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Content of Appropriation Bills

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CONTENT OF APPROPRIATION BILLS

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.

N.Y. CONST. art. VII, § 6:

No provision shall be embraced in any appropriation bill submitted by the governor or in such supplemental appropriation bill unless it relates specifically to some particular appropriation in the bill, and any such provision shall be limited in its operation to such appropriation.

SUPREME COURT

CAYUGA COUNTY

New York State Bankers Association v. Wetzler⁵⁹
(decided June 17, 1991)

Plaintiffs, bankers association and Cayuga Lake National Bank, contended that the "Audit Fee Provision"⁶⁰ contained in the state

59. 573 N.Y.S.2d 816 (Sup. Ct. Cayuga County 1991).

60. *Id.* at 817. The Audit fee provision, in pertinent part, states:

"Notwithstanding any other provision of law, the commissioner of taxation and finance is hereby authorized and directed to establish and implement fees to assess such taxpayers for cost [sic] associated with conducting such audits. Such assessments shall include all direct, indirect, fringe benefit and other costs resulting from conducting such audits including costs incurred in other programs, with the exception of expenses incurred pursuant to administrative hearings and civil judicial hearings"

Id. (quoting 1990-91 State Operation Budget, Audit Fee Provision).

operations budget bill violated article VII, section 4 of the New York State Constitution because it was not part of the original budget bill submitted by the Governor.⁶¹ The defendant, Commissioner of the Department of Taxation and Finance, asserted, *inter alia*, that the Audit Fee Provision was valid under article VII, section 6 of the New York State Constitution, which allows certain additions to appropriation bills.⁶² The court held that the Audit Fee Provision was violative of article VII, section 4.⁶³

The 1990-91 state operations budget bill contained an appropriation for the expense of conducting tax audits of bank taxpayers.⁶⁴ The New York State Legislature added to this appropriation the "so-called" Audit Fee Provision that authorized the State Tax Commissioner to charge each bank taxpayer a fee in order to cover the cost of conducting their own tax audits.⁶⁵ The tax invoices were issued by the commissioner. The plaintiffs argued that the provision was not a part of the original budget bill submitted by the Governor, but was added by the legislature. The plaintiff further argued that because the provision was an "appropriation" and not a "revenue measure," it was prohibited by the plain language of article VII, section 4 of the New York State Constitution.⁶⁶ The defendant argued that article VII, section 6 was the controlling provision and allowed certain additions to appropriation bills.⁶⁷

To determine which section of the constitution governed, the court first noted that the provision was not: "a strike out of an item; or a reduction of an item; nor an addition of an item of appropriation" under section 4.⁶⁸ Thus, the Audit Fee Provision

61. *Id.* at 817-18. The plaintiffs contended that the Audit Fee Provision was added by the legislature and that a plain reading of article VII, section 4 invalidates the provision. *Id.* at 818.

62. *Id.* at 818; *see also* N.Y. CONST. art. VII, § 6.

63. *New York State Banker's Ass'n*, 573 N.Y.S.2d at 819.

64. *Id.* at 817.

65. *Id.*

66. *Id.*; *see* N.Y. CONST. art. VII, § 4.

67. *Id.*

68. *New York State Bankers*, 573 N.Y.S.2d at 818.

could be constitutional only if it was saved by section 6 or by the interplay between sections 4 and 6. In order to ascertain the correct meaning of section 6, the court examined *People v. Tremaine*,⁶⁹ a case that discussed the predecessor section to section 6.⁷⁰ Adopting the reasoning of *Tremaine*, the court rejected the defendant's reading of section 6 because it would "deprive Section 4 of all meaning."⁷¹ Instead, the court determined that section 6 should be "read as prohibiting the Governor from doing what the Legislature is prohibited from doing under Section 4."⁷² The court concluded that the Audit Fee Provision was "an instance of significant and substantial legislation of large economic impact on Bank Taxpayers, being passed without recourse to the regular legislative process . . ."⁷³ As such, it was a "perfect example of the ills intended to be cured by Section 4."⁷⁴

69. 252 N.Y. 27, 168 N.E. 817 (1929).

70. In *Tremaine*, the New York Court of Appeals determined that § 22 of article 3, the predecessor section to section 6, was inserted in the constitution of 1814 to prevent the inclusion of general legislation in an appropriation bill and that it had no affirmative application to "an appropriation bill submitted by the governor." *Tremaine*, 252 N.Y. at 47-48, 168 N.E. at 824.

71. *New York State Bankers*, 573 N.Y.S.2d at 818.

72. *Id.*

73. *Id.* at 818-19.

74. *Id.* at 818.