Kentucky Law Journal

Volume 44 | Issue 1 Article 13

1955

Constitutional Law--Special Legislation--Payment of Personal Property Taxes

P. Joan Skaggs
University of Kentucky

Recent Cases

CONSTITUTIONAL LAW—SPECIAL LEGISLATION—PAYMENT OF PERSONAL PROPERTY TAXES

House Bill 346,[1] enacted by the 1954 session of the General Assembly of Kentucky, provided that before a resident of Kentucky could be issued a motor vehicle registration receipt or license plate he had to submit evidence to the county court clerk that he had paid his personal property taxes, due to the state, county and city. Carriers of persons for hire operating vehicles designed to carry more than nine persons were excluded from the coverage of the act.[2] The appellant asserted the unconstitutionality of the act for the reason that it was special legislation prohibited by Section 59 of the Kentucky Constitution. The appellee contended, *inter alia*, that the law involved a valid exercise of the state's police power to regulate the use of its highways by motor vehicles. The judgment of the lower court upheld the validity of the statute. The Court of Appeals reversed that judgment, holding that the act was invalid special legislation, within the prohibition of Section 59 of the Constitution, because of the distinction made between kinds of motor vehicles. *Schoo* v. *Rose*, 270 S.W. 2d 940 (Ky. 1954).

This case involves a rather unusual application of the "special legislation" concept to a revenue measure designed to aid in the collection of personal property taxes. The Court of Appeals concluded that omission from the coverage of the act of owners of motor vehicles designed to carry more than nine persons amounted to "special legislation." The reasoning used by the court to reach this decision was at least questionable.

The court, however, correctly rejected the appellee's contention that the 1954 act in question should be upheld as a valid

[1] This bill was codified as KY. REV. STAT. secs. 186.275-186.285.

[2] The scope of the application of the Act is defined in section 1, subsection (1) thereof to include all Kentucky residents who are required to register a motor vehicle pursuant to KY. REV. STAT. sec. 186.060. These latter sections provide for the registration and licensing by county court clerks of certain motor vehicles except motor vehicles operating under certificates of convenience and necessity. Such excepted vehicles are required to be licensed by the Department of Motor Transportation and certificates for them are issued under the provisions of Chapter 281 of KY. REV. STAT.

exercise of the police power, recognizing that a legislative enactment can be sustained as an exercise of police power only if it has some reasonable relation to such objects as public safety, health, peace, good order or morals. The court stated that:

> Making the right to operate an automobile upon the public highways of the State dependent upon whether a person has paid his personal property taxes upon property other than the vehicle to be licensed seems to us to have no relation to any of the subjects to which the police power extends. Rather it seems clear that the act is purely and simply a revenue measure, adjunctive to enforcing the collection of taxes on personal property.[3]

After determining that the law in question in the *Schoo* case was a revenue measure, the court considered its validity under the constitutional prohibition against "special legislation."[4] Recognition was given to the accepted general statements of rules which attempt to define what is meant by special legislation.[5] In spite of the agreement of the courts of various jurisdictions on the general statements, these rules are difficult to apply in the numerous and varied fact situations in which laws have been attacked as "special."[6]

---

[3] 270 S.W. 2d 940, 941-942 (Ky. 1954).

[4] Section 59 of the KENTUCKY CONSTITUTION provides that the General Assembly shall not pass any local or special acts concerning twenty-eight specifically named subjects and concludes with an inclusive provision in subsection 29 that: "In all other cases where a general law can be made applicable no special law shall be enacted." The constitutions of almost all of the states contain some limitation on the power of the legislatures to enact special or local laws. See Anderson, *Special and Local Acts In Arkansas*, 3 ARK. L. REV. 113 (1949); Cloe and Marcus, *Special and Local Legislation*, 24 KY. L.J. 349 (1936); 51 YALE L.J. 1358 (1942).

