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Appropriations

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APPROPRIATIONS

N.Y. CONST. art. VII, § 4:

The Legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items therein, but it may add thereto items of appropriation provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose. None of the restrictions of this section, however, shall apply to appropriations for the legislature or the judiciary.

SUPREME COURT

ALBANY COUNTY

Schulz v. State¹
(decided March 21, 1994)

Plaintiffs claimed that the New York State Legislature was not authorized to determine how to allocate appropriations which were intended to financially aid localities and community agencies. Plaintiffs asserted that this violated the New York State Constitution, as the doctrine of separation of powers maintains that allocating appropriations is an executive function rather than a decision for the Legislature.² Additionally, plaintiffs contended that the Legislature's appropriation of \$48 million violated article VII, section 4 of the New York State Constitution³ because the

1. 160 Misc. 2d 741, 610 N.Y.S.2d 711 (Sup. Ct. Albany County 1994).

2. *Id.* at 743, 610 N.Y.S.2d at 712.

3. N.Y. CONST. art. VII, § 4. This provision provides in relevant part: The legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items therein, but it may add thereto items of appropriation provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose. None of the restrictions of this

Legislature is required to specify separately the purpose of funds that have been added to a budget bill.⁴ In addition, the plaintiffs alleged that certain items of appropriation violated article VII, section 8, or article VIII, section 1 of the New York Constitution,⁵ since gifts or loans of state funds cannot be given to private entities for private purposes.⁶ Defendant brought a motion to dismiss, claiming the legislative appropriations were constitutional.⁷

The New York Supreme Court, Albany County, held that each of these constitutional challenges should be dismissed.⁸ First, the court held that the lump-sum appropriations did not violate the doctrine of separation of powers since the Legislature was entitled to recommend to the governor how the funds should be allocated.⁹ Additionally, the court found that article VII, section 4 was not violated, since the degree of itemization required in the budget appropriation was a discretionary function of the Legislature and the executive branch.¹⁰ Further, the court found

section, however, shall apply to appropriations for the legislature or judiciary.

Id.

4. *Schulz*, 160 Misc. 2d at 743, 610 N.Y.S.2d at 712.

5. N.Y. CONST. art. VII, § 8. This provision provides in relevant part: The money of the state shall not be given or loaned to or in aid of any private corporation or association, or private undertaking; nor shall the credit of the state be given or loaned to or in aid of any individual, or public or private corporation or association, or private undertaking

Id.; N.Y. CONST. art. VIII, § 1. This provision provides in pertinent part:

No county, city, town, village or school district shall give or loan any money or property to or in aid of any individual, or private corporation or association, or private undertaking, or become directly or indirectly the owner of stock in, or bonds of, any private corporation or association

Id.

6. *Schulz*, 160 Misc. 2d at 743, 610 N.Y.S.2d at 712.

7. *Id.* at 751, 610 N.Y.S.2d at 717.

8. *Id.*

9. *Id.* at 745-46, 610 N.Y.S.2d at 714.

10. *Id.* at 747, 610 N.Y.S.2d at 714-15.

that the items of appropriation were constitutional as they were for public purposes.¹¹

This dispute concerns a lump-sum appropriation of \$48 million contained in Chapter 52 of the Laws of 1992 and reappropriated by Chapter 53 of the Laws of 1993.¹² The items of appropriation were intended to aid municipalities and private not-for-profit community agencies.¹³ However, the Legislature recommended to the executive branch how the money should be allocated.¹⁴ In addition, the Legislature added other appropriations in the budget bill without specifying in great detail where the funds would be spent.¹⁵ Still, the Governor approved the itemization of the additional appropriations. Plaintiffs commenced an action for a declaratory judgment challenging the constitutionality of the \$48 million appropriation.¹⁶ However, the court granted the defendant's motion to dismiss.¹⁷

In determining the separation of powers issue, the court distinguished the facts of this case from *People v. Tremaine*, otherwise known as *Tremaine I*.¹⁸ In *Tremaine I*, the New York Court of Appeals held that segregation clauses inserted by the

11. *Id.* at 749, 610 N.Y.S.2d at 715-16.

