The Police Commission of the City of St Louis v. The County Court of St Louis County 1864

523/2

635/7

Sharp Branch

Petition for Mandamus

March 64

March 64

- Increase payment to police fn

- who is respn

- Issued - no good cause why the court should not [illegible]

Bates

An act to provide for the payment of the Police of the City of St. Louis.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Sec: 1. For the purpose of providing additional means for paying the Police force of the City of St. Louis, the Board of Common Council of said City, shall levy an additional tax of one tenth of one per centum on all property in said City made taxable by law for State purposes, for the Year Eighteen Hundred and Sixty four, and for each Year thereafter, and all monies collected from such tax, shall be set apart as a special fund, to be used for no other purpose; and any Ordinance of said Board appropriating any part of said Monies to any other use or purpose, shall be utterly void.

Sec. 2. In addition to the appropriation already made by said Board, for the support of the City Government for the fiscal Year, ending the first Monday of April Eighteen Hundred and Sixty four, the said Board may make additional appropriations, prior to said date for the payment of said police force during said fiscal Year, anything in existing laws to the Contrary notwithstanding.

Sec 3. The County of St. Louis shall be chargeable with One fourth of the whole expense of the police force of said City of St. Louis

for

for the Year Eighteen Hundred and Sixty four, and for each Year thereafter, and the County Court of said County shall from time to time appropriate money out of the County Treasury to meet that proportion of said expense; and whenever the said Board of Police Commissioners shall need money to meet the expenses of said Police force, they shall make requisition upon said County for One-fourth, and upon said City for threefourths, thereof.

Sec. 5. This Act shall take effect upon its passage.

Approved February 5th 1864.

Office Secretary of State,
City of Jefferson, Missouri.

I, Mordecai Oliver, Secretary of State of the State of Missouri, hereby certify that the above and foregoing, is a full, true and complete copy of an Act entitled, "An act to provide for the payment of the Police of the City of St Louis, approved February 5th 1864; as fully as the same appears upon the Original Roll of said Act, now on file in this office.

In Witness whereof, I have hereunto set my hand and affixed the seal of Office.

Done at Office, in the City of Jefferson, this 5th day of February 1864

(Sign.) M. Oliver
Secretary of State.

L.S.

This is copy of the act in possession of Cek of Police Commissioners - which will be furnished —

Police Commissioners
the City of St. Louis

The County Court of St. Louis County

In the Supreme Court

Application for Mandamus:

John Horr, William Patrick and John Rygin - state that they have been regularly appointed Police Commissioners of the City of St. Louis under the provisions of an act of the General Assembly of the State of Missouri approved March 27th 1861 - that they are still such commissioners -

That by the provisions of an act of the General Assembly of the State of Missouri Entitled an act to provide for the payment of the Police of the City of St. Louis approved February 5th 1864 - it was and is provided that in addition to the appropriation already made by the Board of Common Council of the City of St. Louis for the support of the City Government for the fiscal year Ending the first Monday of April 1864 - the said Board may make additional appropriations, prior to said date for the payment of the Police force for the City of St. Louis during said fiscal year - that by said act it is further provided that the County ~~Court~~ of

St. Louis shall be chargeable with the one fourth of the whole Expense of the Police force of said City of St. Louis, for the year 1864 and for each year thereafter, and the County Court of said County shall from time to time appropriate money out of the County Treasury to meet that proportion of said Expense, and that whenever the said Board of Police Commissioners shall need money to meet the Expenses of said Police force, they shall make requisition upon said County for one fourth and upon said City for three fourths thereof — Your petitioners state that in addition to the appropriation made under previous laws — the said Board of Common Council for the City of St. Louis — under the act of the General Assembly last referred they did make an appropriation on the day of February 1864 for the payment of the Police for the City of St. Louis for the months of January and February 1864 of the sum of seven thousand ~~five hundred~~ dollars — ~~and for the month of March 1864 of the sum of~~

petitioners further state that
day of ~~March~~ February 1864 they made a
petition upon the County Court of St. Louis
County for the ~~said sum of three~~ seven thousand
~~five hundred~~ dollars for expenses of the
Police force of the City of St. Louis for
the months of January and February 1864 - which
amount was asked for that purpose -
~~and that on the day of 1864~~
~~they made a further appropriation on the~~
~~County Court of St. Louis County~~
~~for the further sum of~~
~~to meet the Expenses of the Police force of~~
~~the City of St. Louis for the month of~~
~~March 1864 - and which was~~
~~asked for that purpose~~ - But they
say that the said County Court refused to pay
the same or any part thereof either
for the Expenses of the month of January or February
1864. ~~or March 1864~~ - or to make
an appropriation therefor - as will appear
by copies of said requisitions and the
order of said County Court refusing
to allow the same or to make an
appropriation therefor - which is hereto
annexed -

Wherefore your petitioners pray that a
Mandamus may issue from this
honorable Court, directed to said County

[6]

Court, Commanding said County Court to cause said several amounts to be paid and an appropriation to be made therefor, or to show cause if any they have why the same has not been done —

Sharp & Broadhead
Attys for Petitioners —

John Hoor one of the above named Commissioners on his oath states that the foregoing petition and the facts as therein stated he believes to be true —

John Hoor

Sworn to and subscribed before me this 21st day of March AD 1864 Herman A Haeussler Notary Public fee 25 cts

(7) State at relation of 110.
Jno Hon. Wm Patrick Jno Riggin
The Police Commissioners of St Louis
Vs.
The County Court

(7) Petition for Mandamus

Filed March 21. 1864
A W Mead
Clk

[redacted]
...ative mandamus awarded, returnable April 5th 1864 Dp 224
... Argued & Submitted
... awarded. Opn filed Dp 266

In the County Court of St. Louis County

Thursday February 18th 1864.

A Claim of $7000 in favor of Wm Patrick, Treasurer of the Board of Police Commissioners, being for one fourth of the Police expenses of the City of St. Louis for the months of January and February 1864 having been presented to the County Auditor for allowance, and by said Auditor presented to the Court as having been disapproved by him; the Court here reject said Claim and concurs in the action of the Auditor. The Vote on this action of the Court was as follows, to wit: Messrs Justices Able, Alt. Charles, Fisse, James and Lightner, Ayes — Taussig absent.

State of Missouri } ss.
County of St. Louis } I certify the foregoing to be a true copy from the Record now on file in my office.

