STATE FLORIDA EX REL. RIVERS H. BUFORD v. W. ROGER WATKINS

102 So. 347 (1923) | Cited 0 times | Supreme Court of Florida | April 28, 1923

BROWNE, J. -- The Attorney General applied for and obtained an alternative writ of mandamus direct to W.Roger Watkins as Clerk of the Circuit Court of Hillsborough County, Florida, to require him to comply with the provisions of Chapter 8497, Laws of Florida, and render to the Board of County Commissioners of Hillsborough County, Florida, a sworn statement showing in detail the expenses of his office, fees and commissions collected and the gross and net income thereof, for the year ending December 31, 1922.

The return to the writ challenges the Constitutionality of Chapter 8497, Acts of 1921, and the matter is now before us on a motion for a peremptory writ.

In the case of State v. Shepard, decided August 14, 1922, 84 Fla. 206, 93 South. Rep. 667, Chapter 8497, it was held "that the gross and net amount of fees collected in 1921 by the clerk of the circuit court in one county of the State is largely in excess of those collected in the only county of the state having 100,000 or more population. But the respondent is not within the classification based on population, since he is an officer in a county of less than 100,000 population, and he cannot contest the validity of that classification when it does not invalidate the classification he is in".

In the instant case the respondent is an officer in a county having over 100,000 population, and is therefore in a position to raise the question of the constitutionality of the second proviso of the act, which the respondent in the Shepard case was not.

Assuming that Section 1 of the act is valid down to the second proviso, which makes the objectionable classification, the question presents itself of the effect of the invalid portion upon the entire section.

The opinion in the Shepard case, supra, intimated that this proviso was based upon an arbitrary and unreasonable classification.

In a separate concurring opinion the then Chief Justice said: "I concur in the conclusion reached in this case, that Chapter 8497, Acts of 1921, is constitutional and valid but only if the proviso in relation to counties having 100,000 population or more is eliminated.

"I regard that proviso as unconstitutional and invalid. All of the 'enumerated cases' in Section 20, Art. 3 of the Constitution, whereby the Legislature is prohibited from passing special or local laws, are of equal dignity.

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"The Legislature cannot enact a valid law providing that 'the punishment for the crime of larceny shall be imprisonment not exceeding two years, or by fine not exceeding $1,000, or by both fine and imprisonment in all counties in the state; provided tat 'in counties having 100,000 population or more', the punishment shall be by imprisonment not exceeding five years, or by fine not exceeding $5,000, or by both fine and imprisonment.'

"Neither could the Legislature make a rule for 'changing venue of civil and criminal cases' for part of the state, and a different rule 'in counties of 100,000 population or over.'

"The same is true with regard to 'summoning and impaneling grand and petit juries' where expediency and convenience might suggest a different rule for sparsely settled counties than in those more thickly populated.

"If a classification based upon population may be constitutionally applied in the matter of 'regulating the fees of officers of the state and county,' a similar classification would have to be sustained in an act making the punishment of crime vary according to population, in the several counties of the State, and likewise with regard to all the 'enumerated cases' in Section 20 of article 3 of the Constitution. It follows that so much of Section 1 of Chapter 8497 as provides:

"'That in counties of one hundred thousand (100,000) population or over said officers shall receive from the net income te first five thousand ($5,000.00) dollars; ninety (90%) per cent. of the next one thousand ($1,000.00) dollars; fifty (50%) per cent. of the next two thousand ($2,000.00) dollars; thirty (30%) per cent. of the next two thousand ($2,000.00); and ten (10%) per cent of the rest and residue thereof; Provided, further, that in no event shall such officers be entitled to more than seven thousand five hundred ($7,500.00) dollars per annum' -- is unconstitutional and void."

In this concurring opinion Mr. Justice BROWNE also gave it as his opinion that the proviso could be eliminated without destroying the purpose of the act. Upon further consideration he has reached a different conclusion.

The proviso being unconstitutional it becomes necessary for us to determine what was the legislative purpose as shown by the language of the entire Section 1, and it is quite palpable therefrom that the purpose was to limit the compensation of county officials to $6,000.00 per year, except in counties having 100,000 or more, and as to them the compensation should be limited to $7,500.00 per year. If we eliminate the second and third proviso of Section 1, that purpose is undoubtedly destroyed, and there will be substitute for the legislative will a different plan, namely, that the compensation of all county officers shall be limited to $6,000.00 per year. That such was not the intention of the legislature is clear when the act is read in connection with the fact known to every one in Florida that there are at least two counties in the State, the population of each of which exceeds 100,000, and with the rapid growth of our population, other counties will soon come within the 100,000 classification.

The proviso being unconstitutional, and the majority of the court being satisfied that the manifest purpose of the legislature would not be carried out if the salary of officials in the counties of over 100,000 population should be limited to $6,000.00 a year, the entire section must fall.

