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Private Loans: Ruotolo v. State of New York

N.Y. CONST. art. VII, § 8:

The money of the state shall not be given or loaned to or in aid of any . . . private undertaking . . . or in aid of any individual . . . .

N.Y. CONST. art. III, § 19:

The legislature shall neither audit nor allow any private claim or account against the state, but may appropriate money to pay such claims as shall have been audited and allowed according to law. No claim against the state shall be audited, allowed or paid which, as between citizens of the state, would be barred by lapse of time. But if the claimant shall be under legal disability the claim may be presented within two years after such disability is removed.

COURT OF APPEALS

Ruotolo v. State of New York[1683]
(decided February 17, 1994)

The state contended that the retroactive nature of General Municipal Law section 205-a[1684] violated the New York State Constitution, article VII, section 8,[1685] which prohibited the state from making a gift or loan of state money.[1686] Additionally, it contended that the law violated article III, section 19, of the New

1683. 1994 WL 45627 (N.Y. Feb. 17, 1994).

1684. General Municipal Law section 205-a is an exception to the long-standing common law "fireman's rule" which prohibits firefighters from recovering against a property owner based upon a negligence theory. *See* Ruotolo v. State, 187 A.D.2d 160, 161-62, 593 N.Y.S.2d 198, 199, 203 (1st Dep't 1993), *aff'd*, 1994 WL 45627 (1994).

1685. N.Y. CONST. art. VII, § 8. The article provides in pertinent part: "The money of the state shall not be given or loaned to or in aid of any . . . private undertaking . . . or in aid of any individual . . . ." *Id.*

1686. *Ruotolo*, 1994 WL 45627, at *3.

York State Constitution[1687] which governs the audit or allowance of a time-barred claim.[1688] The court held that neither constitutional provision was violated.[1689]

In 1935, the New York State Legislature enacted General Municipal Law section 205-a in an attempt to improve the common law fireman's rule.[1690] General Municipal Law section 205-a "provide[s] a cause of action for the injury to or death of a firefighter in the line of duty caused 'directly or indirectly as a result of any neglect, omission, willful or culpable negligence'" of anyone who does not comply with governing statutes, ordinances, rules, orders or other related requirements.[1691]

On February 14, 1984, Officers Ruotolo and Brathwaite reported to a scene where a moped was allegedly stolen at gunpoint.[1692] The two officers saw a person, George Agosto, near a moped.[1693] As the officers exited their car, Agosto began shooting at them, killing Ruotolo and seriously injuring Brathwaite.[1694] Officer Brathwaite and the estate of Officer Ruotolo brought suit against the State of New York alleging that the state, via the Parole Board, was negligent in not revoking Agosto's parole and incarcerating him.[1695] On September 2, 1988, the court of claims granted defendant state's motion for summary judgment on the ground that the claimants' theory of

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1687. N.Y. CONST. art. III, § 19. The article provides in pertinent part:

> The legislature shall neither audit nor allow any private claim or account against the state, but may appropriate money to pay such claims as shall have been audited and allowed according to law. No claim against the state shall be audited, allowed or paid which, as between citizens of the state, would be barred by lapse of time. But if the claimant shall be under legal disability the claim may be presented within two years after such disability is removed.

Id.

1688. *Ruotolo*, 1994 WL 45627, at *3.

1689. *Id.* at *6-7.

1690. *Ruotolo*, 187 A.D.2d at 162, 593 N.Y.S.2d at 199.

1691. *Id.*

1692. *Id.* at 162-63, 593 N.Y.S.2d at 200.

1693. *Id.* at 163, 593 N.Y.S.2d at 200.

1694. *Id.*

1695. *Id.*

negligence was barred by the public policy considerations of the original fireman's rule.[1696]

Claimants' appeal was still pending on July 12, 1989, when the General Municipal Law was amended by section 205-e, which extended the applicability of section 205-a to police officers.[1697] The appellate division affirmed the decision rendered by the court of claims, but did not decide whether the statute was applicable because the court found that the statute could not be applied retroactively.[1698]

The statute was amended again on July 22, 1990, to "revive every cause of action for the personal injury or wrongful death of a police officer which was pending or was dismissed on or after January 1, 1987."[1699] Claimants moved to reargue and vacate summary judgment granted by the court of claims.[1700] The court denied this motion, reasoning that the legislative history "confirms that [§ 205-e] is to be construed *in pari materia* with section 205-a and that the statute and regulation allegedly violated are not ones which deal with on-premises safety and maintenance."[1701] The claimants then appealed to the appellate division and argued that this determination was incorrect.[1702]

1696. *Id.* at 163-64, 593 N.Y.S.2d at 200.