12. *Id.* at 748-49, 610 N.Y.S.2d at 712.

13. *Id.* at 743, 610 N.Y.S.2d at 712.

14. *Id.* at 746, 610 N.Y.S.2d at 714. Reappropriation legislation was provided for the Director of the Budget, who was an executive officer, to aid in deciding where the \$48 million should be used. *Id.* at 745, 610 N.Y.S.2d at 714.

15. *Id.* at 746, 610 N.Y.S.2d at 714.

16. *Id.* at 743, 610 N.Y.S.2d at 712.

17. *Id.* at 751, 610 N.Y.S.2d at 717. The court explained that the plaintiffs' action should be dismissed for failure to join the necessary parties. Still, the court deemed it prudent to examine the constitutional issues on the merits. *Id.* at 751 n.8, 610 N.Y.S.2d at 717 n.8.

18. 252 N.Y. 27, 168 N.E. 817 (1929). In *Tremaine I*, the Legislature attempted to segregate lump-sum appropriations in accordance with § 139 of the State Finance Law. However, Governor Franklin D. Roosevelt claimed that the State Finance Law was unconstitutional, as it is the executive who has such duties. *Id.* at 37-39, 168 N.E. at 819-20.

Legislature into the appropriations bill were unconstitutional.¹⁹ The court explained that itemization of lump-sum appropriations was an executive duty, not a legislative function.²⁰ In contrast, the *Schulz* court found “[t]here is no such legislative direction.”²¹ The court held that the Legislature can recommend to the executive branch how appropriations should be allocated as long as there is no delegation of power.²² The court reasoned that the Legislature did not violate the doctrine of separation of powers since it is the duty of the executive branch to decide whether to adopt or reject legislative recommendations.²³

The court also held that items of appropriation added by the Legislature did not violate article VII, section 4 of the New York State Constitution.²⁴ The plaintiffs allege that the instant case is similar to the facts in *People v. Tremaine*, otherwise known as *Tremaine II*.²⁵ In *Tremaine II*, the court held that the Legislature

19. *Id.* at 45, 168 N.E. at 822. (“It follows that so much of the appropriation bills in question as confers powers on the legislative chairmen to approve segregations is unconstitutional and void.”).

20. *Id.* at 43, 168 N.E. at 822. The court stated that “[i]t may not engraft executive duties upon a legislative office and thus usurp the executive power by indirection.” *Id.* Furthermore, “[s]uch a delegation of legislative power would be abhorrent to all our notions of legislation on the matter of appropriations.” *Id.* at 44, 168 N.E. at 822.

21. *Schulz*, 160 Misc. 2d at 745, 610 N.Y.S.2d at 713. In *Tremaine I*, the Legislature tried to circumvent the veto power of the Governor whereas the Legislature, in the instant case, offered “an affirmative grant of power to the executive” *Id.* at 745, 610 N.Y.S.2d at 713-14.

22. *Id.* at 745-46 610 N.Y.S.2d at 713-14.

23. *Id.* at 746 n.3, 610 N.Y.S.2d at 714 n.3. (“[T]he Legislature as a matter of comity will in fact have input into how the money will be spent, and that the Executive may choose to give effect to legislative recommendations”).

24. *Id.* at 746-47, 610 N.Y.S.2d at 714.