The remaining section of the act cannot become effective when Section 1 is eliminated, as there is nothing then in the act to which they refer or upon which they can operate.

The entire act, therefore, must fall, and the motion for a peremptory writ is denied.

TAYLOR, C. J., AND ELLIS, J., concur.

WHITFIELD AND WEST J.J., dissent.

WHITFIELD, J., dissenting.

Section 1, Chapter 8497, Acts of 1921, is as follows:

"Each county official whose compensation for his official duties is paid wholly or partly by fees or commission or by both by fees and commissions shall receive as his yearly compensation for his official services, from the whole or a part of the fees and commissions so collected, the following sums only: All the net income from such office not to exceed Five Thousand ($5,000.00) Dollars; sixty (60%) of the next One Thousand ($1,000.00) Dollars, or any fraction thereof; forty (40%) per cent of the next Two Thousand ($2,000.00) Dollars, or any fraction thereof; twenty (20%) per cent of the next Two Thousand ($2,000.00) Dollars, or any fraction thereof, and ten (10%) per cent of the rest and residue thereof; Provided, however, that should said method of computation yield a net income of more than Six Thousand $6,000.00) Dollars per year, the excess over and above Six Thousand ($6,000.00) Dollars net per year shall be paid over as herein provided and no such officer shall under the foregoing computation of remuneration receive as his net income from the moneys so collected by him more than Six Thousand ($6,000.00) Dollars per year. Provided, that in counties of One hundred Thousand (100,000) population or over said officers shall receive from the net income the first Five Thousand ($5,000.00) Dollars; ninety (90%) per cent of the next One Thousand ($1,000.00) Dollars; fifty (50%) per cent of the next Two Thousand ($2,000.00) Dollars; thirty (30%) per cent of the next Two Thousand ($2,000.00) Dollars; and ten (10%) per cent of the rest and residue thereof; Provided, further, that in no event shall such officers be entitled to more than Seven Thousand Five hundred ($7,500.00) Dollars per annum."

The opinion of the court in holding the entire Act to be void, because a portion of Section 1 is held to be invalid, wholly ignores Section 5 of the Act, which is as follows:

"Sec. 5 Should any section of this Act be held inoperative or void, or should its application to any official be held inoperative or void, the same shall not affect the legality or applicability of the

balance thereof."

Under this express provision, should any section of the Act be held to be void, or should its application to any official be held to be inoperative, such void or inoperative part "shall not affect the legality or applicability of the balance" of the Act. The portion of the Act held to be invalid is clearly separable and may be disregarded without affecting the efficiency of the remainder of the Act to accomplish the main legislative purpose; and Section 5 specifically expresses the legislative intent that invalid portions of the Act shall not affect the enforcement of the Act, with the invalid eliminated. No authority is adduced for nullifying the state.

The last census shows that Hillsborough county has 87,901 population. This is stipulated and admitted in the proceedings. The respondent is the Clerk of the Circuit Court for Hillsborough county and is within the main provisions of section 1 of the statute. He is not in the class referred to in the second and third provisos to Section 1, and he has no right to contest the validity of such provisos. this is distinctly held in State ex rel. Buford v. Shepard, 84 Fla. 206, 93 South. Rep. 667.

As the writ covers only amounts collected as fees by the respondent since the Act became effective, the respondent may be estopped to assail the validity of the statute. He cannot claim benefits under the statute and then contest its constitutionality.

The constitution expressly provides that the compensation of county officers shall be prescribed by law and no limitation is imposed by the constitution upon this express power of the legislature. The compensation of officers may be changed at any time by laws operating prospectively when not restrained by organic provisions. See 29 Cyc. 1427; 22 R.C.L. 533; Cotton v. Ellis, 52 N.C. 545; Fortune v. Board of Com'rs of Buncombe County, 140 N.C. 322, 52 S.E. Rep. 950; Board of Com'rs of New Hanover County v. Stedman, 141 N.C. 448, 54 S.E. Rep. 269; Farwell v. Rockland, 62 Me. 296; Legler v. Paine, 147 Ind. 181, 45 N.E. Rep. 604; 12 C.J. 1139.

Neither the constitution nor the statutes regulating the fees that may be collected by county officers gives to such officer a vested right in fees that may be collected after the enactment of a statute fixing the compensation of such officers and requiring all collections for fees in excess of stated amounts to be paid into the county treasury, as does Chapter 8497; therefore collections of fees made after the latter statute became effective are subject thereto; and if an officer collects fees after the enactment of the later statute, he cannot avail himself of the benefits conferred by the statute and then assail its validity. 12 C.J. 770; 8 Cyc. 792; Outgamie County v. Zeuhlke, 165 Wis. 32, 161 N.W. Rep. 6; Greene County v. Lydy, 263 Mo. 77, 172 S. W. Rep. 376, ann. Cas. 1917C 274, an d notes

In State ex rel. Buford v. Spencer, 81 Fla. 211, text 215, 87 South. Rep. 634, the court held, in express terms, that fees collected by officers "represent the charge made by the State for Services rendered by it through certain designated officers. The State may give all the fees to the officer as his compensation, or it may give him a portion only, and retain the remainder to be applied to such

purposes as the legislature may determine." in view of this adjudication, the respondent has no right to litigate the constitutionality of the statute.