Witness my hand and the seal of said Court at St Louis this 21 day of March 1864

S. H. Eager Jr
Clerk

15 ¢ paid by Mr Broadhead.

The Police Commissioners of the City of St Louis
vs.
The County Court of St Louis County

In Supreme Court

March Term 1864

For answer & return to the writ of Mandamus issued herein at the instance of the Police Commissioners of the City of St Louis commanding the said County Court, to pay over to said Police Commissioners the sum of Seven thousand dollars for the expenses of the Police force of the City of St Louis for the Months of January & February 1864. or show cause why the same should not be done, The said Respondent says it did refuse to pay over to said Police Commissioners the said sum of Seven thousand dollars. and that it ought not to be required to pay the same for the following reasons.

1st Because Respondent is advised and believes and so states that the act of the General Assembly entitled "an act to provide for the payment of the Police of the City of St Louis" approved February 5th 1864. and upon which the writ in this cause is founded. is of no binding force whatever. but that it is in violation of Common right and of the Constitution of the State of Missouri. and therefore inoperative and void. In this that it

appropriates private property without just com-
-pensation. That said act is retrospective in its
operations, and violates the principles of taxation
as laid down in said Constitution.

2nd. Respondent says it aught not to pay said
sum of Seven thousand dollars because there is
no money in the County Treasury, that can
legally be appropriated to pay the same.
The County funds under control of Respon
= dent having been raised by taxation prior to the
passage of said act; and for certain specific purpos
=es set forth in the order for the assessment and
levy of the taxes from which such funds were
derived, cannot be diverted from the purpose
for which they were collected.
That if said act be of any force or validity
(which these Respondents denies) it would be
necessary for Respondent to levy a special tax
upon the taxable property in the County to
raise money to pay said Police force, and no
such special tax can be levied without first
making application to the General assembly so
to do.

3d. Said Respondents ought not to be required
to pay said sum because it is sought to be
recovered, and applied for the purpose of paying

a debt already incurred by said Police Commissioners or the City of St Louis prior to the passage of said act, and in so far said act is retrospective in its nature, and is inoperative & void.

4th If this Court shall be of opinion that said act is legal and valid, then Respondent says the relief sought for in this case ought not to be granted, because it is not stated or shown to this Court what the expense of said Police force has been or will be for the year 1864. Or that the proper authorities of the City of St Louis have made the appropriations contemplated by said act.

5th Because the expense of said Police for the Months of January & February 1864, had already been paid in the manner provided by law at the time of the passage of said act, and of the issuing of said writ.

All of which is respectfully submitted.

J. H. Lightner.
Presiding Justice St Louis Co. Ct.

Samuel H. Gardner
for Respondent

Police Commissioners

vs

County of St. Louis

Return

Filed April 21. 1864

A. W. Mead

Clo

Office Board of Police Commissioners
St. Louis Feby 17th 1864

To the Honble
The County Court of
St. Louis County.

Copy

It is ordered by the Board of Police Commission-
-ers, that the County Court be respectfully request-
-ed, to cause a warrant to be drawn on the proper
officer, for the sum of Seven thousand dollars ($7000.00)
in favor of Mr. William Patrick, treasurer of the
Board; this amount, being one fourth of the Po-
-lice expenses, for the months of January and Febru-
-ary 1864: In pursuance of an Act of the Legisla-
-lature, entitled "An act to provide for the payment
of the police of the city of St. Louis". Approved Feby.
5th 1864

Seal

In testimony whereof the Vice President of
the Board has hereunto set his hand, and
caused the same to be attested by the clerk
with the seal of the Board

Attest
Geo. Ravin
C.P.

John How

Copy of Requisition on
the County Court —

Filed May 3d 1864
A. W. Mead
Clk

An act, amendatory of an act entitled "An act creating a board of police commissioners, and authorizing the appointment of a police force for the City of Saint Louis" approved March 27 1861.

Be it enacted by the General Assembly of the State of Missouri as follows,

Section 1. Section 3 of the act to which this act is amendatory, as recited above, is hereby amended as follows; By adding after the word "capacity" (in the fifth line of the printed laws of the session of 1860 and 1861) the words, "who shall be ex-officio president of said board, and said board shall appoint one of their members as vice president, who shall act during the absence of the president."

Section 2. Section 7 is hereby amended as follows; by adding after the words, "chief of police" the words "who shall give bond with security in the penal sum of twenty thousand dollars for the faithful performance of his duties."

Section 3. Sections 8 and 9 are hereby amended as follows; Each captain shall receive seventy five dollars per month; each lieutenant seventy

dollars; each sergeant sixty five dollars; and each ordinary policeman and detective sixty dollars; each turnkey fifty dollars payable monthly.
Section 4 - In addition to the police force authorized by the act, to which this act is amendatory, there shall be appointed, enrolled and employed an additional force of not more than thirty men and one captain, and ordinary policemen as is now by law provided, which additional force shall be used and employed solely in the extended new limits of the city of Saint Louis, at such points thereof, and in such proportions, as the several localities require.
Section 5 - It is hereby made the duty of the board of police commissioners to estimate what additional sum of money will be necessary to enable them to carry out the provisions of this act and to certify the same to the board of common council of the city of Saint Louis, who are hereby required as soon as possible, to set apart and appropriate the amount so required, agreeable to section (15.) fifteen

of the act to which this is amendatory. The whole of said appropriation for police purposes not to exceed the sum of one hundred and seventy five thousand dollars.

Section 6 - All parts of the act to which this act is amendatory, inconsistent with the provisions of this act are hereby repealed. This act to be in force and take effect from and after its passage.

Approved December 12 1863.

Office Secretary of State
City of Jefferson, Missouri.

I, Mordecai Oliver, Secretary of State of the State of Missouri, hereby certify that the above and foregoing is a full, true and complete copy of an act entitled, "An act amendatory of an act entitled, 'An act creating a board of Police Commissioners, and authorizing the appointment of a Police force for the City of Saint Louis,' approved March 27, 1861," ap-

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proved December 12, 1863; as fully as the same appears upon the original Roll of said act, now on file in this Office.

In witness whereof, I have hereunto set my hands and affixed the Seal of Office. Done at Office in the City of Jefferson, this 15th day of December AD 1863.

M. Oliver
Secy of State.

Act of Dec 12th 1863

Filed May 3d 1864
A. W. Mead
Clk

The Police Commissioners of the City of St. Louis vs. The County Court of St. Louis County. } In the Supreme Court - Application for Mandamus.

