

Louisiana Law Review

Volume 32 | Number 2

The Work of the Louisiana Appellate Courts for the

1970-1971 Term: A Symposium

February 1972

Public Law: State and Local Taxation

Melvin G. Dakin

Repository Citation

Melvin G. Dakin, *Public Law: State and Local Taxation*, 32 La. L. Rev. (1972)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol32/iss2/21>

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

ment has been rendered and appeal taken, the Secretary is to print the name of the successful district court litigant upon the ballot, thus mooting the appeal, if no decision on appeal has been had prior to the voting period. Noting that parties would be deprived of any legislatively authorized procedure to contest an election if invalidated, and further noting that election matters are beyond control of the judiciary in the absence of special authority, the court dismissed the appeal. It thus treated as a political question the legislative decision to make a district court judgment final where necessary to provide absentee ballots an appropriate period before an election.

STATE AND LOCAL TAXATION

Melvin G. Dakin*

ASSESSMENTS

Municipalities are authorized by the legislature to "levy and collect local or special assessments on the real property abutting the improvements . . . sufficient in amount to defray the total cost of the works. . . ." In *Williams v. City of Shreveport*,² the municipality had assessed the cost of improvements to a street entirely upon the abutting privately owned property, although city property as well as privately owned property abutted thereon. This was deemed in accordance with its authority to levy an assessment sufficient to cover the *total* cost of the improvement. A court of appeal rejected the underlying argument that public property, because exempt from taxation, was also exempt from assessment; as to abutting public property, the city must pay an assessment thereon as an agent of the entire body of citizens, who are assumed to that extent to benefit. The fact that the public property consisted of esplanades along the middle of the boulevard was not deemed to change the result, since they were not part of the street and as such occupied the position of ordinary abutting property.

In *Bussie v. Long*,³ our supreme court has now approved a "public" action⁴ for a writ of mandamus directing the tax com-

* Professor of Law, Louisiana State University.

1. LA. R.S. 33:3301 (1950).

2. 241 So.2d 598 (La. App. 2d Cir. 1970).

3. 257 La. 623, 243 So.2d (1971).

4. See L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 483-86 (1965) for analysis and defense of this development.

mission to establish actual cash value of taxable property in the state and fix the percentage of such value upon which ad valorem taxes must be assessed and collected. Rejecting the defense that such an order would trench upon the discretion of the commission, the court held that while the establishment of actual cash value of property involves a judgment factor, as does fixing percentage of the value appropriate for a uniform tax base, nonetheless, the statutory duty to establish actual cash value and fix such percentage is mandatory, direct, and positive. The court therefore concluded that the duties ordered to be carried out were ministerial duties imposed by law and subject to judicial mandate within the meaning of article 3863 of the Code of Civil Procedure. A dissenting Justice would have limited the taxpayers to the procedure permitting one who has filed a sworn list of his property to test, in an appropriate court, the correctness or legality of any assessment made against the property listed on such return.⁵ It seems apparent, however, that this private remedy would be relatively useless in accomplishing state-wide equalization of property valuation.

That adjudication of property to the state for unpaid taxes may involve unanticipated consequences was demonstrated in *St. Paul Fire & Marine Insurance Co. v. Asset Realization Co.*⁶ During the period when title to property was in the state, a servitude over the property was granted to the police jury of Jefferson Parish; when a certificate of redemption was thereafter issued to the taxpayer-owner, the certificate duly recited this fact.⁷ Subsequently, an insurer was called upon to pay damages for partial eviction upon the servitude being exercised; it successfully sought indemnification and the indemnitor in turn sought payment from the parish. The court held that, since the indemnitor bought under a certificate of redemption clearly reciting the servitude granted, it was entitled to no relief from the parish; whether the state had authority to grant a servitude over property while adjudicated to the state for unpaid taxes was left in abeyance.

SALES AND USE TAXES

In enacting a use tax to supplement the sales tax, the legis-

5. LA. R.S. 47:1998 (1950).

6. 237 So.2d 714 (La. App. 4th Cir. 1970).

7. The parish cited LA. R.S. 41:91, 92, 94, 1171, 1172 (1950) as authority for the granting.

lature levied the tax upon the "cost price of each item" without indicating at what point in time the cost price was to be calculated.⁸ In *Mouton v. Klatex*⁹ a court of appeal determined that this left open the issue as to whether *cost price* included cost of transportation. The court held that such transportation costs were included, rejecting an argument based on a Florida statute using the language "the cost price as of the moment of purchase . . ."¹⁰ Without such language in our statute, the court concluded, it was not plausible to assume that cost price was the cost price arranged for out of the state separate and apart from transportation costs. It seems equally plausible to argue that imposition of sales tax upon the sales price of an article would include the cost of transporting the article to the point of sale, but in *Dunham Rentals Inc. v. West Feliciana Parish School Board*¹¹ a court of appeal rejected a levy of parish sales tax upon the transportation cost of gravel on the ground that "sales of services" did not specifically include sales of transportation services. Under *Mouton*, had the parish levied sales tax upon the sales price of the commodity rather than separately upon the sale of the transportation services, presumably it would have been upheld.