In State ex rel. Atlantic Coast Line R. Co. v. State Board of equalizers, 84 Fla. 592, 94 South. Rep. 681, the State officers had not acted under the statute for their benefit. The services of the official here were not rendered and the fees were not collected before the change in the statute as in Louisiana ex rel. fisk V. Jefferson Police Jury, 116 U.S. 131, 6 Sup. Ct. Rep. 329.

As the Attorney General did not question the right of respondent t challenge the constitutionality of the statute, its validity will be considered as was done in the Shepard case, 84 Fla. 206, 93 South. Rep. 667. There is no contention that Chapter 8497 or any part thereof violates any provision of the Federal constitution.

The grounds of attack now made on the statute are not materially different from those urged in the shepherd case where by a unanimous court Chapter 8497 was held to be valid. The learned criticisms of the statute by counsel for the respondent have not disclosed any conflict between the constitution and Chapter 8497, Acts of 1921.

The constitution classifies laws into two groups, viz: those that are general and those that are special or local, further providing that "the legislature shall not pass special or local laws in any of" specifically "enumerated cases"; and provides that "in all cases enumerated * * * all laws shall be general and of uniform operation throughout the State, but in all cases not enumerated or excepted * * * the legislature may pass special or local laws." Among the "enumerated cases" in which laws shall be "general and of uniform operation throughout the State," are those "regulating the fees of officers of the State and County." Secs. 20 and 21 Art. III.

The classifications of general and of special or local laws by the constitution do not forbid statutory regulations by special or local of matters that are not among the "cases enumerated" in which the constitution provides that laws "shall be general and of uniform operation throughout the State." special local laws are expressly authorized except in the specifically "enumerated cases."

It is expressly provided that the "compensation" of county officers "shall be prescribed by law. Sec. 6, Art. VIII. But as laws prescribing the "compensation" of county officers are not among the "enumerated cases" in which laws are required to be general, "the legislature may pass special of local laws" prescribing such compensation.

The constitution contains no classifications of laws or of subjects relating to the compensation of county officers or to the distribution of fees collected by county officers. Chapter 8497, by its terms was enacted "to fix and determine the compensation and remuneration of all county officials in the State of Florida now paid in whole or in part by fees and commissions." Such a law is not among the "enumerated cases" in which laws are required by the constitution to "be general and of uniform

operation throughout the State," therefore under the constitution "the legislature may pass special or local laws" on the subject.

The Constitution does not provide that the county officers are entitled to the fees collected by them, and this Court has held in State ex rel. Buford v. Spencer, 81 Fla. 211, 87 South. Rep. 634, that the "fees represent the charge made by the State for services rendered by it through certain designated officers," and that "the State may give all the fees to the officer as his compensation, or it may give him a portion only, and retain the remainder to be applied to such purposes as the Legislature may determine." State ex rel. Attorney General v. Judges, 21 Ohio St. 1. The Constitution does not prescribe or limit the classifications that may be made in regulating the compensation of officers, therefore the Legislature may classify as it sees proper in prescribing such regulations. The provisionn of the Constitution that "all laws * * * regulating the fees" that may be collected by "officers of the State and county," "shall be general and of uniform operation throughout the State," does not require laws regulating the disposition of the fees when collected to be "general and of uniform operation throughout the State." And even if under the Constitution the "compensation" of county officers may be "fixed" or "prescribed" only by general laws, and even if under the Constitution the disposition of fees collected pursuant to general and uniform laws may be regulated only by general laws, Chapter 8497 is a general law, whether the provisio to Section 1 of the Act is or is not a valid classification or is or is not a separable enactment. See Harwood v. Wentworth, 162 U.S. 547, 16 Sup. Ct. Rep. 890; Stone v. Wilson, (Ky. App.) 39 S.W. Rep. 49; Ex Parte Wells, 21 Fla. 280; Collier v. Cassady, 63 Fla. 390, 57 South. Rep. 617; Givens v. Hillsborough County, 46 Fla. 502, 35 South. Rep. 88; Whitaker v. Parsons, 80 Fla. 352, 86 South. Rep. 247; Carlton v. Johnson, 61 Fla. 15, 55 south. Rep. 975; fine v. Moran, 74 Fla 417, 77 South. Rep. 533; Bloxham v. Florida Cent. & P.R. Co., 35 Fla. 625, 17 South. Rep. 902; Dell v. Marvin, 41 Fla. 221, 26 South. Rep. 188; State ex rel. Lamar v. Jacksonville Terminal Co., 41 Fla. 363, 27 South. Rep. 221. The classifications of the statute are general, reasonable and practical, and embrace all within the classes. The law covers a general State purpose and the classifications are not arbitrary. See 25 R.C.L. p. 814, et seq. and Notes; State ex. rel. Patterson v. Donovan, 20 Nev. 75, 15 Pac. Rep. 783; Codlin v. Kohlhousen, 9 N.M. 565, 58 Pac. Rep. 499; Harwood v. Perrin, 7 Ariz. 114, 60 Pac. Rep. 891; Clark v. Finley, 93 Tex.. 171, 54 S.W. Rep. 343; 36 Cyc. 987; Stone v. Wilson (Ky. App.) 39 S.W. Rep. 49; Chicago, B. & Q.R. Co. v. Doyle, 258 Ill. 624, 102 N.E. Rep. 260, Ann. Cas. 1914B 385; 6 R.C.L. 418; Budd v. Hancock, 66 N.J.L. 133, 48 Atl. Rep. 1023; 3 Words & Phrases (2nd Series) p. 168; 4 Words & Phrases (2nd Series) p. 635; 7 L.R.A. Digest, p. 8874 et seq.; Cooper v. Rollins, 152 Ga. 588, 110 S.E. Rep. 726.

