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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.

SUPREME COURT, APPELLATE DIVISION

THIRD DEPARTMENT

County of Rensselaer v. Regan³⁸
(decided December 31, 1991)

The plaintiffs, consisting of five New York counties

38. 578 N.Y.S.2d 274 (3d Dep't 1991).

participating in the STOP-DWI program,³⁹ challenged a 1990-1991 State Operations Budget provision (Budget Provision) as violative of article V, section 1⁴⁰ of the New York State Constitution because it imposed upon the Comptroller duties not incidental to his constitutionally sanctioned duties.⁴¹ In addition, the plaintiffs asserted that the Budget Provision violated article III, section 1,⁴² and sections 1 and 2 of article IX⁴³ of the New York State Constitution. The court, affirming the lower court's decision,⁴⁴ found the provision unconstitutional because it violated article V section 1, the constitutional limitation on legislative assignment of extraneous administrative duties to the Comptroller. The court declined to address the plaintiffs' remaining constitutional claims.⁴⁵

In 1981, the New York State Legislature enacted the STOP-DWI program to encourage localities to institute programs designed to reduce "alcohol-related traffic injuries and deaths through coordinated efforts within the counties for better enforcement, prosecution and prevention of drunken driving."⁴⁶ Under STOP-DWI, participating counties are required to present a proposal to the Commissioner of Motor Vehicles for his approval.⁴⁷ If the proposal is accepted, the Commissioner thereafter assumes responsibility for monitoring the program.⁴⁸ Incentive to participate in STOP-DWI is supplied by a provision in the statute

39. N.Y. VEH. & TRAF. LAW § 1197 (McKinney Supp. 1992) (amending N.Y. VEH. & TRAF. LAW art. 43-A § 1678 (McKinney 1981)).

40. N.Y. CONST. art. V, § 1.

41. *County of Rensselaer*, 578 N.Y.S.2d at 276.

42. N.Y. CONST. art. III, § 1 ("The legislative power of this state shall be vested in the senate and assembly.").

43. N.Y. CONST. art. IX, §§ 1, 2 (These two provisions relate to the rights of local governments and the home rule powers of local governments.).

44. *County of Rensselaer v. Regan*, 573 N.Y.S.2d 345 (Sup. Ct. Albany County), *aff'd*, 578 N.Y.S.2d 274 (3d Dep't 1991).

45. *County of Rensselaer*, 578 N.Y.S.2d at 277.

46. *Id.*; *see also* N.Y. VEH. & TRAF. LAW § 1197(3)(a) (McKinney Supp. 1992).

47. N.Y. VEH. & TRAF. LAW § 1197(1)(b) (McKinney Supp. 1992).

48. *See id.* § 1197(7)-(8).

which directs that all fines, penalties, and forfeitures imposed in alcohol-related driving offense prosecutions, by courts of the participating county, will be applied to that county's program,⁴⁹ rather than added to state revenues.

All New York counties chose to take part in the program. Subsequently, the 1990-1991 Budget Provision was implemented, directing the State Comptroller to "collect, withhold and receive and deposit . . . up to two percent of revenues received in any court pursuant to the STOP-DWI program" in order to subsidize the budget of the Department of Motor Vehicles.⁵⁰ The counties asserted three arguments attacking the constitutionality of the 1990-1991 Budget Provision: First, the budget provision violated article V, section 1 of the state constitution because it conferred duties upon the Comptroller not incidental to those which are constitutionally sanctioned duties; second, the provision violated article III, section 1 because it assigned lawmaking duties without adequate guidelines; and third, the provisions violated sections 1 and 2 of article IX in that the appropriation of county funds interferes with the home rule powers of the counties.⁵¹

Defendants maintained that the 1990-1991 Budget Provision merely assigned the Comptroller tasks that were "incidental to his constitutional functions"⁵² as dictated by the New York

49. *Id.* § 1197. Section 1197 specifically provides:

Program establishment. (a) Where a county establishes a [STOP-DWI program] it shall receive fines and forfeitures collected by any court, judge or magistrate or other officer within the county from [alcohol-related traffic] violations Upon receipt of these moneys, the county shall deposit them in a separate account . . . and they shall be under the exclusive care, custody and control of the chief fiscal officer of each county participating in the program."

Id.

50. *County of Rensselaer*, 578 N.Y.S.2d at 275.

51. *Id.* at 276. The court based its opinion solely on the article V, section 1 claim. It declined to consider the two other arguments. *Id.* at 277.

52. *Id.* Defendants' threshold argument that plaintiffs' lacked standing was rejected. The court found that the plaintiffs' had standing because they were asserting a "propriety claim of entitlement to a specific fund." *Id.* This "entitlement" was the plaintiffs' entitlement to receive moneys collected by the courts participating in the STOP-DWI program in accordance with Vehicle and Traffic Law § 1197. *Id.*

Constitution article V, section 1. The defendants also asserted that the provision at issue should be construed to withstand the constitutional objection that it conferred excessive administrative discretion upon the Comptroller.

In finding the Budget Provision unconstitutional under article V, section 1 of the New York State Constitution, the court held that the provision violated “the constitutional limitation on legislative assignment of extraneous administrative duties to the Comptroller.”⁵³ The court noted that the STOP-DWI legislation specifically directed funds accumulated from the prosecution of the designated offenses to the participating counties, and clearly not to the Comptroller for deposit in the state’s general fund.⁵⁴ The STOP-DWI legislation is therefore distinguishable from legislation permitting the comptroller to “[set] off an amount due the State incidental to auditing a claim for payment from State funds”⁵⁵ because the STOP-DWI funds at no time belong to the state. Additionally, it is not “merely a direction for the internal allocation of funds within the State’s financial structure.”⁵⁶ Rather, the Budget Provision at issue directed the Comptroller to collect a portion of the STOP-DWI funds and deposit those funds in the state’s general fund. The court found “no nexus whatsoever between this statutorily imposed responsibility and any auditing or other constitutionally designated function of the Comptroller.”⁵⁷ Consequently, the court found the budget provision to be an unconstitutional assignment of responsibility to the Comptroller.

The court also acknowledged the significance of the legislative intent in making its determination. The court stated that

53. *Id.* at 277.

54. *Id.*

55. *Id.*

56. *Id.* (distinguishing this case from *Methodist Hosp. of Brooklyn v. State Ins. Fund*, 102 A.D.2d 367, 479 N.Y.S.2d 11 (1st Dep’t 1984) (where moneys were transferred from the state insurance fund to the general fund of New York State), *aff’d*, 64 N.Y.2d 365, 476 N.E.2d 304, 486 N.Y.S.2d 905, *appeal dismissed*, 474 U.S. 801 (1985)).

57. *Id.*

“elimination of the statutory revenue collection duties of the Comptroller was apparently one of the objectives of the 1925 amendment to the State Constitution adding article V, section 1 and its prohibition against assignment of administrative responsibilities not incidental to the Comptroller’s primary auditing functions.”⁵⁸

58. *Id.* (citing *Patterson v. Carey*, 41 N.Y.2d 714, 724, 363 N.E.2d 1146, 1154, 395 N.Y.S.2d 411, 418 (1977)) (“[T]he Legislature was precluded from assigning the Comptroller any administrative duties, save those incidental to the performance of the Comptroller’s constitutional functions.”).