[5] In the principal case the court, to support the general rules with regard to "special legislation," referred to citations dealing with situations involving due process of law and protection of the laws guaranteed by the Federal Constitution. 270 S.W. 2d 940, 941. While the statement of general rules with regard to these rights protected by the Federal Constitution are either identical with or almost identical with those applied to special legislation, the concepts are not identical. It has been pointed out that there are many statutes which will fall under the provisions prohibiting special and local legislation which will be upheld under the Fourteenth Amendment of the Federal Constitution because the Fourteenth Amendment equal protection clause requires only that there be "equality" of and not "identity" of treatment (as is required by the special legislation provisions) of all those persons or things in a particular class, assuming that the classification is reasonable. On the other hand, a person attacking a law under the Fourteenth Amendment must show not only an unreasonable classification but also an injury resulting therefrom. Under a provision prohibiting special legislation one need only show that the law affecting him is based upon an unreasonable classification. Cloe and Marcus, *supra* note 4 at 354. See also, 51 YALE L.J., *supra* note 4 at 1360, where it is stated that: "More general restrictions on all types of repressive special legislation are embodied in the due process clause and the concept of separation of powers."

[6] Two writers on the subject of special legislation have concluded that "special

As a general rule courts recognize that an act will meet the constitutional requirements of general legislation, and will not be condemned as "special," if its operation is uniform upon a class of persons, places or things prescribed by or affected by the act.[7] It is also necessary that the *classification* must be "reasonable" and germane to the purpose of the statute.[8] The Court of Appeals, in the instant case, stated the often-repeated rule that ". . . there must be distinctive and natural reasons inducing and supporting the classification."[9] It is sometimes said that classification must be based upon some reasonable and substantial difference in kind, situation or circumstance bearing a proper relation to the purpose of the statute.[10]

The court seemed to consider that the principal question in the instant case was whether the *classification* in the legislative enactment, by which the law was made applicable to one class of motor vehicle owners and not to another, was reasonable. The court recognized that motor vehicles have been separately classified for legislative purposes other than those relating to collection of revenue,[11] stating that other separate classifications could be

legislation is that legislation which the court calls Special." Horack, *Special Legislation: Another Twilight Zone,* 12 IND. L.J. 109, 123 (1936). Cloe and Marcus, *supra* note 4 at 376, have stated that principles "appear to be no more than bolstering statements; they are used when in accord with the court's conclusion and otherwise ignored."

[7] Commonwealth v. Griffen, 268 Ky. 830, 105 S.W. 2d 1063, 1065 (1937); King v. Com., 194 Ky. 143, 238 S.W. 373, 376, 22 A.L.R. 535 (1922); 50 AM. JUR. 17-21 (1944); 12 AIR L. REV. 419, 421 (1941); Anderson, *supra* note 4, at 118; 2 KAN. L. REV. 75, 76 (1953).

[8] Commonwealth v. Griffen, *supra* note 7; Com. v. Kentucky Jockey Club, 238 Ky. 739, 38 S.W. 2d 987, 994 (1931); 50 AM. JUR. 20-21, 23-24 (1944); Comment, 2 KAN. L. REV., *supra* note 6; Cloe and Marcus, *supra* note 4 at 364.

[9] 270 S.W. 2d 940, 941.

[10] 50 AM. JUR. 24 (1944). See also *supra* note 8.

[11] Chapter 281 of KENTUCKY REVISED STATUTES deals with contract motor carriers, common carriers and motor carriers operating under certificates of public convenience and necessity and imposes various kinds of restrictions with regard to such vehicles that are not imposed with regard to ordinary passenger automobiles. Additional fees or taxes are prescribed with regard to the motor vehicles dealt with in this chapter that are not imposed with regard to ordinary automobiles. KY. REV. STAT. sec. 281.615 provides that no person shall act as a motor carrier without first having obtained a certificate or permit from the Department of Motor Transportation, KY. REV. STAT. sec. 281.620 imposes a $25 filing fee on applicants for a certificate or permit or for amendment or transfer or sale or change in route or abandonment of a certificate or permit as a condition precedent to the granting of the thing applied for. KY. REV. STAT. sec. 281.655 prescribes that before any certificate or permit will be issued or renewed, the applicant or holder of the certificate or permit must file or have on file with the Department of Motor Transportation an approved indemnifying bond or insurance policy, and the types and amounts of insurance to be carried on each vehicle are prescribed according to passenger capacity and gross weight. KY. REV. STAT. sec. 281.811 imposes a tax,

