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Gift or Loan of State Money: Schulz v. State of New York

GIFT OR LOAN OF STATE MONEY

N.Y. CONST. art. VII, § 11:

[N]o debt shall be hereafter contracted by or in behalf of the state unless such debt shall be authorized by law . . . . No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all votes cast for and against it at such election . . . .

N.Y. CONST. art. VII, § 8, cl. 1:

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 . . . .

N.Y. CONST. art. X, § 5:

Neither the state nor any political subdivision thereof shall at any time be liable for the payment of any obligations issued by . . . a public corporation heretofore or hereafter created, nor may the legislature accept, authorize acceptance of or impose such liability upon the state or any political subdivision thereof.

N.Y. CONST. art VII, § 4(c):

Except as otherwise provided in this constitution, no county, city, town, village or school district described in this section shall be allowed to contract indebtedness for any purpose or in any manner which, including indebtedness, shall exceed an amount equal to . . . .

(c) the city of New York, for city purposes, ten per centum

ALBANY COUNTY

Schulz v. State of New York[1167]
(decided July 27, 1993)

In a declaratory action, plaintiffs who were citizen-taxpayers and residents of New York State[1168] claimed that several sections of Chapter 56 of the Laws of New York[1169] violated article VII, section 11,[1170] article VII, section 8,[1171] and article X, section 5[1172] of the New York State Constitution because the financing

1167. 156 Misc. 2d 169, 601 N.Y.S.2d 239 (Sup. Ct. Albany County 1993).

1168. The court first examined plaintiffs' standing to challenge Chapter 56. The court found that the plaintiffs lacked standing to challenge a statutory financing scheme as taxpayers but did have the requisite standing by virtue of their status as citizen-voters. *Id.* at 172-73, 601 N.Y.S.2d at 242.

1169. 1993 N.Y. Laws 56. Section 1 of the statute provides in pertinent part: "[T]he legislature recognizes the need for continued investment in order to restore our highway, bridge, transit, air and rail facilities to a state of good repair and to enhance and improve such facilities to address current and projected capacity problems." *Id.*

1170. N.Y. CONST. art. VII, § 11. This section provides in pertinent part:

> [N]o debt shall be hereafter contracted by or in behalf of the state, unless such debt shall be authorized by law, for some single work or purpose, to be distinctly specified therein. No such law shall take effect until it shall, at a general election, have been submitted to the people, and received a majority of all the votes cast for and against it at such election . . . .

Id.

1171. N.Y. CONST. art. VII, § 8, cl. 1. This section provides in pertinent 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.

1172. N.Y. CONST. art. X, § 5. This section provides in pertinent part:

> Neither the state nor any political subdivision thereof shall at any time be liable for the payment of any obligations issued by . . . a public corporation heretofore or hereafter created, nor may the legislature accept, authorize acceptance of or impose such liability upon the state or any political subdivision thereof.

scheme contained in Chapter 56 violated the debt limitations imposed by the Constitution.[1173] Plaintiffs also argued that the financing scheme constituted a "taking" without due process of law.[1174] Plaintiffs further sought a preliminary injunction enjoining defendants, the New York State Thruway Authority (Thruway Authority) and the Metropolitan Transit Authority (MTA) from issuing any bonds pursuant to Chapter 56 of the New York Laws of 1993.[1175] The court held that the challenged provisions of Chapter 56 were constitutional on two bases.[1176] First, the statutory provisions provided a creative method of financing that furthers the public interest and thus, should be accorded deference.[1177] Second, the legislature was empowered with the authority to earmark funds for a public corporation to be used for a public purpose.[1178]

The legislation at issue provided for funds derived from statewide gasoline taxes, supplemental petroleum taxes, highway

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Id.

1173. *Schulz*, 56 Misc. 2d at 174, 601 N.Y.S.2d at 242. Chapter 56 provided for allocation of funds from certain trust funds that were composed of revenues from gasoline and transportation taxes. *Id.* at 171, 601 N.Y.S.2d at 241. The funds were to be used for the financing of transportation, bridge, and highway projects. *Id.*

1174. *Id.* at 177, 601 N.Y.S.2d at 244. Specifically plaintiffs alleged "that funds 'otherwise available to reduce plaintiffs' taxes will be unconstitutionally taken from plaintiffs and illegally used to pay the principal and interest on the debt incurred by various state authorities.'" *Id.*

1175. *Id.* at 171, 601 N.Y.S.2d at 240.

1176. *Id.* at 177, 601 N.Y.S.2d at 244.

