Michigan Law Review

Volume 42 | Issue 2

1943

MUNICIPAL CORPORATIONS - CONSTITUTIONAL LAW-EXEMPTION OF HOMESTEADS FROM TAXATION FOR STATE PURPOSES

Hobart Taylor, Jr.
University of Michigan Law School

MUNICIPAL CORPORATIONS — CONSTITUTIONAL LAW — EXEMPTION OF HOMESTEADS FROM TAXATION FOR STATE PURPOSES — A taxpayer brought a class suit in his own name for the use and benefit of himself and other taxpayers [1] against the city of Wichita Falls to have an ordinance exempting from all taxes $3,000 of the assessed taxable values of all residence homesteads of the city declared void, and for a permanent injunction restraining the city from allowing such exemption and issuing certificates therefor to owners of homesteads. The ordinance had been passed under authority of a constitutional amendment permitting a similar exemption for "state purposes." [2] *Held*, a homestead is taxable under the constitution for all purposes other than state purposes and taxing units other than the state gain no authority to exempt a homestead from local taxation by virtue of the amendment of 1933. *City of Wichita Falls v. Cooper*, (Tex. Civ. App. 1943) 170 S.W. 777.

Today most of our state constitutions contain provisions requiring uniformity of tax rates and property valuation for tax purposes.[3] However, these constitutions also provide for total or partial exemption from taxation of certain classes of taxpayers such as municipal corporations, religious bodies, public utilities and institutions of learning. Quite naturally, persons not included in the precise letter of these clauses and interested in obtaining immunity from taxation have attempted to secure interpretations liberal enough to make them members of one of the favored classes. But their efforts have met with only limited success, either because the constitution expressly provides that the enumerated exemptions shall be exclusive [4] or because of a general judicial policy of strict construction of ex-

[1] The right of taxpayers to bring such representative suits has long been recognized. Corollary to this is the proposition that, in the absence of fraud or collusion, the judgment rendered is res judicata as to all other taxpayers who then live or may reside in the district. Harmon v. Auditor of Public Accounts, 22 Ill. App. 129 (1886), affd. 123 Ill. 122, 13 N. E. 161 (1887); Stallcup v. City of Tacoma, 13 Wash. 141, 42 P. 541 (1895); Luhrs v. City of Phoenix, 33 Ariz. 156, 262 P. 1002 (1928); Parsons v. Arnold, 235 Ky. 600, 31 S. W. (2d) 928 (1930); Hovey v. Shepherd, 105 Tex. 237, 147 S. W. 224 (1912). And see 6 MCQUILLEN, MUNICIPAL CORPORATIONS, 2d rev. ed., § 2770 (1937); and cases cited 34 C. J. 1028 (1924).

[2] Texas Constitution, art. 8, § 1-a (amendment of 1933).

[3] Fewer states have constitutional or statutory provisions requiring uniformity of tax rates than have regulations governing the valuation of property. It has been suggested that the reason for the more limited number of states possessing the additional restrictive provision is that such discrimination is generally considered impracticable and patently unjust. JENSEN, PROPERTY TAXATION IN THE UNITED STATES 161 (1931). However, such requirements may be found in Nevada, South Carolina, Indiana, Washington, Oregon and Utah. Kentucky, Arkansas and Alabama represent another group of states which expressly require uniformity of rate as to certain specific kinds of property such as that of private corporations. But usually the requirement is simply that taxation be proportioned to the value of the property. Such provisions, of course, force the adoption of a uniform rate. Representative of this group are Texas, Illinois, Michigan, New Jersey, Ohio, and North Carolina. See 88 UNIV. PA. L. REV. 728 at 732 (1940).