sustained as a valid exercise of the police power, but concluded that there was no reasonable basis tax-wise for the distinction between large carriers of persons, including various kinds of busses and other classes of vehicles, and small carriers. The Court of Appeals observed that owners of both classes of vehicles were required to pay a license tax as a condition precedent to their rights to use the highways, and that both are required to pay taxes upon other personal property and are liable to the same penalties for nonpayment, and concluded that the only substantial difference between the two groups is that the license tax is paid through different agencies. In conclusion the court stated: "We do not think that single difference is sufficient to support a classification by which the act is applicable to one class and inapplicable to the other."[12]

The purposes for which prohibitions against special legislation were added to state constitutions and the cases in which such provisions have been applied seem to give the best indication as to what situations really involve the concept of invalid special legislation and indicate that the court misapplied that concept in the instant case. The constitutional purposes and cases suggest (1) that the "special legislation" doctrine was not intended to prohibit a revenue collection measure based upon a reasonable classification of the things or objects on which it was designed

---

on every motor carrier operating wreckers, of $10 per year per wrecker. Various other statutory provisions contained in Chapter 281 dealing with taxes and tax collection are as follows: sec. 281.812—yearly seat tax on airport limousines; sec. 281.813—weight tax on U-Drive-It vehicles used in the transportation of property; sec. 281.815—mileage and seat tax on motor vehicles engaged in transporting passengers for hire, and license fees for certain other commercial vehicles; sec. 281.750—identification required of motor vehicles for proper identification and for prevention of tax evasion; sec. 281.755—inspection of motor vehicles; sec. 218.810—weight tax on motor vehicles primarily engaged in the transportation of property for hire, license fee for driveaways. In addition to the statutory provisions just mentioned there are others requiring various reports and inspections with regard to certain vehicles that enable the state government to keep a close check on them. The fact that motor vehicles have been separately classified for tax purposes is illustrated by KY. REV. STATS. sec. 138.470 which expressly exempts from the 3% usage tax, imposed on motor vehicles by KY. REV. STAT. sec. 138.460, motor vehicles of a common carrier or contract carrier upon which the tax imposed by KY. REV. STAT. sec. 281.810 (imposing a weight tax) or sec. 281.815 (imposing a mileage and seat tax) and a franchise tax is paid by the owner.

[12] 270 S.W. 2d 940, 942. The appellee's contention that the operation of a motor vehicle upon the public highways is not a right but a privilege that might be conferred or denied at the will of the Legislature was disposed of by the court's saying that such conditions and regulations imposed must be general and uniform in their operation.

to operate, and (2) that the statutory classification involved in the *Schoo* case was not unreasonable.

The origin of state constitutional provisions prohibiting the enactment of "special", "local" or "private" acts can be traced to abuses of political power by special interest groups.[13] The various states adopted such constitutional provisions in order to prevent piecemeal legislation and to secure uniformity of the laws as applied to geographical areas and to all persons of the same class.[14] The terms "special" and "local" appear to be used synonymously in many of the cases, but when properly applied, "special" relates to persons or things and "local" relates to political or geographal units.[15] There was also a desire on the part of framers of constitutional provisions to prevent a waste of time spent on trivial matters by the legislatures, and to prevent their concern with such a large volume of laws that proper consideration could not be given to them.[16]

Authoritative precedents supporting the decision in the instant case are lacking. None of the cases cited by the Court of Appeals to support its decision involve a factual situation similar to that in the *Schoo* case. Some of the cited cases deal with validity of classification of subjects of legislation under the "equal protection" clause of the Federal Constitution, and the citation to *American Jurisprudence* used by the court deals with "equal protection" of the laws and not with the special legislation concept.[17] The use of these citations, instead of those dealing with special legislation cases, probably did not change what would have been the court's decision. Although a classification could be held good under the "equal protection" clause that might be invalid when applied to a "special legislation" provision in a state constitution,[18] the same, or substantially the same, definitions for

[13] 2 KAN. L. REV., *supra* note 7 at 75.