"Special or local laws" are forbidden in "regulating the fees of officers of the State and county." This is for the protection of those who pay the fees. Special or local laws are those made applicable exclusively to particular persons or places, as distinguished from laws that are general in their application or that relate to classes of persons or subjects.

The provisions of the State Constitution and the Fourteenth Amendment are not intended to forbid classifications and justly discriminating laws fixing the "compensation" of officers even if such laws

are required to be general or of uniform operation throughout the State. See Sec. 27, Art. III; Sec. 6, art. VIII; Secs. 16, 18, 27 and 30 Art. V, as to fixing the compensation of county officers. See also chapters 7886, 8496 and 8498 Laws of Florida.

As the authority to prescribe the "compensation" of county officers is expressly conferred without limitation by the Constitution, the Legislature may fix such compensation with or without reference to fees collected by such officers; and if the compensation is fixed with reference to fees collected, the rate of compensation so fixed is not thereby required to be by laws that are "general and of uniform operation throughout the State"; and if it be so required, practicable and reasonable classifications potentially applicable throughout the State are not forbidden, and the classifications of Chapter 8497 are practicable and reasonable and are potentially applicable throughout the State.

Chapter 8497 in Section 1, fixes the "compensation" of county officers by stated rules having reference only to the net amount of all fees and commissions allowed to be collected by such officers, with regulations in other sections to make the Act effective; and by a proviso in the nature of an exception to Section 1 it is provided that in counties of more than 100,000 population the "compensation" of county of officers shall be fixed by a stated rule having reference to population as well as to the net amounts of all fees and commissions collected in the county. The proviso to Section 1 is not essential to the main purpose of the Act i.e., the fixing of compensation for county officers. It is merely a sub-classification, and an elimination of it if invalid will leave those covered by the proviso or exception subject to the other provisions of the statute as though no proviso or exception had been incorporated in the Act. This interpretation is expressly required by Section 5 of the Act and it should be observed. Section 5 cannot, and is not intended to encroach upon judicial functions. It merely expresses the Legislative intent with reference to the several provisions of the enactment.

The manifest purpose and effect of Section 5 of Chapter 8497 is to declare the Legislative will to enact all the parts of the Act that are constitutional and that valid portions would have been enacted without the other portions that may violate organic law. See Snetzer v. Gregg, 129 Ark. 542, 196 S.W. Rep. 925, L.R.A. 1917F. 999; 6 R.C.L. p. 125; Public Utilities Com. v. Potomac El. Power Co., U.S. Sup. Ct., April 9, 1923. Of course, if Section 1 is invalid as an entirety, the Act is inoperative, because there is nothing to execute if Section 1 is invalid; but a portion at least of Section 1 has been expressly adjudged to be valid as against substantially the same attack that is made here, and Section 5 should not be construed to destroy the Act when it was designed to save the valid portions of the law. Peninsular Industrial Ins. Co. v. State, 61 Fla. 376, 55 South. Rep. 398; St. Louis Southwestern R. Co. v. State of Arkansas, 235 U.S. 350, 35 Sup. Ct. Rep. 99. The intent of the statute should control. Knight & Wall Co. v. Tampa Sand Line Brick Co., 55 Fla. 728, 46 South. Rep. 285; Curry v. Lehman, 55 Fla. 847, 47 South. Rep. 18; City of Miami v. Romfh, 66 Fla. 280, 63 South. Rep. 440. The word "Section" as used in Section 5 of the Act means "portion," and this was the intended adjudication in State ex rel. Buford v. Shepard, 84 Fla. 206, 93 South. Rep. 667. Section 5 in effect provides that if the proviso to Section 1 is invalid in its application, the officers covered by the proviso shall be subject to the other provisions of the Section. Board of Trade v. Olson, U.S. Sup. Ct., April 16, 1923.