1177. *Id.* at 176-77, 601 N.Y.S.2d at 244 (quoting Hotel Dorset Co. v. Trust For Cultural Resources, 46 N.Y.2d 358, 369-70, 385 N.E.2d 1284, 1289, 413 N.Y.S.2d 357, 362 (1978)). The *Dorset* court stated:

> Courts are required to exercise a large measure of restraint when considering highly intricate and imaginative schemes for public financing or for public expenditure designed to be in the public interest. Some may be highly controversial. But when a court reviews such a decision, it must operate on the rule that it may not substitute its judgment for that of the body which made the decision. Judges, however much they might disagree with the act under review, are not free to invalidate it on that ground.

Id.

1178. 156 Misc. 2d at 177, 601 N.Y.S.2d at 244.

use taxes and certain vehicle registration fees to be placed in a highway and bridge trust fund (Highway Trust Fund) and a mass transportation trust fund (Mass Transit Fund).[1179] Chapter 56 allocated revenues from these trust funds "for the financing of mass transportation, bridge and highway projects."[1180] Under this scheme, the defendants were "authorized to issue special limited obligation bonds."[1181] The bonds were to be paid from the monies deposited in the trust funds.[1182] These revenues were "separate and apart" from other state funds, and further, no money could be disbursed from the trust funds absent an appropriation made by the New York State Legislature.[1183] Chapter 56 and other previously enacted legislation provided that bonds issued by public authorities did not constitute a debt of the state.[1184] The court found that the financing scheme was "'in harmony with fundamental law'"[1185] and that the plaintiffs failed to rebut, beyond a reasonable doubt, the presumption that all legislative enactments are constitutional.[1186] Thus, the court

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1179. *Id.* at 171, 601 N.Y.S.2d at 241.

1180. *Id.*

1181. *Id.*

1182. *Id.*

1183. *Id.*

1184. *Id.* at 171-72, 601 N.Y.S.2d at 241. The MTA argued that "the use of state subsidies paid from the State's general fund to a public authority to secure its bonds does not constitute a debt within the meaning of the Constitution so long as payments are subject to annual appropriation by the Legislature." *Id.* at 173-74, 601 N.Y.S.2d at 242. The Thruway Authority countered that the state would not be liable to bond holders because the bonds were not a debt of the state and further, this was noted on the bonds. *Id.* at 173-74, 601 N.Y.S.2d at 243.

1185. *Id.* at 177, 601 N.Y.S.2d at 244 ("No statute should be declared unconstitutional if by any reasonable construction it can be given a meaning in harmony with fundamental law.") (quoting People *ex rel.* Simpson v. Wells, 181 N.Y. 252, 257, 73 N.E. 1025, 1026 (1905)).

1186. 156 Misc. 2d at 177, 601 N.Y.S.2d at 244 ("Legislative enactments are presumed constitutional . . . . While this presumption is rebuttable, unconstitutionality must be demonstrated beyond a reasonable doubt.") (quoting Maresca v. Cuomo, 64 N.Y.2d 242, 250, 475 N.E.2d 95, 98, 485 N.Y.S.2d 724, 727 (1985)).

granted the defendants' motion for summary judgment, concluding that there was no genuine issue of material fact.[1187]

In reaching its conclusion, the court relied on *Wein v. City of New York*.[1188] In *Wein*, plaintiffs alleged that legislation creating the New York City Stabilization Reserve Corporation Act (SRCA)[1189] was unconstitutional under article VII[1190] of the New York State Constitution.[1191] The plaintiffs claimed that SRCA was a "corporate government agency constituting a public benefit corporation" and obtained its funds by selling bonds "without a pledge of full faith and credit of either the City or State of New York."[1192] SRCA had been established by the legislature in order to assist the city during a fiscal crisis.[1193] The bonds issued by SRCA were neither a debt of the city nor the state, nor would the city or the state be liable for any debts or obligations of SRCA.[1194] Further, the bonds were payable only out of funds appropriated to SRCA by the city.[1195] Plaintiff, a taxpayer, alleged that SRCA was unconstitutional because the Act which created it permitted the City of New York to illegally obtain additional revenues through the sale of bonds by a corporation without extending its debt obligation beyond the limit set by the State Constitution.[1196] The *Wein* court held that

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1187. 156 Misc. 2d at 178, 601 N.Y.S.2d at 245.

1188. 36 N.Y.2d 610, 331 N.E.2d 514, 370 N.Y.S.2d 550 (1975).

1189. *Id.* at 613-14, 331 N.E.2d at 515, 370 N.Y.S.2d at 552.