[14] Markendorf v. Friedman, 280 Ky. 484, 133 S.W. 2d 517 at 519, 127 A.L.R. 416 (1939); Cloe and Marcus, *supra* note 4 at 357-358. See also Clay v. Saunders, 52 N.Y.S. 2d 837, 184 Misc. 143 (1945), setting out purposes of special legislation provisions.

[15] Cloe and Marcus, *supra* note 4 at 364-365; Anderson, *supra* note 4 at 113. Kentucky cases that set out distinctions between "special" and "local" laws are Shaw v. Fox, 246 Ky. 342, 55 S.W. 2d 11 (1932), King v. Com., 194 Ky. 143, 238 S.W. 373, 22 A.L.R. 535 (1922) and Greene v. Caldwell, 170 Ky. 571, 186 S.W. 648 (1916).

[16] Horack and Welsh, *supra* note 6 at 193.

[17] 12 AM. JUR. 156 (1944).

[18] *Supra* note 5.

purposes of reasonable classification of subjects of legislation are used in both "equal protection" and "special legislation" cases. "Equal protection" is a broader concept than "special legislation."

Only one case was referred to in the opinion of the *Schoo* case that involved a fact situation in which a litigant asserted the invalidity of a statute making the right to receive a motor vehicle license dependent upon a showing of payment of personal property taxes, on the ground that such a statute was "special legislation." That case, *State ex rel. Taylor* v. *Mirabel*,[19] relied on by the appellee to support his contention that the Kentucky statute was constitutional, was said to be "clearly not in point." The court distinguished this case from the *Schoo* case by pointing out that the act in the New Mexico case did not relate to personal property other than the vehicle to be licensed and applied to the owners of *all* motor vehicles alike.[20]

Cases in jurisdictions other than New Mexico have sustained the validity of statutes similar to the Kentucky and New Mexico statutes requiring as a condition precedent to the issuance of a license for the operation of a motor vehicle either the payment of all personal property taxes or only those on the vehicle to be licensed.[21] In *Grossfeld* v. *Baughman*,[22] a Maryland case, a statute was upheld which required all taxes due and in arrears on motor vehicles to be paid before any plate or certificate of registration of title for such a vehicle could be issued or transferred. This act specifically excepted from its application "commercial trucks," and thus was very much like the Kentucky act involved in *Schoo* v. *Rose*. In the *Grossfeld* case the contentions that the act violated the "due process" and "equal protection" provisions of the Constitution and that it was a invalid special law were rejected. The court stated:

> On precedent and principle, the provisions of the statute in question are not open to any constitutional objection. The classification of motor vehicles into two great natural di-

[19] 33 N.M. 553, 273 P. 928, 62 A.L.R. 296 (1928).

[20] The main objection to the constitutionality of the New Mexico act, aside from the question relating to the title of the act, was predicted upon an alleged discrimination between the payers of personal property taxes as to the dates when their taxes should be paid.

[21] See Annotation in 62 A.L.R. 304 (1928), following State ex rel. Taylor v. Mirabel.

[22] 148 Md. 330, 129 Atl. 370 (1925).

> visions is not unreasonable, and the penalties imposed for the failure to pay the taxes on the designated class of non-commercial motor vehicles cannot be said to be so arbitrary or unfair as to fall under the condemnation of law.[23]

The further observation was made that the act affected all of a distinct class within a defined territorial unit and did not apply to those outside the boundary of Baltimore City.[24] Other cases involving the same problem and in which statutes similar to that in the principal case were upheld, despite challenges that such statutes denied equal protection of the laws to persons of the same class and were discriminatory, are *Mayor and City Council of Baltimore* v. *Perrin*[25] and *Hammett* v. *Kansas City*.[26]

Prior to the decision by the Court of Appeals in the principal case, the "special legislation" provision of the Kentucky Constitution has never been applied to invalidate a law in a factual situation similar to that involved in the *Schoo* case. The special legislation section was once used to strike down an act relating to the registration and taxation of motor vehicles, because the procedure for collection was made different in counties having a city of the first class from that in counties not having such a city.[27] Many

---

[23] *Id.* 129 Atl. 373.