25. 281 N.Y. 1, 21 N.E.2d 891 (1939). In *Tremaine II*, the New York Court of Appeals examined whether lump-sum appropriations for the departments of the state government violated the New York State Constitution. The court found that the Legislature “may add items of appropriation provided that such additions are stated separately and distinctly from the *original items of the bill* and refer each to a single object or purpose.” *Id.* at 9, 21 N.E.2d at 893. The court also noted that departments with uncertain expenses may

cannot alter the governor's budget bill by striking out items and substituting them with lump-sum appropriations in the same areas.²⁶ However, the New York Court of Appeals noted that lump-sum appropriations are often necessary since "it [is] impossible to tell beforehand exactly what might be needed"²⁷ Still, the court stressed that lump-sum appropriations are not acceptable as a substitution for the governor's budget.²⁸ In contrast, the issue in *Schulz* was whether it was constitutional for the Legislature to add appropriations to the governor's budget bill without listing in detail the object or purpose of the additional items.

In determining whether the funds required specificity with regard to its purpose, the court relied on the New York Court of Appeals decision in *Saxton v. Carey*.²⁹ In *Saxton*, the court held that the degree of itemization required was "a decision which is best left to the Legislature."³⁰ The court reasoned that the New York State Constitution does not require an itemized budget nor "prescribe any particular degree of itemization."³¹ Similarly, in *Schulz*, the court held that the degree of itemization required in budget appropriations added by the Legislature was left to the discretion of the Legislature and the governor.³²

require lump-sum appropriations because of the difficulty to itemize. *Id.* at 7, 21 N.E.2d at 894.

26. *Id.* at 10, 21 N.E.2d at 895.

27. *Id.* at 8, 21 N.E.2d at 894.

28. *Id.* at 11, 21 N.E.2d at 895. The court explained that the New York State Constitution specifically provides that the Legislature may add items of appropriation to the governor's appropriation bill so long as "[t]he items . . . proposed by the Legislature are to be *additions*, not merely substitutions." *Id.*

29. 44 N.Y.2d 545, 378 N.E.2d 95, 406 N.Y.S.2d 732 (1978).

30. *Id.* at 550, 378 N.E.2d at 98, 406 N.Y.S.2d at 735.

31. *Id.* at 549, 378 N.E.2d at 98, 406 N.Y.S.2d at 734. The *Saxton* court stressed that their holding did not alter their decision in *People v. Tremaine*, which "struck down a legislative attempt to invade the power of the executive to draft the budget." *Id.* at 551, 378 N.E.2d at 99, 406 N.Y.S.2d at 735.

32. *Schulz*, 160 Misc. 2d at 747, 610 N.Y.S.2d at 715. ("Direct concern with the degree of particularization or subdivision of items lies exclusively with the executive and legislative branches of government simply because they are the sole participants in negotiation and adoption of an executive budget.").

In addition, plaintiffs alleged that appropriations in the 1993-94 Aid to Localities Budget violated either article VII, section 8, or article VIII, section 1 of the New York State Constitution.³³ In determining whether the appropriations in the local budget were for private or public purposes, the court relied on several New York State court decisions. According to the New York Court of Appeals, as illustrated in *People v. Westchester County National Bank*,³⁴ "the Legislature may appropriate public moneys for private corporations or for individuals if thereby the public welfare is promoted." Further, in *Yonkers Community Development Agency v. Morris*,³⁵ the New York Court of Appeals held that the Urban Renewal Agency was entitled to take "substandard" land since the taking served a public purpose.³⁶ The court noted that "[a] determination of public purpose must be made by the courts themselves and they must have a basis on which to do so."³⁷

Similarly, in *Schulz*, the Legislature's appropriations were held to be constitutional since they were for the public welfare rather than private purposes.³⁸ In *Schulz*, the plaintiffs challenged sixty-eight items of appropriation in the 1993-94 Aid to Localities Budget.³⁹ Sixteen items were for not-for-profit organizations involved in local tourism, small business development and

See *Hidley v. Rockefeller*, 28 N.Y.2d 439, 271 N.E.2d 530, 322 N.Y.S.2d 687 (1971) (Breitel, J., dissenting).

33. *Schulz*, 160 Misc. 2d at 748, 610 N.Y.S.2d at 715.