1190. N.Y. CONST. art VII, § 4(c). This section provides in pertinent part:

> Except as otherwise provided in this constitution, no county, city, town, village or school district described in this section shall be allowed to contract indebtedness for any purpose or in any manner which, including indebtedness, shall exceed an amount equal to . . .
>
> (c) the city of New York, for city purposes, ten per centum

Id.

1191. *Wein*, 36 N.Y.2d at 614, 331 N.E.2d at 516, 370 N.Y.S.2d at 552-53.

1192. *Id.*

1193. *Id.* at 614, 331 N.E.2d at 516, 370 N.Y.S.2d at 553.

1194. *Id.*

1195. *Id.* at 615, 331 N.E.2d at 516, 370 N.Y.S.2d at 553.

1196. *Id.* at 613-14, 331 N.E.2d at 518, 370 N.Y.S.2d at 556. Plaintiffs also alleged that creation of SRCA violated article VII, § 2 because the city was incurring debt without pledging its full faith and credit. *Wein*, 36 N.Y.2d at 618, 331 N.E.2d at 517, 370 N.Y.S.2d at 557. Plaintiffs further argued that

creation of SRCA was constitutional because the statute which created it expressly provided that the city could not become indebted through the issuing of bonds by SRCA.[1197] The court further opined that should it become necessary for the city to appropriate money to SRCA, if SRCA suffered a deficit in any given year such appropriations would be deemed a constitutionally permissible gift.[1198]

An issue similar to that in *Schulz* and *Wein* was examined in *Comereski v. City of Elmira.*[1199] In *Comereski*, plaintiff, a taxpayer residing in the city of Elmira, brought suit to invalidate a contract between the city and the Elmira Parking Authority, a public benefit corporation.[1200] The contract provided that the city, who owned and operated the city's parking meters, would use a portion of its profits derived therefrom to offset any losses that the Parking Authority might incur.[1201] The court held that while the city was prohibited from giving or loaning its credit to a public corporation, it was not forbidden from making a gift of its public funds to a public corporation established for a public purpose.[1202] The court reasoned that the legislative provisions mandating that bonds issued by public authorities are not to be considered a debt of the city nor payable out of city funds, were not inconsistent with statutes or the contract at issue, which permitted direct financial assistance in the form of a gift, from

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SRCA violated article VII, § 1 because "the city would be loaning credit in aid of a public corporation." *Id.*

1197. *Id.* at 618, 331 N.E.2d at 518, 370 N.Y.S.2d at 556. The court dismissed plaintiffs' argument under article VII, § 2 for the same reason. *Id.* Regarding plaintiffs' argument under article VII, § 1, the court stated that legislation which appropriates a gift from the city to a public benefit corporation is constitutionally permissible. *Id.* at 618, 331 N.E.2d at 518-19, 370 N.Y.S.2d at 557. *See also* Comereski v. City of Elmira, 308 N.Y. 248, 125 N.E.2d 241 (1955) (holding that a city may make a gift of its public funds to a public corporation for an appropriate public purpose).

1198. 36 N.Y.2d at 618, 331 N.E.2d at 518-19, 370 N.Y.S.2d at 556-57.

1199. 308 N.Y. 248, 125 N.E.2d 241 (1955).

1200. *Id.* at 250, 125 N.E.2d at 241.

1201. *Id.* at 251, 125 N.E.2d at 242.

1202. *Id.* at 252, 125 N.E.2d at 242.

municipalities to public benefit corporations.[1203] Consequently, the *Comereski* court upheld the constitutionality of the contract.[1204]

In *New York State Coalition for Criminal Justice, Inc. v. Coughlin*,[1205] (hereinafter *New York State Coalition*) a similar issue involving the extension of the state's credit to a public corporation by way of indemnification was discussed.[1206] In *Coughlin*, the plaintiffs, as taxpayers, brought suit to permanently enjoin defendants from issuing bonds to finance prison construction, and to declare that the Prison Construction Act, which authorized the New York State Urban Development Corporation (UDC) to finance such construction, violated article VII section 8, and article VIII, sections 1 and 3 of the New York State Constitution.[1207] The relevant section of the act provided that "'[t]he state shall and hereby agrees to indemnify and save harmless the corporation from and against any and all liability, ...'"[1208] The plaintiffs contended that this section constituted a guarantee by the state to pay for the bonds if UDC defaulted on those bonds and thus, it violated article VII, section 8 of the New York Constitution which prohibits a gift or loan of the state's credit to a public corporation.[1209] The court, however, held that the state did not have to provide an indemnity with respect to the bonds and that the act did not violate the New York State Constitution.[1210] The court reasoned that although the section in question was ambiguous and may have been interpreted consistently with the plaintiffs contention, the act's purpose was to "'indemnify UDC against, . . . any expenses or liability for any claims related to the design, construction, reconstruction or renovation of correctional facilities,'" not to indemnify UDC

1203. *Id.* at 253-54, 125 N.E.2d at 243.