The Board of Police Commissioners of the City of St. Louis was created by an act of the General Assembly of Missouri approved March 27th, 1861.

They have the appointment of the police force for the City and a general superintendence over the same - and it is made the duty of the Board (§15) with all convenient speed after qualifying and annually thenceforward to estimate what sum of money will be necessary for the current fiscal year to enable them to discharge the duties imposed upon them, which amount they are to certify forthwith to the Board of Common Council of the City, who are required by the act to appropriate and set apart the amount so certified, in the first appropriation ordinance of the fiscal year -

The Board of Police are then authorized to make requisition from time to time upon the Mayor, Auditor and Comptroller, or other proper disbursing officer, for such sums of money as they may deem necessary for executing their duties - Provided - that the same shall not exceed in any year the amount appropriated by the City of St. Louis for maintaining the

Police of the City during the year 1860 - and also provides the sum required or drawn shall not exceed in any one year the amount certified for that year to the Common Council -

The act of the last session approved Feb 5 1864 - provides that the City Council shall make additional appropriations for the payment of the Police force of the City S. 2 - and also provides that the County of St. Louis shall be chargeable with one fourth of the whole expense of the Police force for 1864 - and for each year thereafter - and that the County Court of St. Louis County shall from time to time appropriate money out of the County Treasury to meet that proportion of the expense; and that whenever the Board of Police Commissioners shall need money to meet the expense of said Police force they shall make requisition upon the County for one fourth and upon the City for three fourths -

The necessity for this act was caused by an increase of the pay of the Police - and to meet the additional appropriation by the City - the Board of Common Council is authorized to levy an additional tax -

The provisions of the law are plain - The Board of Police Commissioners are authorized to estimate the amount necessary for the expenses of the Police force - and the City is required to pay 3/4 and the

County one fourth upon the requisition of the Board of Police Commissioners —

The return to the alternative writ of Mandamus presents three questions for the consideration of the Court —

1. That the Act of Feb. 5th 1864 requiring the County to pay one fourth of the Expense of the Police force of the city of St. Louis - is unconstitutional and void

2 — That there is no money in the County Treasury which can be legally appropriated to pay the amount, and no provision of law made for raising by taxation the funds necessary to pay the amount —

3 — That the necessary appropriations and Estimates for Expenses of the Police force have not been made by the proper authorities of the City —

State to use of Police
Commissioners
vs.
County of St. Louis

Statement of the Case

Sharp & Broadhead
Attys

Filed May 3d 1864
A. W. Mead
Clk

The Police Commissioners
of the City of St. Louis. Relators
vs.
The County Court of St. Louis County - Resp.

Now come the above named Relators and say that

1. The return of Respondents to the alternative writ of Mandamus issued from this honorable Court - and the causes therein assigned for refusing pay the sum of seven thousand dollars to Respondents as ordered by said Court are not sufficient in law to justify Respondent in refusing to obey said writ -

2 - They further say that said return is uncertain, inconsistent and insufficient.

Wherefore Relators move that said return be quashed and that the alternative writ of mandamus heretofore issued by this Court be made absolute -

Shark & Broadhead
Attys for Relators -

Board of Police
Commissioners
v.
County Court of
St. Louis County

Motion to quash
return and for a
rule absolute —

Sharp & Broadhead
Attys —

Filed May 3d 1864
A. W. Mead
Clk

Board of Police Commissioners
vs.
County Court of St. Louis County

It is objected by the Respondent that the act of the Legislature of the 5th of February 1864 - gives the Board of Police Commissioners an unlimited authority to make requisitions upon the County - that the whole revenue of the County is thus subjected to their control - and that this being true the County Court can never know how to provide for the payment of these requisitions nor what proportion of the County revenue to set apart for that purpose nor what taxes to levy -

Whatever force there may be in these objections so far as the Constitutionality of the law is concerned - it is very clear that the law does not bear that construction

In the first place supposing there were no limit to the Estimate which the Police Commissioners may make for the Expenses of the Police force, as was the case under the act of March 27 1861 which created the Board yet the limit to be inferred from the fact that the law fixes the number of Police and the pay which they are to receive - the amendatory act of Dec 12. 1863 - does limit the amount by declaring that

"The whole of said appropriation for police purposes not to exceed the sum of one hundred and seventy five thousand dollars" See Sec: 5. Act of Dec 12. 1863 —

This act provided for the increase of pay — and an increase in the number of Police officers — but had made no special provision for an appropriation by the City Council for the Expenses of the current fiscal year caused by this increase of pay — therefore the 2nd section of the act of Feb: 5. 1864 authorized the City Council to make an additional appropriation for such Expenses for the year 1864 — and when the fiscal year ended they can act as before under the law of 1861 and make their regular annual appropriation —

The 3d section then goes on to provide that the County of St. Louis shall be chargeable with one fourth of this Expense and the City with three fourths —

There is no change either expressly or by implication in the limit of $175 000 prescribed by the former law, but it is simply provided that the County Court shall make appropriations to meet that proportion (of one fourth) out of the County Treasury — The number of the Police fix their pay — and the aggregate amount

which may be demanded by the Commissioners are all limited.

It is claimed that there is no money in the County Treasury which can be legally appropriated out of the County Treasury to pay this requisition — because the County Court is required by the general law to estimate the amount of money required for different purposes connected with the affairs of the County — and to raise money by taxation for those purposes — that the money so raised, belongs to those purposes and cannot be diverted from them —

It is not necessary for us to contend — that the Legislature which regulates by law the mode and amount of taxation that may be levied upon the Inhabitants of a County — and also declares the objects to which the money when raised may be applied by the County Court — may also change the law both as to the mode and amount as well as the direction in which the money may be applied —

The ground urged in the second cause of the return is that the money cannot be appropriated, because it has been raised for a different purpose; now it is very clear that no interest under the peculiar protection

of the County Court, whether it be the road interest, the educational interest or any other interest can have any vested ~~interest~~ right in any money raised for those purposes which is beyond the power of the Legislature to control, until there has been an appropriation or setting apart of the money for those particular purposes—
A County is a public corporation - and public corporations are created and exist for public-political purposes - they constitute parts of the political organizations; and are and ought to be subject to changes alterations and in most respects to the control of the supreme legislative power of the state - they may be created or altered with the consent of a bare majority of the inhabitants residing within their limits or without the consent of any of them -