[24] *Id.* at 374.

[25] 12 A. 2d 261 (Md. 1940). In this case it was contended on constitutional grounds that the requirement of payment of taxes on all personal property of former owners, including those on vehicles, deprived the present owners of property without due process of law. The court concluded that the act could not be objected to as discriminatory on the ground that city officials assessed taxes on vehicles owned by individuals separate from those on their other personalty and received payment of taxes on them separately and that they did not follow that practice with respect to taxes of corporation.

[26] 173 S.W. 2d 70 (Mo. 1943), wherein a city ordinance prohibiting issuance of a license to anyone failing to pay city personal property tax for preceding year, as applied to motor vehicle owners did not violate the "equal protection" clause of the Fourteenth Amendment, nor the state constitutional provisions giving all persons the natural right to enjoyment of the gains of their own industry. The contention was rejected that the statute in question denied equal protection to certain taxpayer licensees in that it made their duties more onerous and burdensome than those of taxpayers who were not such licensees.

[27] Nuetzel v. State Tax Commission, 205 Ky. 124, 265 S.W. 606 (1924). See also: Hager v. Walker, 128 Ky. 1, 107 S.W. 254 (1908), in which revenue measures were held to be special legislation; Commonwealth v. E. H. Taylor Jr., Co., 101 Ky. 325, 38 S.W. 10 (1897), in which a statute was declared invalid special legislation requiring taxation of the property in the possession of and owned by one who owed taxes thereon to the United States in a different manner or mode from that required on the same kind of property in the hands of and owned by those citizens who had paid taxes to the United States. In the *Hager* case a license tax on real estate agents was declared invalid special legislation because the amount of the tax imposed was of different amounts, dependent upon what class of city an agent lived in.

other cases deal with the reasonableness of a classification involving population differences of certain areas. Other Kentucky cases upholding legislation challenged as special and as not setting up a reasonable classification for the subjects of the act deal with a wide variety of subjects and classifications ranging from cases in which laws were applied to certain illegal businesses,[28] to cases dealing with salaries of judges and commissioners of the Court of Appeals,[29] and a case in which a distinction was made between drugstores employing regular pharmacists and those not employing such pharmacists.[30]

It might have been contended that making the right to receive a motor vehicle license plate or registration receipt dependent upon whether or not a vehicle owner can show evidence that he has paid his personal property taxes discriminates between those who own and those who do not own motor vehicles, and thus discriminates in the enforcement of the personal property tax. This same discrimination might also support an argument that there is a violation of the guaranty of equal protection of the laws, or of the constitutional provision requiring that all taxes must be levied and collected by general laws, or of the requirement that taxes must be uniform. Nevertheless, the "equal protection" clause of the Constitution does not prohibit a reasonable classifica-

[28] Commonwealth v. Kentucky Jockey Club, 238 Ky. 739, 38 S.W. 2d 987 (1931) (in which a statute creating the offense of gaming and providing that it should not include pari mutuel system of betting on horse races within inclosures while races were being run was held not to be forbidden by Sec. 59 of the Constitution of Kentucky, prohibiting the passage of local or special acts); King v. Com., 194 Ky. 143, 238 S.W. 373 (1922) (in which a law for abatement of disorderly houses was held not to violate the constitutional provision against special or local legislation).

[29] Manning v. Sims, 308 Ky. 587, 213 S.W. 2d 577 (1948) (in which it was contended that the act in question was special and local in its application to judges and exempted them from the provisions of the general law relating to expense accounts).

[30] Markendorf v. Friedman, 280 Ky. 484, 133 S.W. 2d 517, 127 A.L.R. 416, *appeal dismissed* in 309 U.S. 627, 60 S. Ct. 610 (1939). This case upheld a classification of drug stores as reasonable for purposes of public health. Two additional cases illustrating other fact situations in which statutes were upheld despite charges that they amounted to special legislation are Galloway v. City of Winchester, 299 Ky. 87, 184 S.W. 2d 890 (1944) and Com. ex rel. v. Griffin, *supra* note 7. In the first of these cases a statute prohibiting maintenance of an action against a city for personal injuries caused by a defect in a street unless timely notice was given to city officials was held constitutional and not objectionable as class legislation or special legislation by fixing a period of limitation different from the period within which one may sue other tort-feasors. The *Griffin* case upheld the portion of a statute relieving incumbent members of boards of education from the necessity of meeting new educational qualifications.

