The Board of President and Directors of the St. Louis Public Schools v. Bacon, James H. Commissioner of Common Schools for St. Louis County 1857 St. Louis 386/1

Old Box 590/14

COA = App. for a Writ of Mandamus
1855 = Filed
Oct. 1857 = Term

want comm. to apportion funds for the schools
no legal power basis for "township school monaps" to go to a "school corporation"
didn't grant writ

State of Missouri S.S.:

In the Supreme court of the State of Missouri October Term 1855

The Board of President & Directors
of the St Louis Public Schools, plaintiffs

against

James H. Bacon, commissioner of common
Schools of St Louis county, defendant

The plaintiffs, a body corporate and politic, state, that the United States, by an act of Congress, passed on the sixth day of March 1820, entitled "an act to authorize the people of the Missouri Territory to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and to prohibit slavery in certain Territories," proposed to the convention to be formed under said act to grant to this State section number sixteen in every township, for the use of the inhabitants of such township, for the use of schools, to be obligatory upon the United States, if accepted by said convention; that said proposition was on the 19th day of July 1820, accepted by said Convention, and said grant of lands, by virtue of said acceptance, then became complete, and the title thereof vested in the state of Missouri, for the use and purposes aforesaid; that township number forty five, north, range seven east of the fifth principal meridian, in the County of St Louis, and State of Missouri, includes the city of St Louis, and a small territory

adjacent to said city; that a part of section number sixteen, in said township, was sold by authority of an act of the General Assembly of the State of Missouri, entitled, "an act respecting township forty five north in range Seven east", approved March 8, 1849, for a large sum of money; that the annual interest which has accrued on said money has been paid and is now in the County treasury of said county of St Louis, subject to be drawn out on the warrant of said defendant for the use of schools within said township; that there is a great number of inhabitants, and white children within said township, and at least nine tenths of them are within said city of St Louis; that the plaintiffs have the lawful power, and authority, and it is their duty to apply for and receive all of the nett proceeds of said sale of said section sixteen, to which said inhabitants, and children of said city are entitled and the interest thereon, and to apply the same to the use of schools within said city; that said commissioner has the lawful and proper information as to the number of white children in said township, and as to the existence of the said money in said County treasury subject to be drawn out on his warrant, as aforesaid; that the plaintiffs have applied to said commissioner, and requested him to make an apportionment of said last mentioned money according to the number of white children residing

in said township, and draw his warrant on the county treasury of said county for the amount that the plaintiffs are entitled to, for the use of schools in said city; but the said commissioner fails, neglects and refuses so to do.

The plaintiffs, therefore, ask this court to issue a writ of mandamus, commanding said commissioner to make said apportionment, and issue his warrant on the county treasury of said county for the amount to which the plaintiffs are lawfully entitled, for the use of schools within said city; and the plaintiffs also ask for such other further and general relief in the premises as they may be lawfully entitled to.

E. Casselberry atty for plaintiffs

State of Missouri }
County of St Louis } ss Be it remembered that Isaiah Forbes President of the aforesaid Board of Directors being duly sworn deposes and says that he believes the averments, statements matters and things set forth in the foregoing application to be true

Subscribed & sworn to before me this 27th day of September 1855 }

Liberty Waste
Justice of the Peace

Isaiah Forbes
President

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(14)

Oct. Term 1857.

The Board of President & Directors of the St Louis Public Schools

vs

James H. Bacon, Commissioner of Common Schools of St Louis County

Application for a writ of mandamus

Filed 15th October 1855
Wm. J. Glanville
Ck.

~~[illegible]~~
br. pfff. alg. 90, Same 40/

~~46~~
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The Board of President & Directors of the St Louis Public Schools vs James H. Bacon, Commissioner of Common Schools of St Louis County } In the Supreme Court

In addition to the statement of the facts in the application for a mandamus in the above cause the plaintiff refers to the laws in relation to the subject.

The act of Congress of Feb. 15, 1811 (U. S. Statutes at Large vol. 2 page 620), section ten provides that "section number sixteen shall be reserved in each township for the support of schools within the same."

The act of Congress of March 3, 1811, (U. S. Statutes at Large vol. 2 page 665), section ten has the same provision as the above act of Feb. 15, 1811.

The act of Congress of March 6, 1820 and the acceptance of the grant under the act by the convention have been noticed in the application filed in this case, and need not be here repeated.