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Even if the organic provision that laws fixing the fees of officers shall be "general and of uniform operation throughout the State" has any application to Chapter 8497, which fixes the compensation to be allowed officers and does not prescribe or regulate fees that may be collected, the quoted provision of the constitution does not forbid proper classification that are potentially applicable "throughout the State," (Bloxham v. Florida Cent.& P.R. Co., 35 Fla. 625, 17 South. Rep. 902; Carlton v. Johnson, 61 Fla. 15, 55 South. Rep. 975; Ex Parte Wells, 21 Fla. 280; Chap. 7886 Acts 1919; 25 R.C.L. 814), and it has been held that the classification of this statute relating to the volume of fees collected is valid. State ex rel. Buford v. Shepard, 84 Fla. 206, 93 South. Rep. 667. The respondent is in that class because no official census shows that the county in which he is an officer is in the class that is predicated upon 100,000 population of the county, the last official census showing less than 100,000 population in Hillsborough County; 23 Atl. 517; 50 Atl. 163; and the respondent cannot assail a classification that does not embrace him unless the invalidity of that classification invalidates the class the respondent is in. See Jeffrey Mfg. Co. v. Blagg, 235 U.S. 571, 35 Sup. Ct. Rep. 167; Hendrick v. State of Maryland, 235 U.S. 610, 35 Sup. Ct. Rep. 140; State ex rel. Clarkson v. Phillips, 70 Fla. 340, South. Rep. 367; Stinson v. State, 63 Fla. 42, 58 South. Rep. 722; Scally v. Meminger, 64 Fla. 464, 60 South. Rep. 180; Adams v. American Agricultural Chemical Co., 78 Fla. 362, 82 South. Rep. 850; 12 C.J. 768. And even if the classification based on 100,000 population is invalid, it will not affect the validity of the remainder of the Act, first, because it is clearly separable and its elimination would not cause results with reference to the main purpose of the Act not intended by the Legislature, and second, because the Act itself in Section 5 provides that if one Section of the Act be invalid, the remainder of the Act shall not thereby be affected. This was expressly held in State ex rel. Buford v. Shepard, supra, even though the word "Section" and not "portion" is used in the fifth Section. Section 5 should not by technical construction be utilized to nullify valid portions of the Act, when obviously such Section specifically expresses a Legislative intent that the valid portions of the Act shall be effectuated. It is the duty of the Court to give effect to the lawmaking intent. To hold that because the word "Section" was used in Section 5, the entire Section 1 must be eliminated if a portion of it is invalid, would be to so construe the statute as to destroy it, rather than to so construe it as to sustain it as it is the duty of the court to do if it can fairly so be done. Davis v. Florida Power Co., 64 Fla. 246, 60 South. Rep. 759; State ex rel. Young v. Duval County, 76 Fla. 180, 79 South. Rep. 692; Burr v. Florida East Coast R. Co., 77 Fla. 259, 81 south. Rep. 464; In Re Seven Barrels of Wine, 79 Fla. 1, 83 south. Rep. 627; Florida East Coast R. Co. v. State, 79 Fla. 66, 83 South. Rep. 708; St. Louis Southwestern R. Co. v. State of Arkansas, 235 U.S. 350, 35 Sup. Ct. Rep. 99; 12 C.J. 787; 6 R.C.L. 79, 101. Even if the classification based on population is more liberal to the officers than the classification based on collections of fees, the respondent has no legal ground of complaint, as the Legislature may by law fix the compensation of county officers as its will dictates.

Even if the proviso to Section 1 of Chapter 8497 is invalid, Section 5 cannot against its plain intent fairly be construed to require the entire Section one to be eliminated, though the proviso may be regarded as eliminated and the remainder of the Act may be made effective to accomplish the general legislative purpose. This may be done without the aid of Section 5 of the Act. Carr v. Thomas, 18 Fla. 736; Ex Parte Wells, 21 Fla. 280; Donald v. State, 31 Fla. 255, 12 South. Rep. 695; English v. State, 31

Fla.340, 12 South. Rep. 689; Harper v. Galloway, 58 Fla. 255, 51 South. Rep. 226; Stinson v. State, 63 Fla. 42, 58 South. Rep. 722; Board of Com'rs of Hillsborough County v. Savage, 63 Fla. 337, 58 South. Rep. 835; State ex rel. Clarkson v. Phillips, 70 Fla. 340, 70 South. Rep. 367; Lainhart v. Catts, 73 Fla. 735, 75 South. Rep. 47; Prairie Pebble Phosphate Co. v. Silverman, 80 Fla. 541, 86 South. Rep. 508. See also 7 L.R.A. Digest, p. 8838 et seq.; Lathrop v. Mills. 19 Cal. 515, text 530.