[4] Representative of this group are Texas, Arkansas, Georgia and Colorado. The rule forbidding exemptions applies to municipal as well as state taxes. City of Austin v. Austin Gas-Light & Coal Co., 69 Tex. 180, 7 S. W. 200 (1887).

emptions.[5] Thus property of the Young Men's Christian Association, used exclusively for the purpose of furthering religious work, does not come within the exemption of "actual places of public worship." [6] Nor are uncompleted buildings not yet ready for use covered by an exemption of the "operative property" of a public utility.[7] A house and lot owned by a church is not exempt from taxes although the rental is used solely for religious purposes.[8] Nor is an exemption of the property of honorably discharged soldiers applicable to the entire community property of a married soldier and his wife, but only to his one-half undivided interest therein.[9] And an exemption of buildings used for public worship does not relieve from taxation a building used exclusively by a church when it is owned by a private individual and leased to the religious body at a regular rental.[10] In the principal case, an attempt was made to construe a $3,000 exemption of homesteads "for state purposes" [11] so as to include taxes levied by subsidiary taxing units of the state, such as municipalities. The rejection of this argument by the Texas court cannot be regarded as unexpected, as it had intimated in a prior decision that the passage of the self-executing constitutional provision did not in itself permit homestead owners to claim immunity from local taxation.[12] The enunciation by the court of the correlative principle that the

[5] Representative of this group are Illinois, West Virginia and Indiana. For discussion, see 2 COOLEY, TAXATION, 4th (Nichols) ed., § 661 (1924). Cf. Wheeler v. Weightman, 96 Kan. 50, 149 P. 977 (1916). A distinction is sometimes drawn between exemption and abatement on the basis that the former is an immunity that prevents any assessment in the first instance, while the latter does not relieve the property of its share of the burden of taxation until after assessment has been made and the tax levied. In legal effect, however, the difference would seem of little consequence. State ex rel. Richards v. Armstrong, 17 Utah 166, 53 P. 981 (1898). To the effect that commutation (payment of a sum in advance for the privilege of exemption) of taxes is forbidden by the "equal and uniform" clause, see Millers' Mutual Fire Ins. Co. v. City of Austin, (Tex. Civ. App. 1916) 210 S. W. 825. *Contra*: Illinois Central R. R. v. McLean County, 17 Ill. 291 (1855).

[6] City of San Antonio v. Young Men's Christian Association, (Tex. Civ. App. 1926) 285 S. W. 844.

[7] Southern California Telephone Co. v. Los Angeles County, 212 Cal. 121, 298 P. 9 (1931).

[8] State v. Union Congregational Church, 173 Minn. 40, 216 N. W. 326 (1927).

[9] Oglesby v. Poage, 45 Ariz. 23, 40 P. (2d) 90 (1935).

[10] City of Dallas v. Cochran, (Tex. Civ. App. 1914) 166 S. W. 32.

[11] "Three thousand dollars of the assessed taxable value of all residence homesteads as now defined by law shall be exempt from all taxation for all state purposes. . . ." Texas Constitution, Art. 8, § 1-a (amendment of 1933).

[12] Graham v. City of Fort Worth, (Tex. Civ. App. 1934) 75 S. W. (2d) 930. In that case a homestead owner sought to enjoin the city from taxing his homestead for city purposes after the amendment of 1933, contending that this amendment exempted his property from local taxation when read in conjunction with the city charter which provided that "All property exempt from taxation by the Constitution and laws of the State of Texas shall be exempt from taxation by the city of Fort Worth." Charter of Fort Worth, Texas, c. 25, § 8. Held, the subject matter of the amendment relates wholly to taxation for state purposes, a matter entirely distinct from city taxes, and hence the meaning and effect of the charter (which was not interpreted as granting an exemption to persons of plaintiff's class at the time the amendment was adopted) is not changed.

adoption of the amendment did not give the local taxing units themselves authority to absolve homestead owners from taxation would seem to close the last loophole by means of which Texas homestead owners could escape the onus of local taxation.[13]

Hobart Taylor, Jr.

[13] "The effect of the holding in the Graham case, as we understand it, is that notwithstanding the Constitutional provision, the city still had the right to tax the homestead for city purposes, and we may add, that not only did it have the right to do so, but under the general principles of the Constitution, it was obligated to do so upon an equal and uniform basis, with all other property." 170 S. W. at 781.