See City of St. Louis vs. Thos. Allen 13. Mo. R. p 414 - and may be abolished by the same power without the consent of any of the inhabitants -
If any individual or number of individuals have acquired rights in property under the action of a municipal corporation legitimately exercised that is a different question - as for example if a man has contracted to build a bridge or a County jail - and money has been raised and appropriated for the purpose of paying

him, neither the Legislature nor the County perhaps could divert that fund to another object —

The Respondent does not deny that there is money in the County Treasury sufficient to pay the amount required — nor is it averred that the money has been appropriated to other purposes — but that there is no money which can be legally appropriated, because the money was raised for other purposes — now it may turn out that it is very impolitic, contrary to the public interest that those purposes should be carried out, or that there is some other purpose more important to which the money may be applied — the consent of the corporation is nothing because it is a public corporation and has no consent to give except in accordance with the will of the State —

Chief Justice Story says in the case of Dartmouth College vs. Woodward 4 Wheaton 518 — "Public corporations are such only as are founded by the Government for public purposes, where the whole interests belong also to the public — they are such as towns cities, parishes and counties" —

Such corporations can have no property — no interest which may not be taken away by the effect of legislation —

~~So that whether~~

But even if the money raised by the County has been appropriated to the objects specified and there be no surplus over and above the appropriation and no contingent fund for county Expenditures, which is not at all probable - it is a very easy thing for the County Court to draw a warrant on the County Treasury to be paid out of any money not otherwise appropriated ~~and then to levy an additional~~ or out of the fund for the pay of the Police for St. Louis as provided by this law and then to levy an additional tax to take up such warrants. The County Tax is collected annually - the assessors Books are returnable on or before the first of June of each year - and after those books are corrected and adjusted. The tax is levied when or may be needed under the law —

The County by the general law is authorized to levy a tax not exceeding three fifths of one

per cent – the present tax is one fourth of one per cent – the whole amount required of the County by the law for the payment of the Police force could not exceed the sum of $43750 –

By the general Revenue Law, the County Court of each county, after the tax book is corrected and adjusted, ~~which is after the first day of July in each year~~, shall ascertain the sum necessary to be raised for county purposes, and fix the rates of taxation so as to raise the required sum – See R. C. 1855 – p. 1350 Sec: 2 – and also Supm Acts 1859-60 p. 521. S. 13 –

This is to be done after the first day of June in each year when the assessor's Books are returned –

There is no difficulty in anticipating this first as is often done by issuing the warrant upon it to be paid when the tax is collected, even if there should be no money on hand at the time of the requisition – and when the assessors Books are returned to levy a tax to pay it – In this case they refuse to issue the warrant –

It is said that a special tax cannot be levied without an act of the general assembly authorising it -

As no money can well be raised by the County except by taxation which is the general mode provided by law for raising money by a County, except what arises from the proceeds of fines & forfeitures and as the act of Feb: 5. 1864 - requires the money to be paid - it may well be held that this act authorises the County to raise it in the manner provided by law for raising bonds for other purposes - and that any supposed restrictions in former laws are repealed by this act -

But the act of March 14. 1859 - See Sep Acts of 1859 p 448 - will not bear the construction contended for -

The fourth clause of the 19th section provides that the "total of taxes ordered to be assessed and levied by said Board of County Commissioners for all purposes, general and special, ordinary and extraordinary shall not be greater than ~~three~~ fifty cents of one per cent -"

The 31st section of the same act provides "that whenever a deficiency shall occur in the revenue of the County of St. Louis to meet any necessary expenditure &c

the board of County Commissioners (now the County Court) shall make application to the General Assembly for permission to levy a special tax" —

It is very clear that a limitation of three fifths of one per cent in the amount of taxation that may be levied, is equivalent to a grant of power to levy to the extent of three fifths — and this extends to all objects of county expenditures, including all purposes general & special ordinary and extraordinary — The limitation of power contended for would be inconsistent with this grant, and absurd because it would require the Court to ask the legislature to permit them to do what they are already authorized to do, if it be true that the Court has not exhausted the power to levy taxes to the extent of three fifths — To give force and effect to both sections — the 31st section must be so construed as to apply to a case in which the Board has already levied to the extent of three fifths —

III. The constitutional objections urged against the validity of the act are three fold -

1st. That it is retrospective in its operation

2nd. That it appropriates private property without just compensation

3d. That it violates the principles of taxation as laid down in the Constitution.

In regard to the first objection it may be remarked that a law which neither defeats, nor impairs any existing right, can hardly be said to be retrospective in its operation in the sense contemplated by the Constitution - If a debt is created by the State without any means being provided for its payment - and the Legislature should afterwards provide for raising the money by taxation, such a law would be equally retrospective in its operation, and yet such legislation would unquestionably be within the power of the Legislature, because instead of violating any existing right it only imposes a new obligation upon the citizen, and the fact that a debt or obligation has already been incurred by a part of the community - by a corporation or by an individual would not change the nature of the case - on the contrary it would be the highest duty of the Legislature to equalize burdens as far as possible wherever the object to be accomplished is for the public good and that

must be determined by the Legislature, and is altogether beyond the province of the judiciary — It would hardly be contended that the Legislature might not lend or give the money or credit of the State to a Railroad Company either to relieve it from existing obligations or to aid in its future construction and operation, when such a course may be supposed to be for the public good — and who is to determine whether the Legislature judged wisely or not —

But it can hardly be supposed that this argument is seriously urged —

The other two constitutional objections may be treated of together — for the questions run into each other so that it is difficult to seperate them.

The great fallacy of the objections consists in the fact that a proper distinction is not made between public Municipal Corporations and private corporations or individuals —

1. Municipal corporations cannot properly be said to have any vested rights, which

may not be interfered with by the supreme legislative power of the State, they are mere agencies of the State created for the purpose of more conveniently carrying out the objects of State policy. and in the absence of any express constitutional prohibition may be entirely changed or even legislated out of existence without the consent of any of the inhabitants composing them.