In the case of the Trustees &c. vs. Indiana 14 Howard Reports page ~~[illegible]~~ 268 the Supreme Court of the United States decided that a reservation of land in the manner prescribed in the foregoing laws of Congress is an appropriation of the same. See the cases therein refered to.

The section number sixteen in controversy was appropriated; first, By the act of Congress of Feb. 15, 1811; second, By the act of March 3, 1811; and third By the act of March 6, 1820. All of these laws appropriated the land for the use of the inhabitants of the whole township in their collective capacity, and not to a part of them.

The first section of the seventh article of the constitution of Missouri provides that "Schools and the means of education shall forever be encouraged in this State, and the General Assembly shall take means to preserve from waste or damage such lands as have been or hereafter may be granted by the United States for the use of schools within each township in the State, and shall apply the funds which may arise from such lands in strict conformity to the object of the grant". All laws therefore inconsistent with the object of the grant are void, ~~on account of being inconsistent~~ because the object of the grant is for the benefit of the inhabitants of the whole town=ship and not for a part of it.

The act of the legislature of Missouri of March 8, 1849 (page 632) requires the land to be sold for the benefit of the inhabitants of the whole township, which the commissioners

sold accordingly, and this proceeding is for the distribution of the nett proceeds of the sales of this very land.

The foregoing laws vested in the whole inhabitants an equal interest in the fund and the legislature can no more divest any part of the inhabitants than they can transfer the farm of A. to B by a legislative enactment without any consideration being given to A or without his consent.

On a careful examination of all of the provisions of the act of the legislature of Feb. 24, 1853 relating to common schools we think that the defendant misunderstands the third article of the act. This article does not relate to the rights of the inhabitants to their proportional part of the funds; it is only of an organic nature, relating to the municipal subdivision of the township into school districts, and leaves the rights of the ~~parties~~ inhabitants to their funds arising from the sales of the sections ~~of the inhabitants~~ open to be governed by the other laws on the subject of school lands.

St Louis Public Schools
vs
The commissioner of
Common Schools of
St Louis County

Plaintiff brief

~~Filed 26th October [illegible]~~
~~[illegible]~~
Ck.

The Board of President and Directors of the St Louis Public Schools — Plaintiffs

vs

Jas H. Bacon, Commissioner of Com. Schools for St Louis County — Defendant

Supreme Court of Missouri
Application for Mandamus

The Commissioner refuses to apportion to the Applicant any part of the "Township School Moneys" of its Township because the law does not appear to authorize such apportionment

By the 1st subdivision of Sec 3 Art. 3 of the Act relating to common schools, approved Feb 24 - 1853, it is made the duty of the Commissioner "to apportion the State, County and Township school moneys subject to distribution, among the several School Districts of his county according to the number of white children residing in each" — — "and also to apportion in the same manner, State and County School Moneys" (omitting Township) "subject to distribution, among the several School Corporations in his county"

This is the only provision of the law fixing the basis of the apportionment to be made by the Commissioner. With this provision, the latter clause of Sect 4 Art 2 taken in connection with Sect. 35 of same article, seems to conflict

The applicant in this case being a "School Corporation", there does not appear to be any legal power in the Commissioner to apportion to it any part of the "Township School Moneys"

There is no dispute in this case as to facts — It is admitted that the city of St. Louis is a "School Corporation" situate in Township 45 N. R 7 East — that said "Township is "organized for school purposes according to law". — ~~and~~ that there is in the county treasury subject to distribution "Township School Moneys" belonging to said Township — and that the Commissioner is informed of the number of children residing in the several School Districts and School Corporations of the Township.

The sole question is one of law — involving the construction and force of the "Act of Congress to authorize the people of the Missouri Territory to form a Constitution &c" approved March 6th 1820 — and the School Law of this State approved Feb 24th 1853

St Louis Public Schools

vs

The Commissioners of Common Schools of St Louis County

Defendants brief

Filed 26th October 1855.
Wm S. Glennie Clk.