1204. *Id.* at 254, 125 N.E.2d at 244.

1205. 103 A.D.2d 40, 479 N.Y.S.2d 850 (3d Dep't), *aff'd*, 64 N.Y.2d 660, 474 N.E.2d 607, 485 N.Y.S.2d 247 (1984).

1206. *Id.*

1207. *Id.*

1208. *Id.* at 44, 479 N.Y.S.2d at 853.

1209. *Id.*

1210. *Id.* at 45-46, 479 N.Y.S.2d at 854.

against defaulting on the payment of the bonds.[1211] Therefore, without finding indemnification with respect to the bonds, the court upheld the constitutionality of the act.[1212]

Subsequently, statutes that appropriated public funds to provide immunity, defense, and indemnification of trustees and officials of public corporations were upheld as constitutional. In *Long Island Lighting Co. v. Mack*,[1213] the plaintiffs were Long Island Lighting Company (LILCO) and a resident of Freeport.[1214] They brought suit in their capacity as taxpayers to declare that the exculpation and indemnification provisions of Public Authorities Law violated article VII, section 8, of the New York State Constitution.[1215] These provisions excluded the trustees and officers of Long Island Power Authority (LIPA), a public corporation, from "any personal or civil liability" stemming from the exercise of their powers "unless their conduct [was] determined to constitute 'intentional wrongdoing.'"[1216] The court held that these provisions did not violate the New York State Constitutional provision proscribing the state from giving or loaning of credit to a public corporation.[1217]

The court stressed that although article VII, section 8, of the New York State Constitution[1218] was "designed to prevent the state from acting as a surety or a guarantor of the debt of others," the State may indemnify or assist a public corporation as long as it was "'made pursuant to an appropriation which . . . distinctly specif[ied] the sum appropriated and the object or purpose to which it is to be applied.'"[1219] The court reasoned that because the funds to be used to pay the cost of

1211. *Id.* at 45, 479 N.Y.S.2d at 854 (citing 1983 N.Y. Laws 56, at 2399 (Memorandum of State Exec. Dep't)).

1212. *Id.* at 45-46, 479 N.Y.S.2d at 854.

1213. 137 A.D.2d 285, 529 N.Y.S.2d 502 (2d Dep't 1988).

1214. *Id.* at 288, 529 N.Y.S.2d at 503.

1215. *Id.*

1216. *Id.* at 287, 529 N.Y.S.2d at 503.

1217. *Id.* at 287-88, 529 N.Y.S.2d at 503.

1218. N.Y. CONST. art. VII, § 8.

1219. *Id.* at 291-92, 529 N.Y.S.2d at 505-06 (citing Wein v. State of New York, 39 N.Y.2d 136, 145-46, 347 N.E.2d 586, 590, 383 N.Y.S.2d 225, 229-30 (1976)).

indemnification were annually appropriated by the legislature through "tax-raised revenues" which did not involve any "borrowing by the state," these provisions did not "create a state debt," award of a gift, or loan of state credit.[1220] The court further noted that "the Legislature has determined that indemnification statutes [were] necessary in order to attract worthy persons to serve as public officials, especially when such civic-minded individuals serve without compensation"[1221] and that "[w]ithout immunity and indemnification, . . . it would be difficult to obtain the services of the required competent and civic-minded trustees . . . ."[1222] The court also stated that this particular indemnification statute does not indemnify the trustees and officers of LIPA for breach of fiduciary duty.[1223] Accordingly, the court upheld the constitutionality of the indemnification provisions.[1224]

With respect to the due process claim, the *Schulz* court held that the legislature had clear authority to apportion funds to a public corporation which was established for a public purpose.[1225] Thus, the court concluded that the financing scheme did not offend due process.[1226] Therefore, a state may constitutionally apportion part of taxes that are specified for use by a public corporation created for a proper public purpose. Further, allocation of such taxes will not be violative of due process as a "taking."

1220. 137 A.D.2d at 294-95, 529 N.Y.S.2d at 507.
1221. *Id.* at 292, 529 N.Y.S.2d at 506.
1222. *Id.* at 291, 529 N.Y.S.2d at 505.
1223. *Id.* at 294, 529 N.Y.S.2d at 507.
1224. *Id.* at 287-88, 529 N.Y.S.2d at 503.
1225. *Schulz*, 156 Misc. 2d at 177, 601 N.Y.S.2d at 244.
1226. *Id.*