"Plenary power in the Legislature for all purposes of civil Government is the rule – a prohibition to exercise a particular power is an exception"

See 15. N. York R. p. 543 – case of the Metropolitan Police Commissioners) – "As a political society, the State has an interest in the repression of disorder, and the maintenance of peace and security in every locality within its limits; and if from exceptional causes the public good requires that Legislation either permanent or temporary be directed towards any particular locality, whether consisting of one county or of several counties, it is within the discretion of the Legislature to apply such legislation as in its judgment the exigency of the case may require; and it is the sole judge of the existence of such causes" –

Ibid p. 544 –

In the case before the Court there are two municipal corporations, one the County and

the other the city - one embraced within the territorial limits of the other, both created for the public convenience - both agencies of the State for public purposes authorized to raise money by taxation and the money thus raised under the control of the State to be disposed of as the Legislature may direct - Whatever may be done by either the City or the County, is the act of the Legislature through these agencies - This is the view taken by Judge Leonard in Wells vs. the City of Boston see 22. Mass. p 389 - As a general proposition he says the Legislature cannot delegate its legislative power, but it has become a practice to do so in the creation of municipal corporations.

"This authority to tax, may undoubtedly be delegated to subordinate agencies, such as County tribunals and municipal corporations to be assessed and applied locally."

It is absurd therefore to treat these "subordinate agencies" as if they had rights and franchises similar to those held by individuals or private corporations.

Can any one doubt the power of the Legislature to order by a law the removal of the county seat from the City of St. Louis to some other point in the County - the sale of the Court House and all the

public buildings?—

If money has been raised by taxation in any particular County, what is to prohibit the Legislature from applying the money so raised to any object which may be thought best for the promotion of the public welfare? and in the case before the Court it is not pretended that the money required is not now in the County Treasury— This is upon the idea that there is no necessity to resort to ~~taxation~~ a special tax to raise the money— and the act of Feb: 5th 1864— says nothing about taxation— If the money is in the County Treasury, raised for one purpose, what is to prevent the Legislature from applying it to another purpose? why may not money raised by taxation for road purposes or for the purposes of building bridges, be applied to school purposes, or to quarantine purposes or to military or police purposes? The County Court could not so apply it because their authority is limited. They are "subordinate agencies"— but to deny the legislature this authority is to deny that body the power to legislate for the public good —

In the case of Wells v. The City of Boston Judge Leonard does not deny this power to the Legislature - In that case the question was simply a question of taxation, and how far the Legislature might delegate this power to subordinate agencies - and not the question whether after the money has been raised by taxation and is in the Treasury and under the control of subordinate agencies it may not be diverted from one purpose and applied to another - In such cases there can be no such thing as appropriating private property without compensation - because it is public property and not private which is sought to be appropriated -

In the case before the Court the money is in the County Treasury - it has been raised by taxation upon the people of the whole county - the City of St. Louis is within the limits of the County its inhabitants constitute a portion of the people of the county and no inconsiderable portion - and it is proposed by the act in question to appropriate a portion of the money thus raised to purposes within that portion of the County which is called the City of St. Louis - who but the Legislature is to determine whether it is or is not for the benefit of the whole County - for the public benefit? —

A company has been incorporated to build a bridge across the Missouri River at St. Charles, is there any prohibition in the constitution against the passage of an act authorizing and requiring the County of St. Louis to apply the money raised by taxation for road purposes, or the pecuniary of fines & forfeitures which come into the County Treasury and are not raised by taxation - to aid in the construction of this bridge? - it is true such an act may indirectly aid the Company - but it benefits the public also -

See Bank of Rome vs. Village of Rome 18. N.Y. 43 -

I contend therefore that money raised by taxation by a County tribunal - or money which comes into the County Treasury from other sources is not private property in any sense of the term - and that an act of the Legislature which merely seeks to divert that ~~property~~ from one purpose and apply it to another is not in violation of that provision of the Constitution ~~from~~ which forbids the taking of private property without compensation - It is public property and may be used by the State for public or private purposes in its discretion as has been the practice from the formation of the State Government - It may be given away in charities - for the relief of the poor - the decrepid - it may

be applied to some great object of general interest – who is there that can gainsay it, what individual is there in the County who can say that or a portion of it is my money – I paid it for a particular purpose and if you undertake to divert it from that purpose, the act is void and the money reverts to me ~~it is void~~

But suppose the money is not in the County Treasury - and the whole of it has to be raised by taxation upon the citizens of the County - What principle of taxation laid down in the Constitution does it violate?

It is admitted that "the Legislature possesses the uncontrolled power of taxation, limited only by the restriction that "all property subject to taxation shall be taxed in proportion to its value" and that this authority may be delegated to subordinate agencies, such as county tribunals and municipal corporations to be assessed and applied locally" - Sells vs. City of Boston 389 -

See also People vs. Mayor &c of Brooklyn 4. N.Y. 426
" Providence Bank vs. Billings & Pittman 4. Peters 563 -
" McCulloch vs. Maryland 4. Wheaton 316 -

In the case of Sells vs. The City of Boston - it is not denied that the Legislature may exercise the very power denied to the City of Boston - Judge Leonard says

No instance can be found where these corporations have been clothed with power to tax others not within their local jurisdiction, for their own local purposes; and if the Legislature possess the power, now claimed over private property, they ought to exercise it themselves, and not delegate it to those

whose interest it is to abuse it" —

So that it is not the power of the Legislature to tax in the particular way complained of, which is not in issue (and denied by the Court in that case — but the power of the Legislature to create a municipal corporation with that power — the corporation can only be authorised to "assess and apply the tax locally" — that is within the territorial limits of the municipality — and that is all that is decided in the case of Wells v. the City of Boston — the same doctrine is held in the case of the Bank of Rome v. The Village of Rome

18. N. York. p. 43 — heretofore referred to — and so in the case of Morford v. Unger 8. Iowa p. 82 — relied upon by Respondent — There the Legislature by act extended the limits of the city of Muscatine, so as to embrace the property of the Plaintiff, which was agricultural land —

This doctrine is not denied, and the reason of the rule is obvious — the legislature cannot under the pretence of creating a corporation for one purpose authorise it to be used for an or vest it with powers not within the purview of such a corporation entirely different purpose —

But in the case before the Court it is not pretended that the tax, if one

is to be imposed is to be assessed or applied outside of the local or territorial limits of the County – the tax could only be levied by the County Court upon all the taxable inhabitants of the County – and be applied when collected to a local object within the County – so that the authority is not in point in this case –

To say that one particular locality in the County will be more benefitted than another – and that the legislature cannot levy a tax the operation of which will create a disproportion between its benefits and its burdens is to deny all power of taxation –

Our Constitution does not require Equality in taxation – in the case of Hamilton & Treat v. St. Louis County – this Court holds that the "idea of Equality in taxation is not the prominent idea" conveyed by the clause of the Constitution above referred to – but rather the contrary –