In *St. John the Baptist School Board v. Marbury-Pattillo Construction Co.*,¹² a contractor was persuaded after informal negotiations that he was liable for school board sales and use taxes on materials utilized in the construction of a grain terminal. The school board, not acquiescing in the amount of taxes voluntarily paid, assessed additional tax on an estimated base and filed suit for this amount, plus interest and attorneys' fees. A court of appeal held that it was error on the part of the trial court to accept the estimated base for the tax since it consisted of the entire amount of the contract plus an additional arbitrary sum added to cover on-site equipment. Noting that the tax was levied only on tangible personal property purchased, used or consumed in the parish, the court re-examined the evidence, disallowed the on-site equipment, deducted 20% as allowance for profit and overhead, and estimated that 60% of the remainder was subject to tax as materials purchased. It also disallowed interest penal-

8. LA. R.S. 47:302(A) (1950).

9. 238 So.2d 1 (La. App. 1st Cir. 1970).

10. *Id.* at 2.

11. 241 So.2d 295 (La. App. 1st Cir. 1970).

12. 239 So.2d 387 (La. App. 4th Cir. 1970).

ties on the theory that the taxpayer was in good faith in resisting the tax. An attempt to impose the tax liability on the port commission for which the terminal had been constructed was rejected on the ground that the commission was only a purchaser, not a purchaser-dealer, and hence exempt within the statute.¹³ A dissenting judge would have rejected the suit on the ground that in proceeding by estimate it was attempting an illegal jeopardy assessment; the court was willing to characterize the suit as properly brought, however, subject only to the objection that the assessment was based on an arbitrary and unreasonable calculation.

In *Collector of Revenue v. J. L. Richards & Co.*,¹⁴ a provisioner for off-shore oil rig crews resisted a sales and use tax on the ground that the provisions were not *used* within the State of Louisiana and on the further ground that the provisioner was not a dealer and hence not subject to the tax. Since the tax is clearly levied upon sales as well as use, and finding that a sales incident—"appropriation to the contract"—had taken place within the state, the court held provisioner properly subject to the tax. No difficulty was encountered in sustaining an occupational tax upon the provisioner, based upon the gross annual receipts of the contracting business carried on within the state.

In 1970 the legislature authorized the parish of East Baton Rouge to levy additional sales taxes and to bond the proceeds.¹⁵ An ordinance was adopted levying such tax and an authorizing resolution adopted. In *Liter v. City of Baton Rouge*,¹⁶ authority to levy the tax and bond the proceeds came under attack on the ground that the bond issue was unconstitutional absent a vote of the taxpayers. Reading the constitution as providing for the issuance of bonds without a referendum only where the bonds had a maturity not exceeding ten years and bore interest at a rate not exceeding 5%,¹⁷ the supreme court held that the bonds did not meet these conditions and could be authorized only as general obligation bonds after approval by the property taxpayers.¹⁸ The court rejected an argument that the general obligation bond provision related only to bonds supported by ad va-

13. *Id.* at 393.

14. 247 So.2d 151 (La. App. 4th Cir. 1971).

15. La. Acts 1970, No. 559, 561.

16. 258 La. 175, 245 So.2d 398 (1971).

17. LA. CONST. art XIV, § 14(e).

18. *Id.* § 14(a).

lorem taxes, since voting was only by property taxpayers; prior to *Cipriano v. City of Houma*,¹⁹ virtually all bond-authorizing enactments contained this limitation with respect to property ownership, even though the bonds were not necessarily to be supported by ad valorem taxes. The constitutional provision states only that the governing authority "shall impose and collect annually, *in excess of all other taxes*, a tax sufficient to pay the interest. . . ."²⁰ This language was held manifestly to contemplate bonds supported by more than one kind of tax; issuing such "sales tax" bonds without referendum was therefore unconstitutional.²¹

PROCEDURE

CIVIL PROCEDURE

*William E. Crawford**

Partial Judgments

The Louisiana Supreme Court in *Walker v. Jones*¹ has written an opinion which may have traumatic effects on article 1915 of the Code of Civil Procedure,² dealing with the authority of the trial judge to render partial final judgments. The court held that a trial judge may, in the same case, render one final judgment on the main demand and another on the incidental demand.

Walker sued Jones and the State Department of Highways for personal injuries arising out of an automobile accident in-

19. 395 U.S. 701 (1969).

20. LA. CONST. art. XIV, § 14(a).

21. 258 La. 175, 193-203, 245 So.2d 398, 406-08.

* Professor of Law, Louisiana State University.

1. 257 La. 404, 242 So.2d 559 (1970).

2. LA. CODE CIV. P. art. 1915: "A final judgment may be rendered and signed by the court, even though it may not grant the successful party all of the relief prayed for, or may not adjudicate all of the issues in the case, when the court:

"(1) Dismisses the suit as to less than all of the plaintiffs, defendants, third party plaintiffs, third party defendants, or interveners;

"(2) Grants a motion for judgment on the pleadings, as provided by Articles 965, 968, and 969;

"(3) Grants a motion for summary judgment, as provided by Articles 966 through 969; or

"(4) Renders judgment on either the principal or incidental demand, when the two have been tried separately, as provided by Article 1038.

"If an appeal is taken from such a judgment, the trial court nevertheless shall retain jurisdiction to adjudicate the remaining issues in the case."