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A New Local Tax Policy in Pennsylvania

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A NEW LOCAL TAX POLICY IN PENNSYLVANIA

As a result of increasing costs, and the demands of the political subdivisions of the Commonwealth of Pennsylvania for additional income, the General Assembly, during the Session of 1947, enacted a statute designed to enable political subdivisions to raise additional revenues.[1] This legislation was modeled after the Sterling Act[2] (the act takes its name from its sponsor) which applied only to cities of the first and second class (Philadelphia and Pittsburgh).

The Act of 1947 authorized the authorities of cities of the second class, cities of the second class A, cities of the third class, boroughs, towns, townships of the first class, and school districts of the second, third, and fourth classes to:

> "levy, assess and collect or provide for the levying, assessment and collection of such taxes on persons, transactions, occupations, privileges, subjects and personal property within the limits of such political subdivisions, as it shall determine, except that such local authorities shall not have authority by virtue of this act to levy, assess and collect * * * any tax on a privilege, transaction, subject, occupation or personal property which is now or does hereafter become subject to a State tax or license fee* * *"

Other subject matters exempted from this power to levy taxes were "the gross receipts from utility service * * * of a company whose rates and services are fixed and regulated by the Pennsylvania Public Utility Commission" and "the privilege of employing such tangible property as is now or does hereafter become subject to a State tax."

The statute embodies an expressed legislative intention in the following quotation:

> "It is the intention of this section to confer upon such political subdivision the power to levy, assess, and collect taxes upon any and all subjects of taxation which the Commonwealth has power to tax but which it does not now tax or license * * * "

The statute contains a "ceiling" upon the aggregate amount of taxes that can be levied by any political subdivision by limiting the amount imposed annually to an amount not in excess of that obtained by multiplying the total assessed valuation of real estate in such political subdivision by the maximum millage of tax thereon allowed by law.

The political subdivisions have not been reluctant to avail themselves of this newly granted power. 27 cities have passed 26 ordinances on amusements, 6 on mechanical devices (juke boxes, vending machines, etc.), 7 mercantile tax ordinances, 6 income wage or payroll taxes, and 4 miscellaneous ones.[3] Townships, numbering 10, have passed 2 amusement taxes, 1 taxing mechanical devices, 5 severance taxes

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1 Act of June 25, 1947, P. L. 1145 (Act. 481).
2 Act of August 5, 1932, P. L. 45 of Acts and Vetoes, Special Session of 1932.
3 4 cities have levied taxes on personal property and 1 on property transactions.

and 3 miscellaneous.[4] 64 Boroughs have enacted 33 tax ordinances on amusements, 20 on mechanical devices, 2 mercantile taxes, 11 income, wage or payroll taxes, 18 per capita taxes, 1 severance tax, and 6 miscellaneous.[5] 55 school districts have passed 6 resolutions taxing amusements, 1 on mechanical devices, 16 on income, wages or payrolls, 2 per capita taxes, 31 severance taxes, and two miscellaneous.[6] [7] No complete compilation has been made of the ordinances and resolutions adopted and proposed but 94 have adopted or proposed some type of tax on the coal industry alone.[8]

Some of the tax ordinances and resolutions are startling when their impact on business or on individuals is considered. Double taxation of coal is not uncommon, the same coal being taxed by one political subdivision where it is produced, by another where it is processed or prepared for market, or by still another, where it is hauled or dumped into railroad cars. The same is true of taxes imposed by political subdivisions on personal property already taxed by counties. Other ordinances and resolutions can only be reconciled with a desire upon the part of political subdivisions to suppress certain businesses as shown by the following examples: 35 cents a ton on strip-mined coal, 25 cents a ton on the deposit of waste material, $150 annually on each pin ball machine, $40 a month on used car dealers and $300 a week on carnivals.

The Sterling Act[9] mentioned before, although used as a model for the present legislation differs materially from it, in that the Sterling Act contained no provision exempting gross receipts of utility services, no prohibition against taxing the privilege of employing tangible property now taxed by the State, nor the "ceiling" measured by the real estate tax. That Act, however, contained the same prohibition against taxing the same subject matters as were taxed by the State.