And so in 27th Mo p. 499 – the Court says "Equality of taxation may be regarded as one of those Utopian visions, which neither philosopher nor legislator has ever yet realized" –

The taxing power may be abused and often works great injustice even when exercised by wise & virtuous legislators –

But as chief Justice Marshal says in Providence Bank vs. Billings & Pittman — "The interest, justice and wisdom of the representative body, and its relations with its constituents, furnish the only security, where there is no express contract — against unjust and excessive taxation as well as against unwise legislation generally" —

The case of Boggs vs. Caldwell County 28. Mo. R 586 — is referred to by Respondent —
In that case there was a dictum of the judge — to the effect that the act of the Legislature was unconstitutional —
It is expressly stated that the question was not before the Court, and could not be brought before it in that way — the Judge says " It is insisted that the law was unconstitutional — and of this we entertain no doubt; but the point is not raised" —
It was an act of the Legislature directing the County Court of Caldwell County — to pay Mr. Boggs an account for services which the Court had passed on and refused to pay —
This was a judicial act of the Legislature, and for that reason we suppose unconstitutional — it was

so urged in argument - though the Court gives no reason for declaring it unconstitutional -

The case of the Mayor & Aldermen of Nashville vs. Towns 5. Sneed 184- has been cited by Respondent -

This is clearly not an authority in point - The decision in that case was upon a clause in the Constitution of Tennessee which reads as follows:

"The General Assembly shall have power to authorise, the several counties and incorporated towns in this State to impose taxes, for county and corporation purposes, respectively in such manner as shall be prescribed by law" -

This was clearly a limitation upon the powers of the legislature, which forbade their passing a law, authorizing one municipal corporation to impose taxes for the benefit of another - and hence the law which authorized & ordered the ~~taxes~~ portion of the County revenue raised within the City of Nashville to be paid into the City Treasury for city purposes was unconstitutional -

There is no such clause in our Constitution -

In the absence of this clause of the Constitution of the State of Tennessee, the Legislature would have the same unlimited power of taxation which is conceded to the State of Missouri —

We claim that all these questions are settled by the comprehensive opinion of Judge Gamble in the case of Hamilton & Treat vs. The County of St. Louis 15 Mo —

In that case the County is required by the act of the Legislature to pay the increased salary of the Judges — The same objections substantially were raised in that case as in this to the constitutionality of the act — and the law was held to be constitutional —

If our view of the case be correct the whole case can be decided on the points raised by the motion to quash the return —

It is not denied that the money is in the County Treasury — but only that it cannot legally be appropriated to the purposes required by the act in question —

Sharp & Broadhead
Atty for Relators —

It is said by Respondent that the Relators have not shown that the proper Estimates have been made by the Police Commissioners of the amt. needed for Police Expenses — by the provisions of the law the requisition is made upon the Estimates, and the requisition having been made the Court will presume that it is based upon an Estimate — and if this is not so the Respondent can deny it which has not been done — and then we will have an opportunity to show it —
But this after all is merely directory — the requisition itself is a sufficient Estimate, unless it exceeds the amount authorized by the law —

Broadhead

State to the use of the
Police Commissioners
vs.
St. Louis County
Court —

Copy all

Argument for
Relator —

Sharp & Broadhead
Attys —

Filed May 3d 1864
A. W. Mead
Clk

The Police Commissioners of the City of St Louis vs The County Court of St Louis County

In Supr Court March Term 64

Respondents Brief

The Court at this time is called upon to "determine the Constitutionality of the "Act to provide for the payment of the Police of the City of St Louis." Approved Feby 3rd 1864 The particular portion of said Act under which the writ in this case was issued and which the Respondent Claims is unconstitutional is the 3rd Section. and is in these words "The County of St Louis Shall be Chargeable with one fourth of the whole Expense of the Police force of said City of St Louis for the Year 1864 and for Each Year thereafter. And the County Court of said County Shall from time to time appropriate Money out of the County Treasury to Meet that proportion of said Expense. And whenever the said Board of Police Commissioners Shall Need Money to Meet the Expense of said Police force they Shall Make requisition upon said County for one fourth and upon said City for three fourths thereof"

This Section of the Act has at

at least one merit, it is clear concise, unmistakeable in its meaning, there is nothing ambiguous or uncertain about it. It demands that one fourth of the expenses of the City police whatever that may happen to be, shall be paid over to the Police Commissioners whenever it may be required by them

The County Court must from time to time make appropriations and stand prepared with the money in hand ready to meet such requisitions as may be made upon it. So far as the County Court can know it may be to day seven thousand dollars — to-morrow seventy thousand —

The immediate question now to be determined is as to the payment of the seven thousand already demanded. But in the decision of that is involved the question as to whether the County treasury is to be held liable to similar requisitions in the future unlimited in number and amount.

The Respondent insists

1st That to compel the County without its consent to contribute towards the support of the City Police is the taking of private property without compensation in such sense as comes within the prohibition of the Constitution

It must be conceded that whether or not the County has now in its treasury such an amount of funds that the sum at present demanded could be paid without actually embarrassing the County yet if the drain upon the County Treasury is to be kept up as is contemplated in the act in question. The County Authorities must eventually and that at no distant period resort to special taxation to meet these demands — It then resolves itself into this. The County Court is required by this Act to levy and collect from the taxable persons and property in the County a sum of money. Not for County or State purposes. But for the benefit of another. I had almost said a foreign, corporation. Both the City and County organizations are instituted as well for the convenient government of the State as for some supposed advantages to be derived therefrom by those residing within their respective limits. The ~~Act~~ Legislature may tax the property in the City and County alike for State purposes. It may legally delegate to the County authorities the power to ~~tax~~ tax all

property within the limits of the County for County purposes and so it may delegate to the City Corporation the power to tax all property within the City limits for City purposes and to this power it is also conceded there is no limit, That is the Legislature may authorise both the City and County ~~within their scope~~ to tax all property within their respective limits even to the full value of the property itself But there is a limit to this delegated power of taxation, It may be considered as a settled principle of law, That the Legislature cannot authorise a Municipal Corporation to tax any property outside of its limits for local purposes — It is true in the case at bar the act does not in words direct or require the levy of any tax by any one But the effect of it is to compel the County Court to levy a tax to raise the money. The mere agency through which the tax is to be levied is of no consequence. This Court in determining the Constitutionality of the law will look only to the sources of taxation from