An elimination of the proviso to Section 1 would not render the entire Act invalid, because the proviso is a severable portion of Section 1; and its elimination would not defeat the main purposes of the Act or cause results not contemplated in enacting the statute, as in Spraigue v. Thompson, 118 U.S. 90, 6 Sup. Ct. Rep. 988; 6 R.C.L. 129.

Section 5 is designed to indicate that the statute would have been enacted without the proviso to Section 1. An elimination of the proviso would not render unenforceable the remainder of the Act as in the State ex re. Swearingen v. Jones, 79 Fla. 56, 84 South. Rep. 84; STate ex rel. Clyatt, v. Hocker, 39 Fla. 477, 22 South. Rep. 721; nor is the proviso an inducement for the Act as in City of Jacksonville v. Ledwith, 26 Fla. 163, text 211, 7 South. Rep. 885; Low v. Rees Printing Co., 41 Neb. 127, 59 N.W. Rep. 362, 24 L.R.A. 702; Hubert v. Martin, 127 Wis. 412, 105 N.W. Rep. 1031, 3 L.R.A. (N.S.) 653; nor would the elimination of the proviso affect the ultimate object and main purposes of the Act, as in Taylor v. Anderson, 40 Okla. 316, 137 Pac. Rep. 1183, 51 L.R.A. (N.S.) 731; State ex rel. Wausau Street R. Co. v. Bancroft, 148 Wis. 124, 134 N.W. Rep. 330, 38 L.R.A. (N.S.) 526. See 6 R.C.L. p. 125; Smetzer v. Gregg, 129 Ark. 542, 196 S.W. Rep. 925, L.R.A. 1917F 999.

The proviso to Section 1 is not so interwoven with other provisions of the Act that it cannot be separated therefrom without in effect usurping a Legislative function in re-framing the Act, as held in Hill v. Wallace, 259 U.S. 44, 42 Sup. Ct. Rep. 453; City of Jacksonville v. Ledwith, supra; Ballard v. Mississippi Cotton Oil Co., 81 Miss. 507, 34 South. Rep. 533, text 554; Butts v. Merchants' & Miners' Transp. Co., 230 U.S. 126, 33 Sup. Ct. Rep. 964; State ex rel. West v. Hillburn, 70 Fla. 55, 69 South. Rep. 784; its elimination would not defeat the Legislative purpose as in State ex rel. Buford v. Spencer, 81 Fla. 211, 87 South. Rep. 634, or subject persons to penalties who were intended to be exempted, as in State v. Patterson, 50 Fla. 127, 39 South. Rep. 398; Connolly v. Union Sewer Pipe Co., 184 U.S. 540, text 565, 22 Sup. Ct. Rep. 431; nor would the elimination of the proviso remove a limitation specifically imposed by repeated express provisions stating the limitation, as in Westlake v. Merritt, decided at this term; nor does a defective or misleading title destroy the entire Act, as in Webster v. Powell, 36 Fla.703, 18 South. Rep. 441; Davis v. Wilson & Toomer Fertilizer Co., 84 Fla. 102, 92 South. Rep. 916. The proviso and the other part of Section 1 are not so mutually dependent that the Section would not have been enacted without the proviso, as in O'Brien v. Krenz, 36 Minn. 136, 30 N.W. Rep. 458; Kellyville Coal Co. v. Harrier, 207 Ill. 624, 69 N.E. Rep. 927; State v. Chicago, B. & Q.R. Co., 195 Mo. 228, 92 S.W. Rep. 784, 113 Am. St. Rep. 661; Darby v. City of Wilmington, 76 N.C. 133; Warren v. Mayor and Aldermen of Charleston, 2 Gray (Mass.) 84, cited for respondent. In Albion Consolidated Min. Co. v. Richmond Min. Co., 19 Nev. 225, 8 Pac. Rep. 480, it is said the Act contained no provision indicating an intent that illegal portions may be eliminated and the

remainder is intended to stand as the statute does in this case.

If the proviso is not invalid, as in Springfield Gas & Electric Co. City of Springfield, 292 Ill. 236, 126 N.E. Rep. 739, cited for respondent of course it is not necessary to determine what the effect of Section 5 of the Act would be if the proviso were invalid. See Smetzer v. Gregg, 129 Ark. 542, 196 S.W. Rep. 925, L.R.A. 1917F 999.

