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*The Work of the Louisiana Supreme Court for the
1950-1951 Term*

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Public Law: Taxation

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to the one requirement of certificate of public convenience and necessity which, he argued, negatives the right or the power to grant a franchise. The court, after reviewing the pertinent provisions of Act 169 of 1898 and Act 334 of 1946 properly concluded that the city did have authority under those acts to enact ordinances to grant franchises.

Defendant next contended that the ordinance was an unconstitutional discrimination between the Baton Rouge Bus Company and others in a like situation. In rejecting this contention the court took cognizance of the chaotic condition of transportation which in the interests of the public impelled the city council to resort to one integrated bus system. Such action, said the court, "cannot be said to have been arbitrary and capricious."

TAXATION

*Charles A. Reynard**

In the course of discussing the work of the court during the 1949-1950 term a year ago,¹ the writer called attention to a tax case² in which it appeared that an issue of due process of law had been mistakenly treated as one involving equal protection—a mistake which did not affect the result. In that case the taxpayer, a pipeline company, was protesting the inclusion of its property within the limits of a levee district when adjacent lands were excluded—both being within the spillway of the district. Although the taxpayer raised the objection of equal protection of the law, it was apparent that the real onus of its complaint, if any, was the manner in which the boundaries of the district were defined. This gave rise to the question whether the act creating the district was such a legislative "gerrymander" as to take the taxpayer's money without due process of law or whether sufficient benefit would be derived from the creation of the district to justify the inclusion of the taxpayer's property within it. During the term just past the identical question was raised in *Bahry v. West Ascension Consolidated Drainage District*,³ this time so clearly that it was recognized and treated as a due process question.

Plaintiffs in the *Bahry* case were taxpayers residing within

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1. 11 LOUISIANA LAW REVIEW 214 (1951).

2. *Interstate Oil Pipeline Co. v. Gullbeau*, 217 La. 160, 46 So. 2d 113 (1950).

3. 218 La. 1028, 51 So. 2d 614 (1951).

the City of Donaldsonville who sought to restrain the levy of taxes by the defendant drainage district of which the city was only a part, on the ground that the city was already served by a drainage system installed some years ago at considerable expense, and hence contended that the proposed system of drainage would confer no benefit upon their property. In the face of conflicting testimony on the subject of potential benefit to be conferred the trial court dismissed the case and the supreme court affirmed, invoking traditional doctrines of due process of law.⁴

The only other tax case of significance during the term, *Giamalva v. Cooper, Collector of Revenue*,⁵ represents a conquest of reality over conceptualism. It was a taxpayer's suit to recover taxes paid on a slot machine pursuant to the provisions of Act 6 of 1948.⁶ Plaintiff contended that the statute offended the constitutional exhortation that "Gambling is a vice and the Legislature shall pass laws to suppress it,"⁷ by purporting to legalize the operation of gambling devices since the tax exaction was denominated a "license." A primary difficulty with this contention is found in the legislative act itself where it is clearly stated that "Payment of the license tax imposed by this subsection shall not be held to legalize the operation of any machine or device defined herein which is prohibited by law." It was on the strength of this legislative disclaimer alone that the trial court dismissed the case. The supreme court affirmed and went on to point out the "difference between licenses or privileges to engage in certain businesses or pursuits which are subject to regulation under the police power, and a license or excise tax levied solely for revenue under the taxing power of the government,"⁸ a distinction which is firmly rooted in our jurisprudence, both state and federal. By refusing to be dissuaded by semantic difficulties

4. "It is the established jurisprudence that the determination of the property to be included within a drainage district is a matter within the sound discretion of the Police Jury, on whom the Legislature has conferred the power of creating the district, and that the courts may not interfere with the exercise of discretion by that body in the absence of arbitrary action and plain abuse—for it is only in such cases that the action can be rightfully characterized as so oppressive as to be confiscatory and, thus, violative of the Fourteenth Amendment of the Federal Constitution. . . . The benefit will, of course, be greater to those properties nearer the canals but some benefit, however slight, will be derived by all of the property. This suffices, as it is not the function of the judiciary to measure the benefit; our role is to determine whether the inclusion of the land is confiscatory." 218 La. 1034, 51 So. 2d 616 (1951).

5. 217 La. 979, 47 So. 2d 790 (1950).

6. La. R.S. (1950) 47:375.

7. La. Const. 1921, Art. XIX, § 8.

8. 217 La. 979, 985, 47 So. 2d 790, 792 (1950).

the court has certainly reached a sound conclusion; any other result would shock the conscience of a law-abiding taxpaying public. Taxation has long been regarded as the individual's contribution to the cost of maintaining government.⁹ Enlightened legislators have traditionally sought to apportion the exaction in accordance with the contributor's ability to pay. Tax legislation of the type involved here represents a further desirable step by imposing a heavier tax burden on those persons whose illegal activities increase the ever-mounting cost of governmental operation.

9. The classical definition by Cooley provides: "Taxes are the enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty for the support of government and for all public needs." Cooley, *The Law of Taxation* 61, § 1 (4 ed. 1924).