5-26-2011

Summary of Clean Water Coal. v. The M Resort, 127 Nev. Adv. Op. No. 24

Marissa Pensabene
Nevada Law Journal

Clean Water Coal. v. The M Resort, 127 Nev. Adv. Op. No. 24 (May 26, 2011)[1]
CONSTITUTIONAL LAW

Summary

An appeal from a district court's judgment that declared Assembly Bill 6 ("A.B. 6"), section 18, constitutional under the Nevada Constitution.

Disposition/Outcome

The Supreme Court of Nevada reversed the district court's judgment, concluding that A.B. 6, section 18, violates the Nevada Constitution. First, A.B. 6, section 18, violates Article 4, Section 20's prohibition against local or special taxes by converting the $62 million collected by the Clean Water Coalition as user fees into a tax. Additionally, because A.B. 6, section 18 applies only to the Clean Water Coalition, and a general law could have applied, it also violates Article 4, Section 21's mandate that all laws shall be general and operate uniformly throughout the state in all cases where a general law can be made applicable.

Factual and Procedural History

The Clean Water Coalition

The Clean Water Coalition ("CWC") was formed pursuant to an interlocal cooperative agreement among four Nevada political subdivisions: the Clark County Water Reclamation District and the cities of Henderson, Las Vegas, and North Las Vegas. Pursuant to NRS 277.080-277.180, the four entities created the CWC based on their "common environmental, economic and regulatory interest in the efficient and responsible collection, treatment, reuse and discharge of municipal [e]ffluent."[2]

One of the CWC's functions included the implementation of the Systems Conveyance and Operations Program (SCOP), which finances and operates a regional system to convey effluent from existing and future wastewater treatment facilities to an outfall location in the Colorado River system. The CWC's members collected sewer connection and usage fees from households and businesses in their respective regions, paying the CWC with the funds from the fees.

Litigation over A.B. 6, section 18

In 2010, in an effort to raise revenue for the state, the Nevada Legislature enacted A.B. 6, section 18. The law mandated the transfer of $62 million in securities and cash from the CWC into the State's General Fund for unrestricted, general use.

CWC filed a complaint in district court against the State, seeking declaratory and injunctive relief, based on assertions that section 18 is not constitutionally permissible

---

[1] By Marissa Pensabene.
[2] The Interlocal Cooperation Act, NEV. REV. STAT. § 277.080-.180 (2007).

legislation. The M Resort also filed a complaint in district court against the State and the CWC, seeking injunctive and declaratory relief and damages, and challenging section 18's constitutionality. The two actions were consolidated, and the State answered the complaints and filed a counterclaim against the CWC, seeking a declaration that section 18 was constitutional. The State also sought an order compelling the CWC to transfer the $62 million to the State's general fund, as required under the bill.

On summary judgment, the district court entered an order declaring A.B. 6, section 18 constitutional. The district court was unable to conclude without a reasonable doubt that section 18 plainly conflicted with the Nevada Constitution, as "each political subdivision remains subject to the overriding sovereign control of statutes enacted by the Legislature."

Discussion

The Legislature's authority to enact laws binding upon political subdivisions is subject to constitutional limitations

The Legislature's law-making authority is considerable, but it is not unlimited.[3] The Nevada Constitution is the "supreme law of the state," which "control[s] over any conflicting statutory provisions."[4] The Constitution imposes limitations upon legislative acts, and the district court is obligated in enforcing restraints. Thus, the Court found the district court erred by "essentially concluding that A.B. 6, section 18 is insulated from judicial review based on the Legislature's overriding sovereign authority over political subdivisions."[5]

A.B. 6, section 18 is a local and special law

A law is local if it operates over "a particular locality instead of over the whole territory of the State."[6] A law is special if it "pertain[s] to a part of a class as opposed to all of a class."[7] On its face section 18 advances statewide objectives, however, the law only burdens the CWC. By appropriating funds collected from certain residents and businesses within a particular locality for the state's general use, A.B. 6, section18 is special (pertaining to only the CWC) and local (applying to only a particular locality).