Even if it may be agreed that the present population of Hillsborough county puts it in the population class in the statute, so the respondent may challenge the validity of that classification, it does not appear that such classification is invalid because it is based upon population, and it was not so held in the Shepard case, supra. See Farnum v. Warner, 104 Cal. 677, 38 Pac. Rep. 421; Summerland v. Bicknell, 111 Cal. 567, 44 Pac. Rep. 232; Clark v. Finley, 93 Tex. 171, 54 S.W. Rep. 343; Minnehaha County v. Thorne, 6 S.D. 449, 61 N.W. Rep. 688; Winston v. Stone, 102 Ky. 423, 43 S.W. Rep. 397; Legler v. Paine, 147 Ind. 181, 45 N.E. Rep. 604; Harmon v. Board of Comrs. of Madison County, 153 Ind. 68, 54 N.E. Rep. 105. Since, in the absence of organic limitations, the legislature has the power to fix the compensation of county officers as it may determine, it can make classifications in its discretion, in enacting prospective statutes, there being no personal or property rights involved. The right of public officers to compensation depends upon the will of the lawmaking department, where not controlled by organic law. The constitution does not require compensation of public officers to be "in proportion to duties" as in Longan v. County of Solano, 65 Cal. 122, 3 Pac. Rep. 463; Green v. County of Fresno, 95 Cal. 329, 30 Pac. Rep. 544. But even if there be a limit to the legislative discretion to classify this particular subject, the classification made upon population is not without a reasonable and practical basis, and the courts have no power to annul the legislative will where there is a classification that is within the limits of the discretion of the lawmaking power. See Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 31 Sup. Ct. Rep. 337; Rast v. Van Deman & Lewis Co., 240 U.S. 342, 36 Sup. Ct. Rep. 370; Heisler v. Thomas Colliery Co., 260 U.S. 245, 43 Sup. Ct. Rep. 83; Dutton Phosphate Co. v. Priest, 67 Fla. 370, 65 South. Rep. 282; Arkansas Natural Gas Co. v. Arkansas Railroad Commission, 261 U.S. 379, 43 Sup. Ct. Rep. 387; Stone, Auditor, v. Wilson, 19 Ky. Law Repts. 126, 39 S.W. Rep. 49.

The provision requiring the fees collected in excess of a stated net amount to be paid into the county treasury is no more a "sale of justice" than it is when the officers are allowed to retain all the fees collected by them. The parties who pay the fees are not complaining that they have had to "purchase justice" by paying the statutory fees for services rendered to them by the officers as the servants of the State. The fees are not shown to be unreasonable or for unlawful purposes. Green County v. Lydy, 263 Mo. 77, 172 S.W. Rep. 376; Ann. Cas. 1917C , and Notes; Christianson v. Pioneer Furniture Co., 101 Wis. 343, 77 N.W. Rep. 174; Hewlett v. Nutt, 79, N. C. 263; Henderson v. State ex rel. Stout, 137 Ind. 552, 36 N.E. Rep. 257, 24 L.R.A. 469; In Re Lee, (Okla.) 168 Pac. Rep. 53, L.R.A. 1918B 144, and Notes; Malin v. La Moure County, 27 N.D. 140, 145 N.W. Rep. 582, 50 L. R.A. (N.S.) 997, Ann. Cas. 1916C 207; Northern Counties Investment Trust v. Sears, 30 Ore. 388, 41 Pac. Rep. 931, 35 L.R.A. 188; Bailey v. Frush, 5 Ore. 136; 12 C.J. 1291; 8 Cyc. 1138.

STATE FLORIDA EX REL. RIVERS H. BUFORD v. W. ROGER WATKINS

102 So. 347 (1923) | Cited 0 times | Supreme Court of Florida | April 28, 1923

Chapter 8497, Acts of 1921, rests upon the express provisions of Section 6, Article VIII of the Constitution that county officers' "compensation shall be prescribed by law," and upon like provisions contained in Sections 16, 18, 27 and 30, Article V, and Section 27, Article III.

Even if the provisions of Section 15, Article XII, relative to the payment of stated salaries to county officers, are applicable to Chapter 8497, Acts of 1921, the statute expressly provides that county officers shall pay "into the general revenue fund of their respective counties, all moneys in excess of the sums to which they are under the provisions of this Act entitled." This amounts to the same as requiring all fees collected to be paid "into the general revenue fund" of the counties, and providing that the compensation allowed "shall be paid from the general fund" of the county as commanded by the Constitution. This would accord with the express holding in State ex rel. Buford v. Spencer, 81 Fla. 211, 87 South. Rep. 634, that "Fees collected by officers represent the charge which the State makes for services rendered by it through its officers, and constitutes a fund subject to the control of the State and to be applied as the legislature directs." See Harmon v. Board of Com'rs. of Madison County, 153 Ind. 68, 54 N.E. Rep. 105. In Henderson v. Koenig, 168 Mo. 356, 68 S. W. Rep. 72, 57 L.R.A. 659, it was held that under the several organic provisions in Missouri the legislature could not require one county officer to pay into the public treasury all fees collected by him under the law and to receive a salary while other county officers were compensated by fees. In that case it was state that "if the legislature desires to classify counties by population, and thus proportion the amounts of fees the various judges of probate may retain according to such ratio, then this must be done by appropriate legislative enactment." That is done in this case. See 36 Cyc. 1016 Note 74. In Wiles v. Williams, 232 Mo. 56, 133 S.W. Rep. 1, 34 L.R.A. (N.S.) 1060, the classification had reference to a particular Federal census which confined it to certain counties. 25 R.C.L. 834.