1697. N.Y. GEN. MUN. LAW § 205-e (McKinney 1993). This section provides in relevant part:

> In addition to any other right of action or recovery under any other provision of law, in the event any accident, causing injury, death or a disease which results in death, occurs directly or indirectly as a result of any neglect, omission, willful or culpable negligence of any person or persons in failing to comply with the requirements of any of the statutes, ordinances, rules, orders and requirements of the federal, state, county, village, town or city governments . . . the person or persons guilty of said neglect, omission, willful or culpable negligence at the time of such injury or death shall be liable to pay any officer, member, agent or employee of any police department . . . or to pay to the spouse and children, or to pay the parents . . . a sum of money . . . .

Id.

1698. *Ruotolo*, 187 A.D.2d at 164, 593 N.Y.S.2d at 201.

1699. *Id.*

1700. *Id.*

1701. *Id.* at 165, 593 N.Y.S.2d at 201.

1702. *Id.*

The appellate division stated that courts have not held that "merely because the statute establishing such right is retroactive, it is unconstitutional."[1703]

The New York Court of Appeals considered the constitutional issues regarding the state making a gift or loan of state money and the audit or allowance of a time-barred claim.[1704] In deciding whether there was an article VII violation, the court stated that it had previously found that the Legislature may make use of public money to redress a wrong, even if no legal duty to compensate existed, as long as it appeared that "not to act would condone a travesty of justice."[1705] The court confirmed that if the Legislature's decision was based upon a satisfactory moral obligation, the nonprofit prohibition was not violated.[1706]

The court determined that the legislative intent of the legislation at issue was sufficient to support a moral objective.[1707] Additionally, in support of a moral obligation, the court looked to the fact that the regeneration of these claims did not reward judgment or give a direct gift of any forbidden state property.[1708] As the court eloquently stated, "[i]t is, in a governmental sense, admirable that the law-enacting branches of government of the state have persevered so diligently to satisfy a perceived moral obligation to citizens for harms inflicted on them within a narrow constitutionally permissible framework."[1709]

1703. *Id.* at 168, 593 N.Y.S.2d at 203 (citing Jackson v. State, 261 N.Y. 134, 139, 184 N.E. 735 (1933)). Thus, the first department, by looking to the legislative intent, noted that the amendment to provide for a retroactive cause of action was not unconstitutional. *Id.* at 169-70, 593 N.Y.S.2d at 204-05. The court further recognized that there is no federal or state constitutional prohibition against bills of attainder and ex post facto laws within the United States Constitution. *Id. See also* U.S. CONST. art. 1, § 9, cl. 3. The clause states in pertinent part: "No Bill of Attainder or ex post facto Law shall be passed." *Id.*

1704. *Ruotolo*, 1994 WL 45627 at *3.

1705. *Id.* at *5.

1706. *Id.*

1707. *Id.*

1708. *Id.*

1709. *Id.*

In *Farrington v. State*,[1710] the court of appeals delineated examples of where a moral obligation may exist.[1711] The court stated:

> Instances in which enactments, authorizing the allowance of private claims, have been held to be constitutional, since it might reasonably be said that the sanctioned claims involved moral obligations, have been subject to classification under two heads . . . . The second are claims involving injuries and damages wrongfully inflicted upon individuals by those in the State service or others for whose acts the State might justly be regarded as responsible.[1712]

In conclusion, the court agreed with the finding of the appellate court that the retroactive effect of General Municipal Law section 205-e was not violative of article III, section 19 of the New York Constitution.[1713] Thus the court affirmed the decision rendered by the appellate division.[1714]

1710. 248 N.Y. 112, 161 N.E. 438 (1928).

1711. *Id.* at 116, 161 N.E. at 440.

1712. *Id.*

1713. *Id. See* Jackson v. State, 261 N.Y. 134, 139, 184 N.E. 735, 736 (1933) (holding that retrospective laws were not per se unconstitutional).

1714. *Ruotolo*, 1994 WL 45627, at *7.