Under the authority of the Sterling Act, the City of Pittsburgh passed an ordinance taxing certain companies and individuals "in respect to the ownership or use" of meters. The Supreme Court of Pennsylvania in *Peoples Natural Gas Co.* v. *Pittsburgh*[10] held this ordinance imposed a property tax and as this property was taxed by the State under the Capital Stock Tax,[11] the city was expressly prohibited from taxing it under the Sterling Act.

Two important cases, arising under tax ordinances passed by the City of Philadelphia, received appellate review. In 1938, City Council passed a sales tax and in *Blauner's, Inc. et al* v. *Philadelphia et al*[12], the Supreme Court of Pennsylvania de-

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4 3 townships have levied taxes on real estate conveyances.

5 These miscellaneous ordinances are on signs-billboards, sale of scrap metal, coal stored, gas pumps and tanks, and $3.00 per person employed by any person or corporation.

6 These miscelleneous resolutions taxed "bone" coal dumped, taxed the ownership of realty, and on rents paid by tenants.

7 This data was compiled by the Department of Internal Affairs, Commonwealth of Pennsylvania.

8 Compilation made by Western Pennsylvania Coal Operators Assn.

9 Act of August 5, 1932, P. L. 45 of Acts and Vetoes, Special Session of 1932.

10 317 Pa. 1 (1934).

11 Act of April 25, 1929, P. L. 657.

12 330 Pa. 340 (1938).

cided that the delegation of tax power conferred on the City of Philadelphia was a lawful delegation, because it was expressly sanctioned by the Constitution of Pennsylvania in Section 1 of Article 15 (the home rule amendment), which reads in part:

> "Cities, or cities of any particular class, may be given the right and power to frame and adopt their own charters and to exercise the powers and authority of local self-government, subject, however, to such restrictions, limitations and regulations, as may be imposed by the Legislature."

The Court then went on to say that the sales tax ordinance was valid because the State had not, by taxation, invaded this field, hence it did not violate the prohibition contained in the Sterling Act.

It is interesting to note that in this case the appellant did not raise the question whether the Sterling Act was too broad a delegation of power by the Legislature of its taxing power in that it violated Article 9, Section 1 of the Constitution.

> "All taxes shall be uniform upon the same class of subjects, within the territorial limits of the authority levying the tax and *shall be levied and collected under general laws* * * *"

The second case, that came before the Supreme Court, *Philadelphia* v. *Samuels*,[13] arose out of another tax ordinance passed by the City of Philadelphia imposing a tax, measured by a percentage of the gross receipts derived from the charges of parking automobiles in an open parking lot. Appeals in these cases were taken by an individual and a corporation and were argued together. The Court held the ordinance to be valid and enforceable against both the individual and corporate appellant, as these "transactions" were not taxed by the State.

Under the authority of the 1947 legislation, the School District of Robinson Township, in the County of Allegheny, passed a resolution taxing "all coal mined and or removed from the ground in Robinson Township" at the rate of 5 cents a ton. A partnership, a taxpayer under the resolution, petitioned the Supreme Court to take original jurisdiction. The petition was granted. The constitutionality of the Act of Assembly was attacked on two main fronts. First, can the Legislature, in the face of Article 9, Section 1 of the Constitution, delegate to political subdivisions, other than cities (which have home rule powers), the power to impose taxes through their own ordinances or resolutions, on any thing or person if such are not subject to State taxation or license fees? And secondly, that the Act produced special and local results. The Supreme Court, in its decision in this case, *English et al* v. *School District of Robinson Township*,[14] held that the Act was constitutional saying that the question had been decided, as to cities, by the opinion in *Blauner's Inc. et al* v. *Philadelphia et al* (cited before), and that, as it applied to school districts (the issue before the court), there existed no unlawful delegation of power. The Court pointed to the existence of the "ceiling" as limiting the school district's taxing power. The Court also held that the statute did not violate Article 9, Section 1 of the Constitution as the taxing resolution was effective throughout the territorial limits of the

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13 338 Pa. 321 (1940).
14 358 Pa. 45 (1948).

school district, and the enabling act was general throughout the State. The Court then reasoned from this conclusion that it was not special or local legislation.