Bloss v. Lewis, 109 Cal. 493, 41 Pac. Rep. 1081, cited for respondent, does not conflict with views herein expressed, as there the constitution required a classification "according to duties." In Philadelphia County v. Sheehan, 263 Pa. 449, 107 Atl. Rep. 14, and Davis v. Clark, 106 Pa. St. 377, the court held classification to be arbitrary. In the first case the holding is contrary to the decision of this court in Ex Parte Wells, 21 Fla. 280. In the other case, as well as Edmonds v. Herbrandson, 2 N.D. 270, 50 N. W. Rep. 970; Nichols v. Walter, 37 Minn. 264, 33 N.W. Rep. 800; State v. County of Sauk, 62 Wis. 376; 22 N. W. Rep. 572, and Darcy v. City of San Jose, 104 Cal. 642, 38 Pac. Rep. 500, the statutes in effect permanently and arbitrarily excluded some counties or towns from the operation of a statute required to be general in its scope. In all these cases it was conceded that proper classifications could be made without destroying the required generality and uniformity of a statute. Other cases cited for respondent are controlled by peculiar organic provisions not applicable here, or are not in conflict with this opinion.

Laws are intended to be utilized for governmental purposes, and it is the duty of the courts to ascertain and effectuate the valid legislative intent as expressed in statutes. Appropriate rules of construction may be invoked to aid in ascertaining the intention of the law-making power when the language used is ambiguous; but technical rules should not be applied when they defeat the manifest

lawmaking intent that appears from a consideration of the context and purpose of an enactment. The context and purpose of Section 5 of Chapter 8497 clearly indicate an intent that the rule by which an invalid severable portion of an enactment may be disregarded and the remainder enforced to accomplish the main legislative object, shall be applied to the statute; and there is nothing to indicate an intent to limit or modify the rule in its application to the statute.

Section 5, Chapter 8497, Acts of 1921, is as follows: "Should any section of this Act be held inoperative or void, or should its application to any official be held inoperative or void, the same shall not affect the legality or applicability of the balance thereof."

By this section of the Act it is expressly provided that "should its application to any official be held inoperative or void, the same shall not affect the legality or applicability of the balance thereof." This clearly covers any portion of the Act that may be invalid; and even if the proviso to Section 1 is invalid as to the respondent, the statute itself expressly provides that such invalidity "shall not affect the legality or applicability of the balance" of the section or of the act. See Public Utilities Commission of the District of Columbia v. Potomac Electric Power Company and Washington Railway & Electric Co., U.S. Sup. Ct., decided April 9, 1923; Board of Trade of City of Chicago, John Hill, Jr., et al. v. Edwin A. Olsen, U.S. attorney for the Northern District of Illinois, Henry C. Wallace, Secretary of Agriculture, and Arthur C. Leuder, United States Postmaster at the City of Chicago, U.S. Sup. Ct. decided April 16, 1923.

It is not contended or even suggested in this case that the second and third proviso to Section 1, or any other portion of Chapter 8497 violates any part of the Federal Constitution. Chapter 8497 prescribes prospectively the compensation of county officers, but does not regulate the fees that may be collected by county officers. Section 20, Art. III of the State Constitution does not require laws prescribing the compensation of county officers to "be general and of uniform operation throughout the State"; and even if the constitution does so provide, classifications do not violate the organic provision and the classification in the second and third provisos to Section 1 is not invalid, particularly in view of the express provision of Section 6, Art. VIII of the Constitution that county officers' "compensation shall be prescribed by law," and no limitation is imposed upon such expres power; and even if there is any ground for invalidating the second and third provisos to Section 1 of the statute, Section 5 expressly provides that the remainder of the Act shall be enforced; and the courts have no power to nullify a valid legislative intent as expressed in a dully enacted statute.

In giving effect to the constitution as the controlling law, the courts are authorized to render inoperative statutory provisions that conflict with some provision of the constitution; but the courts have no authority to disregard or to render nugatory an enactment expressing a legislative intent that does not conflict with organic law. The valid intent of a statute is the essence of the law. Section 5 of Chapter 8497 specifically expresses a legislative design and purpose that if any provision of the Act cannot be validly applied in determining the compensation of any county officer, then it is the legislative intent that the other portions of the statute shall be applied in ascertaining the

compensation to be allowed to such officer. This expresses a valid legislative intent with reference to the operation of the statute, and the courts are not authorized to nullify the valid intent of the statute.

A peremptory writ should be issue.