In the Supreme Court — October Term 1856

The Board of President and Directors of the St Louis Public Schools

vs

James H. Bacon, Commissioner of Common Schools for St Louis County

Petition for Mandamus

The said James H. Bacon, Commissioner, comes and shows cause against the conditional Mandamus in this cause issued as follows

He submits that there is no law requiring authorizing or permitting this respondent as Commissioner as aforesaid to apportion to the Petitioner, or to draw his warrant on the Treasurer of the County of St Louis in favor of said Petitioner for any part of the Township School moneys of Township 45 North Range 7 East claimed in the Petition —

By the first subdivision of the Fifth Section Third article of the act relating to Common Schools approved December 12th 1855 — it is made the duty of the Commissioner of Common Schools —

"To apportion the State, County and Township School moneys, subject to distribution
" among the several School Districts of his County according to the number of white children re-
" siding in each between the ages of five and twenty years, as shall appear from the last annual
" report of the Trustees; — and also to apportion in the same manner State and County School
" moneys subject to distribution, among the several School Corporations in his County"

This Respondent finds no other provision of law fixing his powers and duties in the premises —

The Petitioner claims a part of the Township School moneys of the Township in which it is situated, but being a "School Corporation" the Commissioner submits that he has no authority or power to apportion to it any part of such fund

If this Respondent has mistaken the law or his duty in the premises he prays to be instructed by an order of this Honorable Court, and to be hence dismissed with his costs —

Jas H. Bacon
Commissioner of Common Schools
For the County of St Louis

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St Louis Public Schools

vs

Jas H. Bacon. Com^r,

Answer to conditional Mandamus

Filed 20 Oct. 1856
Wm J. Glanville
Cl

The Board of President & Directors of the St Louis Public Schools
against
James H. Bacon. Commissioner

In the Supreme Court for Missouri
Motion for Mandamus.

James H. Bacon. shows cause against the application for said writ of mandamus. as follows.

1°. He denies that the party moving therefor is the proper person to assert the rights of the City of St Louis in this behalf, admitting for the sake of the argument that such rights exist & that the respondent has done acts in contravention thereof.

The congress of the U.S. by act of 13th June 1812 made a reservation of extensive valuable lands in St Louis to the use of Schools. These lands were afterwards released & granted to the city or town of St Louis by act of 27 Jan. 1831. and by act of the Missouri Legislature. of 13 February 1833. the title to all of the lands granted was vested in the applicants. who were incorporated by their present title. This corporation was created for specific purposes. amongst which the management of the proceeds of the sale of the Sixteenth section. or of the "Township School fund" is not included. And the fact that the applicants are, with respect to certain purposes connected with Education, clothed with certain powers and charged with certain duties within certain territorial limits, does not erect them into Trustees as to that fund.

§9 of the act of Feb 13. 1833. (p. 40. of Session acts) gives to the applicants "possession charge & control of all the "lands or lots in or near the City of St Louis, which have "been either received for or granted to the Inhabitants of St "Louis for school purposes by any act of Congress of the United States" - and the title to all such lands was vested in the corporation

It may not be inappropriate to call to the attention of the Court. that at the date of the act referred to (Feb 13. 1833) an x act had just passed the legislature entitled "an act in addition to an act incorporating the Inhabitants of the town of St Louis". The act of Feb 13th 1833. had reference to such lands only as had been granted by Congress to the Municipal

x an act approved Jan 16th 1833

corporation. And there only were in charge of the corporation then created.

The fund which is the subject of controversy is the proceeds of lands granted by the act of 3d March 1820 to the State for the use of the inhabitants of the Township for the use of Schools. With this, the applicants have nothing to do

2d. Even though it should be conceded that the applicants were the proper parties to ask for the writ of mandamus in the present case, it would not be difficult to demonstrate that no rights exist on the part of the City of St Louis. The acts of the Missouri Legislature exclude the city from all share in the fund in question

The Sixteenth Section in each Township was given by the act of 3d March 1820 "to the State for the use of the Inhabitants of the Township for the use of Schools."

That a trust was created by these words may be in some sense, admitted. But as to the manner of compelling an execution of the trust some difficulty might arise. And certainly the mode in which the State discharges itself of the trust cannot be the subject of judicial criticism. The disposition made by the Legislature of this ~~Sch~~ fund cannot be called in question by the Courts.

Something is said in the application for the writ in this cause, about the constitutional rights of the applicants, and the limitations imposed by the constitution on ~~the~~ legislative power as to the fund in dispute, to which it is only deemed necessary to reply that the applicants are themselves the creatures of the legislature of Missouri and have no standing in Court except by its fiat. And that there are no limitations imposed on the discretion of the State in respect of this fund, by the act of 3d March 1820. None such could have been imposed without such an inter=

ference with the dignity of the State as could not for a moment be tolerated.