A.B. 6, section 18 is an impermissible special and local tax and therefore violates Article 4, Section 20 of the Nevada Constitution

The Nevada Constitution does not permit the Legislature to pass local or special laws "[f]or the assessment and collection of taxes for state, county, and township purposes."[8] In making its determination as to whether the user fees collected by CWC are transformed into a tax by subsequent law directing their transfer into the State's general fund, the Court looked to

---

[3] Galloway v. Truesdell, 83 Nev. 13, 20, 422 P.2d 237, 242 (1967).
[4] Goldman v. Bryan, 106 Nev. 30, 37, 787 P.2d 372, 377 (1990).
[5] Clean Water Coal. v. The M Resort, 127 Nev. Adv. Op. No. 24 (May 26, 2011).
[6] Damus v. County of Clark, 93 Nev. 512, 516, 569 P.2d 933, 935 (1977) (citing State of Nevada v. Irwin, 5 Nev. 111, 121 (1869)).
[7] *Id.*
[8] NEV. CONST. art. 4, § 20.

Douglas Co. Contractors v. Douglas Co. In *Douglas*, the Court looked at the "true purpose" of an ordinance that exacted a fee from subdivision contractors for purposes of supporting county school capital improvements.[9] The Court reasoned that the ordinance was being utilized to benefit the entire county rather than just the new subdivision against which the fee was assessed, and thus properly characterized it as a regulatory measure or a tax.[10] The Court explained, "when it appears from the Act itself that revenue is its main objective, and the amount of the tax supports that theory, the enactment is a revenue measure."[11]

In the present case, A.B. 6, section 18's true purpose is to correct the state's revenue shortfall. Revenue-raising acts are defined as taxes.[12] Thus, the Court held that A.B. 6, section 18 imposes an unconstitutional local and special tax against the CWC in violation of Nevada Constitution Article 4, Section 20.

A.B. 6, section 18 is contrary to Article 4, Section 21 because a general law could apply to address the State's budget shortfall

A general law is one that is applied uniformly.[13] The Nevada Constitution prohibits local and special laws where a general law could apply. To determine if a general law could not be made "applicable" where a local or special law is in place, the Court must analyze whether the challenged law "best subserve[s] the interests of the people of the state, or such class or portion as the particular legislation is intended to affect."[14] In upholding local or special legislation, the Court has considered whether "the general legislation existing was insufficient to meet the peculiar needs of a particular situation," or whether a particular emergency situation existed, requiring more speedy action and relief than could be had by proceeding under the existing general law.[15]

The Court acknowledged that the statewide budget deficit demonstrated exigent circumstances. However, "those circumstances are of statewide concern and cannot be addressed through legislation that does not comport with Article 4, Section 21's local and special law proscription."[16] The State's budget crisis cannot be addressed by a local or special law that applies to burden only one entity of the state that operates in one locality of the state.

Because A.B. 6, section18 addresses the State's budget deficit, which is inherently an issue that concerns the entire state, to which a general law could have applied, it violates the Nevada Constitution under Article 4, Section 21.

---

[9] Douglas Co. Contractors v. Douglas Co., 112 Nev. 1452, 1459, 929 P.2d 253, 257 (1996).
[10] *Id.*
[11] *Id*. at 1457, 929 P.2d at 256 (quoting Eastern Diversified v. Montgomery County, 570 A.2d 850, 854 (Md. 1990)).
[12] *Id.*
[13] NEV. CONST. art. 4, § 21
[14] State v. Irwin, 5 Nev. 111,122 (1869).
[15] Cauble v. Beemer, 64 Nev. 77, 96, 177 P.2d 677, 686 (1947).
[16] Clean Water Coal. v. The M Resort, 127 Nev. Adv. Op. No. 24 (May 26, 2011).

Conclusion

A.B. 6, section18 conflicts with the Nevada Constitution Article 4, Section 20, prohibition against local or special taxes. A.B. 6, section18 also violates Nevada Constitution Article 4, Section21 that mandates that all laws shall be general and operate uniformly throughout the state in all cases where a general law can be made applicable. Therefore, A.B. 6, section18 is unconstitutional.