It is submitted that although the Supreme Court held that the statute under discussion was general, it did not say it was a general law under which taxes could be levied and collected; nor did the Court say that the resolution, under which the taxes were levied and collected, was a general law. No taxes can be levied and collected under the statute; they must be levied and collected under an ordinance or resolution. The political subdivision determines, whether it shall levy or not levy a tax, what things or persons shall be taxed, the rate of tax, the penalties for non-compliance with the provisions of the ordinance or resolution, and how, when or where the tax will be collected. Does this satisfy the second part of Article 9, Section 1 of the Constitution?

As the Supreme Court based its decision in the English Case principally upon the existence of a maximum "ceiling", the practical application of this limitation should be considered. Several school districts have given notice of intention to impose taxes, "the collection of the tax to continue during the year or until the maximum amount allowed by the Act of June 25, 1947, P. L. 1145 has been reached."[15] In the absence of accurate estimating of the future yield of newly enacted levies, if the maximum amount is reached, does this mean that the taxpayers who have made prompt payment are to be discriminated against in favor of the delinquent ones? Even if such a maximum is reached, the political subdivision could, in the next year, increase the real estate millage under the authority of the statute and hence be safely under the "ceiling" and automatically avoid the limitation imposed by the General Assembly.[16]

Following the decision in *English* v. *Robinson Township School District* an important case arose in Clearfield County involving a school district tax of 5 cents per ton on coal mined in Lawrence Township.[17] In that appeal the issue on the constitutional question was squarely based on the tax resolution and not on the Act of 1947. The contention was advanced that no tax whatever could be levied and collected under the statute; that the Constitution[18] required all taxes to be levied and collected under general laws; and that an ordinance or resolution, applicable only in one political subdivision, was not a general law. This question was not answered in the decision of the Court. Instead the tax was upheld in view of the decision in *English* v. *School District of Robinson Township* upholding the statute.

While the word "law" in Section 1 of Article 9 of the Constitution has not been defined, the meaning of the word in other sections of the Constitution has always

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15 Clay Township School District, Butler Co. and Centre Township School District, Blair Co.
16 Section 6 of the Act of June 25, 1947, P. L. 1145.
17 Appeal from Resolution of Lawrence Township School District, Quarter Sessions, No. 30, December SS 1947.
18 Section 1, Article 9.

been defined as meaning a law enacted by the Legislature and not a municipal ordinance.[19]

It also seems perfectly clear that the words "general law" were employed in this section of the Constitution to assure that the Legislature was prohibited from passing local tax laws, a prohibition already contained in Section 7, Article 3 of the Constitution. The word "under" which precedes the words "general law" is undoubtedly a preposition meaning "in conformity with", "by virtue of" or "as controlled or governed by."

The "ceiling" pointed to by the Supreme Court does not concern either the levy or collection of the tax; it concerns the total amount of revenue which can be raised.

The two other contentions, raised in the Lawrence Township case, should also be noted. The first of these was that the resolution, which imposed a tax on coal mined in Lawrence Township, imposed a tax on the property of corporations subject to the State Capital Stock Tax; and if the school district tax was construed to be a privilege tax on the right to mine coal, the tax was still prohibited because the Act denied the power to tax the privilege of employing such tangible property as was taxed by the State. The school district actually contended the tax was an excise on the privilege of mining.

The clause in the Act denying the right to tax the privilege of employing tangible property taxed by the State is as follows:[20]

> "nor have authority, except on sales * * * or other transfers of title or possession of property, to levy, assess or collect a tax on the privilege of employing such tangible property as is now or does hereafter become subject to a state tax"

In order to uphold the tax the Court said -

> "the coal operators' chief business is the severance of the coal from the ground and the sale of it after it has been transported to its destination * * * We believe this resolution to amount to a sales tax of five cents on each and every ton of coal mined and removed in Lawrence Township."

