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Comptroller and Attorney-General

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COMPTROLLER AND ATTORNEY-GENERAL

N.Y. CONST. art. V, § 1:

The comptroller shall be required: (1) To audit all vouchers before payment and all official accounts; (2) to audit the accrual and collection of all revenues and receipts; and (3) to prescribe such methods of accounting as are necessary for the performance of the foregoing duties. The payment of any money of the state, or of any money under its control, or the refund of any money paid to the state, except upon audit by the comptroller, shall be void, and may be restrained upon the suit of any taxpayer with the consent of the supreme court in appellate division on notice to the attorney-general. In such respect the legislature shall define his powers and duties and may also assign to him: (1) supervision of the accounts of any political subdivision of the state; and (2) powers and duties pertaining to or connected with the assessment and taxation of real estate, including determination of ratios which the assessed valuation of taxable real property bears to the full valuation thereof, but not including any of those powers and duties reserved to officers of a county, city, town or village by virtue of sections seven and eight of article nine of this constitution. The legislature shall assign to him no administrative duties, excepting such as may be incidental to the performance of these functions, any other provision of this constitution to the contrary notwithstanding.

COURT OF APPEALS

New York Public Interest Research Group, Inc. v.
New York State Thruway Authority¹⁹
(decided December 20, 1990)

Petitioner, New York Public Interest Research Group, Inc. (NYPIRG), appealed the appellate division's holding that Public Authorities Law (PAL) sections 2804(2)²⁰ and (3)²¹ are unconsti-

19. 77 N.Y.2d 86, 565 N.E.2d 1259, 564 N.Y.S.2d 708 (1990).

20. N.Y. PUB. AUTH. LAW § 2804(2) (McKinney Supp. 1991). This

tutional under the New York State Constitution.²² The court of appeals unanimously affirmed the decision of the appellate division, holding that PAL section 2804 impermissibly interferes with the comptroller's discretion in violation of the New York State Constitution.²³

PAL section 2804 required the state comptroller to review any proposed increase in tolls and to "make public a report of his findings, conclusions and recommendations"²⁴ regarding the proposed increase. The New York State Thruway Authority (Authority) sought a toll increase, but the comptroller refused to review the proposal, asserting that "any proposed toll increase by a public corporation such as the Authority was not dependent upon Comptroller review and support."²⁵ The Authority then held a public hearing and retained a private auditor to review the proposed increase, but the comptroller did not review the proposed increase nor did he submit a report as required by PAL section 2804(2). Nevertheless, the proposed increase was adopted by the Authority.

section provides, in part, that "[t]he comptroller shall review any proposed increase or imposition in fees, tolls or other charges, and . . . make public a report of his findings, conclusions and recommendations." *Id.*

21. *Id.* § 2804(3). This section provides, in part, that:

Every authority or commission shall hold a public hearing or hearings after receipt of the report of the comptroller required by subdivision two of this section Copies of the proposed increase or imposition, the reports required by subdivision one and two of this section shall be available for public inspection

Id.

22. N.Y. CONST. art. V, § 1. In addition, New York State Constitution article X, section 5 was implicated. New York State Constitution article X, section 5 states, "[t]he accounts of every such public corporation . . . shall be subject to the supervision of the state comptroller" N.Y. CONST. art. X, § 5.

23. *New York Pub. Interest Research Group*, 77 N.Y.2d at 88, 565 N.E.2d at 1259, 564 N.Y.S.2d at 708 (citing *Patterson v. Carey*, 41 N.Y.2d 714, 716, 363 N.E.2d 1146, 1149, 395 N.Y.S.2d 411, 413 (1977)).

24. N.Y. PUB. AUTH. LAW § 2804(2) (McKinney Supp. 1991).

25. *New York Pub. Interest Research Group*, 77 N.Y.2d at 88, 565 N.E.2d at 1260, 564 N.Y.S.2d at 709.

NYPIRG then challenged the toll increase, asserting that it was approved without the comptroller's participation as required by PAL section 2804. The Authority, relying on *Patterson v. Carey*,²⁶ contended that section 2804 was unconstitutional.

In *Patterson*, the court of appeals held that section 153-c of the PAL²⁷ was unconstitutional because it interfered with the comptroller's discretion in violation of article V, section 1 and article X, section 5 of the New York State Constitution. Section 153-c purported to rescind an increase in tolls charged by the Jones Beach State Parkway Authority (Parkway Authority) and provided that the increase could not be reinstated, nor any future increases imposed, unless the Parkway Authority complied with a newly devised review process.²⁸ The court stated that article V, section 1 of the state constitution precluded the legislature from assigning any administrative duties to the comptroller, such as those mandated by section 153-c. The court explained that while this clause grants the legislature the power to define the duties and powers of the comptroller in relation to any political subdivisions, the Parkway Authority was not a political subdivision, but rather a public corporation. Therefore, the legislature was not empowered to define the comptroller's duties with respect to the Parkway Authority.²⁹ Further, the court found that the plain language of article X, section 5 grants the comptroller discretionary authority to supervise public authority accounts. The *Patterson* court concluded that the legislature was not permitted to interfere with the comptroller's constitutionally based discretion. Thus, in light of article V, section 1 and article X, section 5, PAL section 153-c impermissibly interfered with the comptroller's duties.³⁰

In the case at bar, the court, citing *Patterson*, noted that article V, section 1 of the New York State Constitution addresses the comptroller's jurisdiction regarding the state and its political

26. 41 N.Y.2d 714, 363 N.E.2d 1146, 395 N.Y.S.2d 411 (1977).

27. N.Y. PUB. AUTH. LAW § 153-c (McKinney 1982).

28. *Patterson*, 41 N.Y.2d at 716, 363 N.E.2d at 1149, 395 N.Y.S.2d at 413.

29. *Id.*

30. *Id.* at 723-25, 363 N.E.2d at 1154, 395 N.Y.S.2d at 418-19 (citing N.Y. CONST. art. V, § 1; N.Y. CONST. art. X, § 5).

subdivisions, and “deems him the ‘independent auditing official for the affairs of the State.’”³¹ The court stated that while the legislature has the power to define the comptroller’s duties with respect to political subdivisions, “the Comptroller’s authority to supervise the accounts of public corporations [is] entirely discretionary.”³² The court held that because PAL section 2804 mandated that the comptroller become involved in the processes of a public corporation, the statute impermissibly interfered with the comptroller’s discretionary powers conferred by the state constitution.³³

31. *New York Pub. Interest Research Group*, 77 N.Y.2d at 89, 565 N.E.2d at 1261, 564 N.Y.S.2d at 710 (quoting *Patterson*, 41 N.Y.2d at 723, 363 N.E.2d at 1154, 395 N.Y.S.2d. at 418).

32. *Id.* at 90, 565 N.E.2d at 1261, 564 N.Y.S.2d at 710.

33. *Id.* at 88, 565 N.E.2d at 1259, 564 N.Y.S.2d at 708.