1-14-2016

City of Fernley v. State, Dep't of Tax, 132 Nev. Adv. Op. 4 (January 14, 2016)

Daniel Ormsby
Nevada Law Journal

City of Fernley v. State, Dep't of Tax, 132 Nev. Adv. Op. 4 (January 14, 2016)[1]

CONSTITUTIONAL LAW: TAX STATUTE MUST BE GENERAL LAWS

Summary

The Court determined that the Local Government Tax Distribution Account under NRS § 330.660 was general legislation, survived rational basis scrutiny, and therefore was not unconstitutional under Article 4, Sections 20 and 21 of the Nevada Constitution.

Background

The Appellant, City of Fernley, appealed the district court's order granting summary judgment in favor of the State. The district court held that the Local Government Tax Distribution Account, also called the C-Tax, was not special or local legislation in violation of Article 4, Sections 20 and 21 of the Nevada Constitution because "the law applie[d] equally to all similarly situated entities."

Discussion

I.

A.

The State adopted the C-Tax system, in 1997 to replace a previous system where new cities would emerge and take a share of the tax revenue without providing public services.[2] The C-Tax consolidated six different tax pools into one C-Tax Account, which was distributed to local governments in a two-tier system. Tier 1 disbursed revenue to Nevada's 17 counties.[3] Tier 2 disbursed revenue to three qualifying types of entities: "(1) Enterprise Districts, such as water, sewer . . . , and sanitation services; (2) Local Governments, including counties, cities, and towns; and (3) Special Districts, such as fire departments, hospitals, and public libraries."[4] Under Tier 2, funds are distributed either as base distributions or excess distributions.[5] If a county, city, or town received tax revenue prior to July 1, 1998, previous base amounts remain the same.[6] However, if a Tier 2 entity—such as a city or a town—did not exist before July 1, 1998, or did exist, but wants to increase its base amount, there are three options available to qualify for the increase in C-Tax distributions.[7] These options include:

> First, a new local government is eligible for increased C-Tax distributions if it provides police protection and at least two of the following services: (1) fire protection; (2) construction maintenance, and repair of roads; or (3) parks and recreation.[8] Second, a new local government can assume the functions of another

---

[1] By Daniel Ormsby
[2] *Hearing on S.C.R. 40 Before the Senate Comm. on Gov't Affairs*, 69th Leg. (Nev., March 31, 1997).
[3] NEV. REV. STAT. § 360.610.
[4] *See* NEV. REV. STAT. § 360.610; NEV. REV. STAT. § 360.650.
[5] NEV. REV. STAT. § 360.680; NEV. REV. STAT. § 360.690.
[6] NEV. REV. STAT. § 360.670.
[7] NEV. REV. STAT. § 360.740.
[8] *Id.*

> local government (i.e., merger of entities).[9] Third, a new local government can enter into a cooperative 'interlocal' agreement with another local government (i.e., taking over services provided by the other local government or agreeing to pay costs).[10]

The goal of the C-Tax was to prevent entities from receiving tax monies without providing public services.

B.

In 1997, the unincorporated town of Fernley received C-Tax distribution based on its status as an unincorporated town. In 1998, Fernley began the process of incorporating by submitting an incorporation petition. In its inquiry to the Department of Taxation, Fernley was told that an increase in C-Tax distributions would only occur if Fernley provided provide NRS 360.740 services, take on responsibilities of another local government, or enter an interlocal agreement. At the time, Lyon County provided several services such as police and fire protection for Fernley.

Fernley's incorporation petition planned on providing government services. Based on its plan to enter an interlocal agreement with Lyon County to continue providing services with Fernley funds, Fernley incorporated in 2001. Fernley failed to enter the agreement with the County, nor did Fernley take on any of the public services required by the statute. Problems arose because Fernley never qualified for an increase in C-Tax distributions while the population nearly doubled.

After another inquiry in 2011, the Department of Taxation informed Fernley that the option to increase C-Tax distributions would be available only if Fernley assumed the services for another local government or entered an interlocal agreement. No agreement occurred. For that reason, Fernley filed a complaint seeking declaratory and injunctive relief for violations of the Nevada Constitution under Article 4, Section 20. The district court entered summary judgment in favor of the State.

II.

A.

The Court reviewed this case de novo.[11] The district court concluded that Fernley's constitutional claims had been time-barred by Nevada's default statute of limitations period of four years.[12] However, the Supreme Court held that statute of limitations could not "prohibit th[e] court from reviewing the constitutionality of an enacted statute."[13] The Court further explained that because of constitutional supremacy, enacted statutes could not bar constitutional challenges.[14] The Court then drew a distinction between retrospective relief and prospective relief and how each would be affected by the statute of limitations.