34. 231 N.Y. 465, 132 N.E. 241 (1921). In *Westchester County*, the court was confronted with the question of whether a New York State act which provided for the issuance of bonds by the State was constitutional. The court held that the New York State Legislature may appropriate public money to persons who served in the military or naval service during World War I, as it was for a public purpose. *Id.* at 468-70, 132 N.E. at 241-42.

35. 37 N.Y.2d 478, 335 N.E.2d 327, 373 N.Y.S.2d (1975). In *Yonkers*, defendants claimed that a proposed taking of land provided for a private purpose, not a sufficiently public purpose. However, the court determined that the Federal urban renewal plan established a public purpose because poor health conditions were reason to redevelop the areas. *Id.*

36. *Id.* at 481-82, 335 N.E.2d at 330-31, 373 N.Y.S.2d at 116-17.

37. *Id.* at 485, 335 N.E.2d at 333, 373 N.Y.S.2d at 120.

38. *Schulz*, 160 Misc. 2d at 750, 610 N.Y.S.2d at 716-17.

39. *Id.* at 748, 610 N.Y.S.2d at 715.

assistance to forest industry firms.⁴⁰ Twenty-one items provided young people with educational and recreational programs and an additional nine items were designated for general educational and recreational programs.⁴¹ Eighteen items of the budget bill provided aid to cultural institutions and museums.⁴² Also, two items were for urban redevelopment programs and another two items were appropriated for not-for-profit agencies.⁴³ In determining whether each of the challenged items were for a public purpose, the court relied on several state legislative decisions which found comparable programs beneficial to the general public.⁴⁴ Thus, the court concluded that the challenged items were an effort on behalf of private entities to promote the welfare of the public, as opposed to their own private agenda.

Finally, the *Schulz* court noted that the plaintiffs failed to name the various private organizations as parties to the action.⁴⁵ Consequently, the court held that the claims must be dismissed for failure to join the necessary parties.⁴⁶ Thus, the court

40. *Id.* at 749, 610 N.Y.S.2d at 716.

41. *Id.* at 749-50, 610 N.Y.S.2d at 716.

42. *Id.* at 750, 610 N.Y.S.2d at 716.

43. *Id.*

44. *See Hotel Dorset Co. v. Trust for Cultural Resources*, 46 N.Y.2d 358, 372, 385 N.E.2d 1284, 1291, 413 N.Y.S.2d 357, 364 (1978) ("[T]he preservation of cultural institutions is in the public interest in that visitors will be produced in the city in which they are located, and benefit all who attend . . ."); *see also Yonkers Community Dev. Agency v. Morris*, 37 N.Y.2d 478, 335 N.E.2d 327, 373 N.Y.S.2d 112 (1975) (holding an urban renewal program a public purpose because of the unsanitary conditions); *Murphy v. Erie County*, 28 N.Y.2d 80, 268 N.E.2d 771, 320 N.Y.S.2d 29 (1971) (holding appropriations to a private management corporation valid so long as the public funds were used to promote the public welfare).

45. *See New York State Ass'n of Plumbing-Heating-Cooling Contractors v. Egan*, 86 A.D.2d 100, 449 N.Y.S.2d 86 (3d Dep't 1982) (holding contractors to be necessary parties as they had been awarded contracts to expand correctional facilities and as a result, would be inequitably affected); *see also Martin v. Ronan*, 47 N.Y.2d 486, 490, 392 N.E.2d 1226, 1227, 410 N.Y.S.2d 42, 43 (1979) (stating that there is "a requisite of due process—the opportunity to be heard before one's rights or interests are adversely affected").

46. N.Y. CIV. PRAC. L. & R. §1001(a) (McKinney 1976). This provision states in pertinent part: "Persons who ought to be parties if complete relief is

dismissed the plaintiffs' claims and held that the Legislature's lump-sum \$48 million appropriation was constitutional.⁴⁷

to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action shall be made plaintiffs or defendants." *Id.*

47. *Schulz*, 160 Misc. 2d at 751, 610 N.Y.S.2d at 717.