There is not the slightest evidence in the tax resolution of any intent to impose a sales tax on a transaction involving transfers of title or possession of property. And it is difficult to follow the reasoning of the Court that a sales tax can be levied on coal merely because it is mined in a given township, particularly where the sale, as the Court indicates, is made after the coal has been transported to its destination which invariably would be beyond the limits of the township.

The second contention in the Lawrence Township case was that the tax imposed by the school district exceeded the "ceiling" under the Act. It was contended by the appellants that the maximum millage for general revenue purposes in third class

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[19] Baldwin v. City of Phila., 99 Pa. 164; Davis v. Homestead Borough, 47 Pa. Super. Ct. 444; McCormick v. Fayette County, 150 Pa. 190; Taylor v. Phila., 261 Pa. 458; Klingler v. Bickel, 117 Pa. 326; County of Crawford v. Nash, 99 Pa. 253.

[20] Section 1 of the Act of June 25, 1947, P. L. 1145.

school districts was 25 under Section 537 of the School Code.[21] By an amendment to the School Code, made at the time minimum salaries for teachers were provided for, third class school districts were given power to levy annually a tax sufficient to pay the minimum salaries and increments of the teaching and supervisory staff.[22]

It was contended that the maximum millage limitation referred to in the statute was the limitation for general revenue purposes and that special or unlimited[23] millages were not to be taken into consideration. The levy for minimum salaries of teachers, etc., seems to be a special levy and is unlimited, except by decisional law which has held that while the levy for this purpose may be above the general 25 mill limit credit must first be given for the amount contributed by the State towards teachers' salaries.[24]

The Court said the following on this point:

"So far as we have been able to discover, there is no maximum for districts of the third class. Lawrence Township is a school district of the third class. There is no testimony as to the maximum millage which such district may be permitted to levy. Inquiry by the court, of people who should have special knowledge, would indicate that as to third class districts there is no maximum levy, and we have been told by school authorities that there is no maximum levy for districts of the third class.

"If there is a limitation beyond which third class districts may not exceed in levying taxes for school purposes, then there is a maximum fixed in act 481 of 1947, limiting the extent to which they can levy a tax under that act. If there is a maximum, then act 481 is a general law. As to third class school districts, the effect of act 481 may go much further than contemplated by either the legislature in the passage of the act, or by the Supreme Court in the decision in the Robinson Case. Undoubtedly, the Supreme Court had in mind that there is a sufficient limitation. In view of the decision in the case of English v. School District of Robinson Township supra, that the act is constitutional, and not a delegation of the taxing power, and though there is a limit beyond which the school district can not go, in the absence of proof to the contrary, we must accept the ruling of the Supreme Court of our state, and will overrule the remaining two objections by the appellants."

It is difficult to come to any conclusion from the above language other than that the Court believed there was no limitation on the millage which a third class school district could levy although the Court says there was no testimony as to the maximum millage. Whether there is or is not a maximum millage for third class school districts is not a matter of fact but of law which it is the duty of the Court to determine.

The testimony in the case clearly established that the tax imposed by the school district on the coal production in Lawrence Township, which was stipulated on the

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21 May 18, 1911, P. L. 309.
22 Apr. 21, 1921, P. L. 321, sec. 1210 Cl. 24.
23 As an illustration the levy for debt service under section 1301 of the Borough Code of 1947.
24 Duff v. Perry Twp. School Dist., 281 Pa. 87. (1924).

record, would materially exceed, for the period from the effective date of the tax resolution to the end of the fiscal year or for the fiscal year if calculated on an annual basis, the amount which could be raised by a 25 mill levy on the valuation of the real estate in the township.

The decision of the Court on this point seems to be that, even though there is no maximum limit on the millage in third class school districts, since the Supreme Court pointed to the ceiling provision as saving the Act, the Court below could not hold the Act unconstitutional.

In conclusion, it would appear that this policy of local taxation should be reexamined, not only as to its economic impacts, but also as to its other resultant effects, not the least being that upon the constitutional guide posts that have piloted the Commonwealth so successfuly in the past.

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