which the money is to be derived and the purpose to which the money is to be applied
This money is to be collected from the whole body of the County It is to be used for the benefit of the City organization alone Is it not then exactly the same thing in effect and in principle as if the Legislature had undertaken to authorize the City Government to levy a tax on all the property within the limits of the County to raise a fund for the support of the City police. It is immaterial whether it is called a tax or by some less objectionable name, or whether as in this case naming it at all is carefully avoided. It is a tax upon property outside of the City limits for the benefit of the City organization It is entirely immaterial to the tax payer who is called upon to pay, whether the tax is levied by the City or County. The outrage is equally great, if he is thus compelled to support against his will a corporation in which he has no interest & whose protection he does not enjoy. The same object would have been accomplished had the 3rd section of the act in question been omitted

entirely and the 1st Section been amended by striking out the words "in said City" and inserting in lieu thereof the words "in the County of St Louis" No one then would have been bold enough to have attempted to enforce such a law And yet it is now sought to accomplish by indirection what it must be conceded could not have been done directly. - That is to impose the burthens of a City Government upon those outside of its Municipal limits — But if it be said that this is not the exercise of the taxing power the same result will follow For as was held in Cheaney vs Hooser (9 B Monroe 330) it makes no difference in principle under what form the power is correspondingly exercised whether in that of laying or authorising a tax or any other form if the operation of the law is to appropriate to the use of the City, the property of individuals not within its local jurisdiction, it must be regarded as coming within the prohibition of the Constitution designed to protect private rights against aggressions however made. And whether under the color of recognised

power or not. And this principle is fully recognized and established as the law of this State in the case of Wells vs The City of Weston (22 Mo Rep 385) where it was decided that the legislature cannot authorize a Municipal Corporation to tax for its own local purposes lands lying beyond its corporate limits. Judge Leonard in his learned and able opinion in that case while conceding to the legislature the uncontrolled power of taxation subject only to the constitutional restriction that "all property subject to taxation shall be taxed in proportion to its value" and conceding also ~~the~~ its right to delegate to subordinate agencies the power of taxation for local purposes denied that the legislature could authorize a Municipal Corporation to impose a tax upon the lands lying beyond its limits, or in other words arbitrarily, under the mask of a tax to take annually from those who are without its jurisdiction a certain portion of their property. The case at bar is if possible stronger than that of Wells vs the city of Weston. Here not even the flimsy mask of the word

tax, is used It is the bold highwayman who says stand and deliver. your money or your life,

The reasoning of the court in the case above cited shows that the power, "attempted to be exercised by the City of Weston" was regarded as the arbitrary seizure of private property for private uses. And as such was held to be unconstitutional. This case has been approved and followed in the case of Morford vs. Unger (8 Iowa Reports 93)

The general principle running through these cases and the principle upon which respondent submits this case should be decided is that no person or property outside of the limits of a Municipal Corporation can be taxed or taken or in any manner required to contribute towards the support or maintenance of such corporation,

The opinion of the court in the case of Hamilton and Frost judges vs St Louis County Court (15th Mo Reports 26) when carefully examined will be found to differ in no respect from the principles above stated The reasoning of the court

in that Case when applied to the facts in the Case at bar fully sustain the position assumed by the Respondent. In that Case the Court held that the County was bound to pay the Salary of the Judges. Simply and Solely because it was properly a County Charge. They were the Judges of the Circuit ~~Court~~ and Common Pleas Courts of St Louis County (not of the City of St Louis.) Their jurisdiction was Co-extensive in name and reality with the County, and the legislature was authorised to impose the burdens arising from local works or services upon the inhabitants of the locality benefitted. ~~Can any one imagine~~ Do it not apparent that if the application had been to compel the County to pay the Salary of the Mayor or any other mere City Official, Judge Gamble ~~would not~~ course of reasoning would have inevitably led him to the Conclusion that the locality benefitted that is the City of St Louis should alone bear the burden. In that Case also the Court expressly repudiated the idea that the State can appropriate and apply to its own use the money in the County Treasury.

If it be once conceded that the legislature can compel the citizens of the whole county to contribute to the support of the City Government in any degree There is then nothing to prevent the whole expense of that ~~City~~ Government being drawn from the County treasury, but the ill-regulated and despotic will of fluctuating and hasty legislation x If the property in Carondelet may be taxed to support the Police of St Louis of course the rule may be reversed and we may be forced to pay the salary of the Mayor of Carondelet and if so why not of St Joseph There is no legal connection whatever between the County of St Louis and the City by which one corporation may be made answerable for the debts or obligations of the other - They are as distinct and independent of each other as if they were hundreds of miles apart.

The mere fact that the territory of one is situated within the bounds of the other is no more a reason why the one should be forced to contribute its money to the support of the other than is the fact that both happen

x See, Sedgwick on Statute & Constitutional Laws 674

to be called "St Louis"

But even if they were co-terminous in Extent and all the inhabitants of the County enjoyed to an Equal degree the protection of the Police of the City, that would still be no reason why the Treasury of the County, which is constituted solely for County purposes, should be burthened with Charges properly belonging to the City

That portion of the bill of Rights relating to taxation may justly be regarded as the Outline, and the recognition of the Essential principle which requires that the burdens and Expenses of Government should as far as practicable be Equally and impartially distributed. It is difficult to suppose that the framers of a System of Government proposing to be founded on Equal rights and duties, should manifest such solicitude to secure an Ad Valorem taxation, and yet disregard the more important principles which lay at the very foundation of the Government they were about to establish. Now the only Equality and uniformity which can Exist in a State organised as ours is consists in requiring each political

Subdivision whether of City or County to pay its own Expenses
So far as the Statute in question deviates from this principle it is in derogation of the Common Rights of the Citizen and ought to be declared inoperative and void
What would be thought of a Statute creating a New County and providing that the Expenses of the County organization in such as the Salary of the County judges the cost of Erecting a Court House should be paid by the adjoining Counties or out of the State Treasury?