tion, and equal protection is afforded if all of the same class are treated alike. Thus it might be said that motor vehicle owners of the type to which the act applies are treated alike (assuming a reasonable classification as a class), and that if the classification involved in this case is reasonable for purposes of the special legislation prohibition, it is reasonable for purposes of the equal protection provision. With regard to the question of whether the collection of taxes in this way violates the "uniformity of taxation" concept, it has been recognized that only the levy or assessment of the tax must be uniform and not its means of enforcement.[31] In the case of *Hammett* v. *Kansas City*[32] the court quotes from *Florida Central and P. R. Co.* v. *Reynolds* as follows:

> If taxes are to be regarded as mere debts then the effort of the state to collect from one debtor is not prejudiced by its failure to make like effort to collect from another. And if regarded in the truer light as a contribution to the support of government, then it does not lie in the mouth of one called upon to make his contribution to complain that some other person has not been coerced into a like contribution.[33]

As a matter of fact, the procedures for collection of taxes on common carriers are far more stringent that those in the instant statute.[34]

In summary, it can be observed that several reasons suggest that the court wrongly concluded that the act in question in the principal case was special legislation, namely: (1) case law authority (in Kentucky and other jurisdictions as well); (2) the purpose of the law, which was to collect personal property taxes; (3) the history of special legislation sections of state constitutions, indicating that a revenue collection measure distinguishing between kinds or classes of motor vehicles was not the type of legislative action that such sections were designed to prevent; and (4) the fact that types of motor vehicles have been separately classified for other purposes, with common carriers and other large vehicles being subjected to many restrictions.

---

[31] *Supra* note 22, 129 Atl. at 373.
[32] *Supra* note 26.
[33] 183 U.S. 471, 480 (1902).
[34] KY. REV. STAT. secs. 281.811, 281.812, 281.813, 281.815, 281.750, 281.810. See *supra* note 11, citing these sections and referring to the particular taxes involved.

In conclusion, it is suggested that this decision will not be greatly acclaimed by honest taxpayers who are actually paying taxes on their automobiles and on other personal property, well-knowing that other property owners are failing to submit a listing of personal property for tax purposes.

P. JOAN SKAGGS

SURETYSHIP—REIMBURSEMENT—SUBROGATION—STATUTE OF LIMITATIONS

A surety made payment in 1943 on a contractor's bond to a materialman without taking a written assignment of the creditor's claim against the contractor. Seven years later, the surety sought reimbursement by the contractor, or, as an alternative, subrogation to the rights of the materialman under the construction contract between the contractor and the City of Ashland. The contractor pleaded the five-year statute of limitations for implied contracts as a bar to the surety's action. The trial court sustained a demurrer to the contractor's plea and entered judgment for the surety. *Held:* Reversed. Where a surety pays a debt of the principal debtor and seven years later sues the principal debtor for reimbursement, the action based on the implied contract for reimbursement is barred by Kentucky Revised Statutes section 413.120, which provides that an action upon a contract not in writing, express or implied, must be commenced within five years from the time the action accrued. Nor can the surety recover through the application of the doctrine of subrogation, for subrogation is an "incident" to the right of reimbursement and is also barred by section 413.120. *Payne* v. *Standard Acc. Ins. Co.*, 259 S.W. 2d 491 (Ky. 1953).

It is widely accepted that a surety may secure reimbursement by the principal debtor for any amount of money which he has paid against the debt.[1] At early common law, the right of a surety to be reimbursed was denied in the absence of an express promise to indemnify,[2] but it is now held that the principal debtor impliedly promises to reimburse the surety for that which he has

[1] HANNA, CASES AND MATERIALS ON SECURITY 357, note 1 (1952).
[2] See Appleton v. Bascom, 3 Metc. 169 (Mass. 1841). See also, SIMPSON, SURETYSHIP 225 (1950).