---

[9] NEV. REV. STAT. § 354.598747.

[10] NEV. REV. STAT. § 360.730.

[11] Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

[12] The default statute of limitations comes from NEV. REV. STAT. § 11.220.

[13] *See* Black v. Ball Janitorial Sev., Inc., 730 P.2d 510, 515 (Okla. 1986); *see also* State ex rel. State Bd. Of Equalization v. Bakst, 122 Nev. 1403, 1409, 148 P.3d 717, 721 (2006); King v. Bd. Of Regents of Univ. of Nev., 65 Nev. 533, 542, 200 P.2d 221, 225 (1948).

[14] *See* Thomas v. Nev. Yellow Cab Corp., 130 Nev., Adv. Op. 52, 327 P.3d 518, 521 (2014).

The Court held that retrospective claims—such as Fernley's challenge to the separation of powers doctrine—were time barred by the statute of limitations because the four-year time limit closed. However, "Fernley's claims for injunctive and declaratory relief from an allegedly unconstitutional statute," could not be barred by the statute of limitations.

B.

Both the Court and the district court found that the C-Tax was a general law, applying equally to all "similarly situated entities," and therefore was not in violation of Article 4, Section 20. In effect, the Court explained that the Nevada Constitution prohibited the Legislature from enacting special or local laws.[15] Local laws were defined as laws which operate over particular areas instead of the whole State.[16] Also, the Court defined special legislation as laws that either benefits or disadvantages a class of persons "in the exercise of a common right; . . . 'arbitrarily selected, from the general body of those who stand in precisely the same relation to the subject of the law.'"[17] Conversely, general laws operate "'alike upon all persons similarly situated,' but 'need not be applicable to all counties in the state.' . . . 'a law is general when it applies equally to all persons embraced in a class founded upon some natural intrinsic or constitutional distinction.'"[18]

Next, the Court determined that the C-Tax was a general law, notwithstanding legislative findings which stated otherwise, and explained that legislative findings are not binding. The Court looks to the text of the statute to determine whether it be general or special or local legislation. Fernley argued that "the State's refusal to award for C-Tax distributions to Fernley after its changed status as an incorporated city singles out Fernley and only maintains the status quo of 'participants in the system at [the time of enactment],' and should, therefore, be held unconstitutional." The Court disagreed. Because Fernley incorporated without fulfilling the requirements of the statute, the Court held that it "singled itself out," rather than being singled out by the legislation.

By contrast, the State argued that the C-Tax distributions were uniform to "all those entities that are similarly situated," and that it satisfied the rational basis test because "the Legislature had a legitimate government purpose for enacting the C-Tax with different classifications because it wanted to promote general-purpose governments." The Court agreed.

The Court explained that when a "classification applies prospectively to all counties which might come within its designated class, it is neither local nor special."[19] The legislative classification must still "be rationally related to the subject matter and must not create odious or absurd distinctions."[20] The Court further pointed out that even though Fernley was the only incorporated city with the outdated tax distribution, if another town acted similarly, the same result would occur. Another reason the C-Tax did not violate the Constitution was that the "C-Tax [did]

---

[15] *See* Clean Water Coal. v. The M Resort, LLC, 127 Nev. 301, 310, 255 P.3d 247, 253-54 (2011).
[16] Att'y Gen v. Gypsum Res., 129 Nev., Adv. Op. 4, 294 P.3d 404, 407 (2013).
[17] *Clean Water Coal.*, 127 Nev. at 311.
[18] Youngs v. Hall, 9 Nev. 212, 218 (1874).
[19] Clark Cty. Ex rel. Cty. Comm'rs v. City of Las Vegas ex rel. Bd. Of City Comm'rs, 97 Nev. 260, 263, 628 P.2d 1120, 1122 (1981).
[20] *Id.* at 264.

not specify recipients. Instead, the C-Tax [had] different formulas it use[d] for any entity that [fell] within that classification."[21] Further the Court held that the classifications were rationally related to achieving the purpose.

III.

The Court's holding: the C-Tax is a general law, applying neutrally to local governments and its classifications are rationally related to achieving a legitimate government objective.

Conclusion

The Court held that the C-Tax was constitutional under Article 4, Section 20 of the Nevada Constitution. The C-Tax was a general law, using classifications rather than specifying counties. Because the C-Tax was a general law and because the classifications survived rational basis scrutiny, the law was constitutional. The Court affirmed the district court's order granting summary judgment in favor of the State.

[21] NEV. REV. STAT. § 360.690.