have been raised by taxation. The taxpayer has no cause of action when the funds have been derived from the sale of municipal bonds for public improvements.⁴

In the absence of statutes some jurisdictions⁵ hold that unless the taxpayer can show that he will suffer a special injury differing from that suffered by the public at large he cannot maintain this type of an action. Other jurisdictions⁶ allow the taxpayer to bring an action even though he cannot show a special injury to himself.

The fact that the illegal expenditure may actually be a saving of tax funds is of no consequence, nor does it make a difference if the amount of the

21. *Abbott v. Abbott*, 67 Me. 304, 308 (1877) (dictum); *McKinney v. McKinney*, 59 Wyo. 204, 135 P.2d 940, 949 (1943) (dictum); *Waite v. Pierce*, 191 Wis. 202, 209 N.W. 475, 481 (1926) (dissenting opinion).

1. The court found that defendant's action is in violation of the 4th and 14th amendments to the United States Constitution and of art. 1, § 19 of the California Constitution which prohibits illegal searches and seizures.

2. Cal. Code of Civil Procedures, Title 7, § 526a. An action restraining a public officer from illegal expenditure of public funds can be maintained by a taxpayer in North Dakota, if he can show irreparable injuries and no adequate remedy at law. See *Viestenz v. Arthur Tp.*, 78 N.D. 1029, 54 N.W.2d 572 (1952).

3. *Fergus v. Russell*, 270 Ill. 304, 110 N.E. 130 (1915); *Jones v. O'Connell*, 266 Ill. 443, 107 N.E. 731 (1914).

4. *Price v. Mattoon*, 364 Ill. 512, 4 N.E.2d 850 (1936).

5. *Ibid.*; *Walldorf v. Chattanooga*, 192 Tenn. 86, 237 S.W.2d 939 (1951).

6. *Terry v. Bender*, 143 Cal. App.2d 198, 300 P.2d 119 (1956); *Barge v. Camp*, 209 Ga. 38, 70 S.E.2d 360, 364 (1952) (dictum).

expenditure is large or small.⁷ This type of an action is not an interference with the discretionary powers of an officer when it prevents him from doing that which which he has no legal right to do.⁸

Generally the individual has no remedy where evidence is obtained illegally by police officers since illegally obtained evidence is admissible in the majority of state courts.⁹ However, one effect of the decision in the instant case is to provide an indirect remedy by denying law enforcement agencies the funds to gather such illegal evidence.¹⁰

WILLIAM J. MCMENAMY

MUNICIPAL CORPORATIONS — REVIEW — TRIAL DE NOVO IN DISTRICT COURT BY VIRTUE OF APPEAL IS NOT THE EXERCISE OF ORIGINAL JURISDICTION. — Defendant was found guilty in police magistrate's court of violating a city ordinance. The District Court dismissed defendant's appeal on the grounds that a trial de novo in the district court, as prescribed by statute, is the exercise of original jurisdiction,¹ and because no other method of appellate procedure is provided for with respect to the police magistrate's court. The Supreme Court of North Dakota, *held*, that a trial anew in a district court is not the exercise of original jurisdiction by the district court and therefore, is not violative of the police magistrate's original jurisdiction. *Minot v. Davis*, 84 N.W.2d 891 (N.D. 1957).

Despite the fact that the court in the instant case stated their holding as settled law in this state, the constitutional and statutory provisions concerning an appeal from police magistrate's court appear to be in conflict. Article 113² of the North Dakota Constitution provides that police magistrates shall have jurisdiction of all cases arising under the ordinances of cities. The legislature has conferred upon police magistrates exclusive jurisdiction in all cases arising under ordinances of cities.³ Thus, it would appear that the police magistrate has exclusive original jurisdiction over the violation of city ordinances.

In regards to appeal, the constitution⁴ provides that the district court shall have original jurisdiction except as otherwise provided for in the constitution, and that appeals shall lie from the county, justice of peace, and police magistrate's court in accord with such regulations as the law will prescribe.⁵ The legislature in section 33-1234 of the code⁶ provides that appeal may be had from a justice of the peace or a police magistrate sitting as a justice of the peace in criminal matters. Section 40-1819 of the code⁷ provides

7. See *Trickey v. Long Beach*, 101 Cal. App.2d 416, 226 P.2d 694 (1951); *Brown v. Boyd*, 33 Cal. App.2d 416, 91 P.2d 926 (1939); *Crowe v. Boyle*, 184 Cal. 117, 193 Pac. 111 (1920); *Osburn v. Stone*, 170 Cal. 480, 150 Pac. 367 (1915).

8. *Viestenz v. Arthur Tp.*, 78 N.D. 1029, 54 N.W.2d 572 (1952).

9. 8 Wigmore, *Evidence* § 2183 (3d ed., 1940). Technically the individual has a right of action in tort against the law enforcement officer who obtains the evidence illegally, however, this remedy is illusory. See *Nueslein v. District of Columbia*, 115 F.2d 690, 695 (D.C. Cir. 1940).

10. See *Wirin v. Horrall*, 85 Cal. App.2d 497, 193 P.2d 470 (1948).

1. Under § 113 of the N.D. Const. and § 40-1801 of the N.D. Rev. Code (1943) exclusive original jurisdiction over the violation of city ordinances is vested in the police magistrate. (Emphasis added)

2. N.D. Const. art. IV, § 113.

3. N.D. Rev. Code § 40-1801 (1943).

4. N.D. Const. art. IV, § 103.

5. N.D. Const. art. IV, § 114.

6. N.D. Rev. Code § 33-1234 (1953 Supp.).

7. N.D. Sess. Laws 1955, c. 266, § 1.