It only remains then to ascertain what disposition the State has actually made of this fund.

By reference to §4 of art 2. of the act of 24 February 1853. (p. 152 of Session acts) it will be seen that the City of St Louis is excluded from any share in the benefit of this fund: And the reason of the exclusion is declared to be the provision already made for the City of St Louis and other towns similarly circumstanced, by acts of Congress. The words of that section are:

"When the inhabitants of any city town or village have had a grant of lands for the use of schools therein, by virtue of any law of the United States. such city town or village shall not be deemed a part of the township in which it is situate + + + within the meaning of this act."

(The preceding section (§3) had provided that "Each Township and fractional township as surveyed under the authority of the United States shall form one school Township within the meaning of this act." p. 151.)

Page 152 §10. declares that "the proceeds of Section Sixteen". and other money, shall constitute a "Township School Fund".

Of this fund, the charge is given to the County Comb. (§10)

By art. 3d. §1. the County Comb is directed to appoint a Commissioner. whose duty it shall be (among other things) (§3. Subd. 1) "to apportion the State County and Township School moneys "Subject to distribution among the several School districts of his County. according to the number of white "children residing in each &c &c. and also to apportion "in the same manner the State & County School moneys "Subject to distribution among the several School Corporations in his County."

From this it follows that the "School Corporations" and the "School Districts" were placed on a different footing. The corporations were to have their share of the State & County School moneys: But the industrious omission of the "township" School moneys from the description of the fund to be divided among the "School Corporations" shows that no part of this fund was to go to the Corporations.

It may be contended that the latter clause of Section 4. of art. 2. reserves to the Schools in St Louis & other towns their proportionate benefits of the distribution of the funds of which the Township School Fund forms a part.

Such however is not the position of the applicants. They seem to concede (which is undeniable) that the acts of the Missouri Legislature deny to them a share in this fund. And they arraign these acts as unconstitutional: On which topic no more will here be said.

Lest however the bearing & effect of the latter clause of Section 4 of art. 2 should seem to be overlooked an attempt will here be made to show what is conceived to be its true meaning.

The first part of that section had declared that if any town, village or city had received a grant of land for School purposes from Congress, such town, city or village should not be deemed a part of the township &c.

But it is obvious that it may happen that the sixteenth section is ~~so far~~ much more valuable than the land granted to the City Town or Village for School purposes, that in order to equalise the means of Education throughout the Township it is necessary to organise and endow out of the Township fund, certain public Schools within the municipality. The first

clause of Section 4 seems to prohibit any such participation, by the municipality in the benefits of the Township School Fund, no matter how pressing the need. The second clause permits the County Court in its discretion to organise public schools in such towns villages or cities and to admit these "organised public schools" to their proportionate benefits of the distribution of the funds set apart by art. 2.

Either this is the true construction of that §4 or the two clauses destroy each other. The second clause is as broad as the first, and except by the interpretation here contended for, annuls it entirely.

It may or may not be the case that ~~in any case~~ the County Court has organized one or more public schools within the chartered limits of the City of St Louis to be supported out of the Township Fund. If it has, then there is a clear and manifest object on which this latter clause may operate. If it has not, it is because in the opinion of the County Court or the School commissioners the city or town is already better furnished than that part of the township outside the corporation, with Educational facilities. The first and second clauses of Section 4. art. 2. and the first & second clauses of the first subdivision of Sect. 3. art. 3. thus mutually explain each other, and are consistent. In no other way can they (it is submitted) be reconciled.

Wherefore it is submitted

1° That the applicants are not the proper parties to complain of any infraction of the rights of the City of St Louis to the proceeds of Section 16 in Township 45 N. R 7 E.

2° That by the acts of the Missouri Legislature the City has no right to participate in the township School Fund. And that at most such public schools as are organized within the City of St Louis by the School commissioners & St Louis County Court, are entitled to a proportionate share of this fund. For this purpose it is necessary that some portion of the city should be laid off into

a School district: and it is not pretended that any such thing has been done.

Respectfully Submitted
Thomas J. Gantt
For the Commissioner of
St Louis County.

The Board of President & Directors of the St Louis Public Schools

v

James H. Bacon, School Commissioner of St Louis County.

Cause shown against the rule for a mandamus.

Gantt for Bacon.