Again, the County is a Corporation authorised by law to acquire and hold Money and property in its Corporate Name. and to dispose of the same, When that Money or property is once acquired and reduced to possession, it becomes private property, and is placed beyond the reach of the Legislative branch of the Government, in the same manner that the property of every Citizen is held sacred from the reach of Legislation. It can only be reached by the judiciary and in the forms prescribed by law or by just and legitimate taxation

The County has title to the ground upon which this Court House stands to the County farm. to the Swinger farm There may all be taken for public uses upon just compensation But will it be contended that the Legislature can arbitrarily vest the title to the whole or any portion of this property in the City of St Louis, merely because this Court House would make a convenient Police Station and Calabouse and save the City the Expense of a New One

If then the Legislature cannot transfer the ~~title of the~~ County's Real Estate to the City, upon what principle can it take the Money of the County, and apply it to the benefit of the City

The Naked Statute as it stands simply takes Money from the County and gives it to the City. — Chief Justice Story covers the whole ground when he says "We know of no case in which a legislative act to transfer the property of A to B without his consent has ever been held a Constitutional Exercise of Legislative power in any State of the Union"

See 2nd Peters 658,

But when this act is to be carried into effect it then practically becomes a question of taxation And that question is the right of the Legislature to tax or to authorise either directly or indirectly a tax to be levied on the citizens of the County for the benefit of the city alone And upon this point it is insisted the case of Wells vs The City of Weston above referred to is conclusive. If the Legislature could not authorise the Municipal Corporation of Weston to tax property adjacent to the Corporate limits and to the distance of one half Mile How much less should property lying twenty Miles from the Municipal limits of St Louis be taxed to support the Police of said City who are by law confined to its limits And it is confidently asserted that no instance can be found where these Corporations have been authorised to tax property Not within their local jurisdiction for their own local purposes,

Again - But so far as the money now in the County Treasury is concerned we insist that it cannot be thus legislated out of the Treasury - that it would be an

act of injustice and bad faith to other County Creditors to do so That Money has been raised for Specific purposes. Shall it be taken from the School fund, the Road fund — the Court House fund, the interest fund or the fund raised to pay Salaries? and yet if the amount now demanded and what may be called for to-morrow and the next day is to be paid on demand it must come from one or all these funds — But will it be a legitimate answer to the honest Creditor of the County when he applies for the money justly due him, to say we have nothing for you sir the money raised to pay your Claim has been used to pay the Expense of the Police of the City of St Louis,

In the Case of Dartmouth College vs Woodward

4th Wheaton 700 it say it was said, Any act of a legislature which undertakes to divert the funds of a Corporation from the purpose for which they were raised or which undertake to impose on a Corporation the payment of a debt not incurred by it is unconstitutional and void,

This same principle is recognized in a very late case in Wisconsin The State ex rel Soulter vs The Common Council of Madison 15th Wisconsin Reports, In which it is held that where the Charter of a City at the time of the issue and sale of its bonds made it the duty of the Common Council when any judgment should be rendered against the City to levy and collect the amount like any other City or ward charges and declared that private property should not be taken in Execution to pay any City debt. A subsequent act of the legislature prohibiting the City from levying such a tax as would be necessary to discharge a judgment rendered against it for interest on said Bonds would deprive the Creditor of the only efficient means of collecting his debt and would be repugnant to the constitution,

In the form in which this matter now presents itself to this Court, it is a direct appropriation by the Legislature of Money in the County treasury, and against the consent of the County But we insist that the legislature

Cannot pass the title to the real Estate of the County — Nor can it transfer the Money of the County to its own treasury. Much less can it transfer it to others Corporations or private individuals. This point has also been well settled by this Court By an Act approved January 21st 1857 The County Court of Caldwell County was directed to pay to one Wilbur F Boggs a certain sum of Money for services rendered by him to the County. This Act came under Consideration in the Case of Boggs vs Caldwell County (28th Mo Rep 586) The Court said "It is insisted that the law is unconstitutional, and of this we entertain no doubt"
See also Mayor & Aldermen of Nashville vs Towns 3d Sneed Rep 186.

Compare that law with the one now under Consideration. Both are positive demands upon the County treasury. The one is however for a mere trifle to pay what the Legislature doubtless considered a just debt of the County, while the other is for an indefinite Amount only limited by the Capacity of the Police Commissioners to Expend Money and is to be drawn in such sums and

at such times as may suit the whims or caprices of a body of men not responsible to or in any manner under the control of the County Authorities and the money when drawn is to be applied to a purpose entirely foreign to the object for which the money was raised. and for the benefit of a corporation in which a large number of the citizen of the County have no interest and from which they derive no benefit —

In summing up this branch of the case we say. this act must be treated as it appears on its face to be as a direct appropriation by the Legislature of money supposed to be in the County Treasury. or it must be regarded as an act requiring the levy of a tax throughout the County ~~for~~ and outside of the municipal limits of the City, for the sole benefit of the City.

And we submit that the cases of Wells vs The City of Weston and Boggs vs Caldwell County are conclusive against the Petitioners whichever horn of the dilemma they may choose to hang upon —

2nd The 17th Subdivision of the Declaration of Rights provides that "No law retrospective in its operations can be passed". The act in question not only provides that the County shall pay ~~one~~ one fourth of the whole expense of the City police for all time to come. But the construction now sought to be put upon it makes it relate back to the 1st of January 64 and we are now asked to pay the expenses for the months of January and February, unless this law is to be retrospective in its operations we can in no event be required to pay any portion of any expenses incurred prior to the passage of the act, indeed it is modest enough to express on its face that it is to take effect upon its passage

If the County is now forced to pay the seven thousand dollars demanded, it is not paying it as one fourth of the expenses of the Police. But it is refunding to the City what the City had lawfully paid of its own debt prior to the passage of the act

(over)

References

R S 1855 Chap 43 page 501
Sess acts 1859 ~~Sp~~ 448 Sec 19 paragraph 4th
ibi " " Sections 20 and 31
Cheaney vs Hosser 9 B Monroe 330
Wells vs The City of Weston 22nd Mo Rep 383
Morford vs Unger 8 Iowa Rep 93
Sedwick on Statute and Constitutional Law 674
2nd Peters 638
Dartmouth College vs Woodward 4 Wheaton 700 et seq
The State Exrel Soulter vs Common Council of Madison
15 Wisconsin Rep
Boggs vs Caldwell Co 28 Mo Rep 586
Mayor & Alderman of Nashville vs Towns
5 Sneeds Rep 186

No appropriation such as is contemplated by the act in question was made by the City Council until the 28th of March 1864 — long after this proceeding was instituted as is shown by the annexed Extract from the published proceeding of the City Council on the 28th March last — This Extract also throws some light on the means used to to induce the Legislature to pass this most Extraordinary act

Saml H Gardner
for Respondent

The following communication was received from the Mayor:

MAYOR'S OFFICE, CITY HALL,
ST. LOUIS, March 23, 1864.

A. W. Fagin President Board of Common Council.

SIR: In compliance with a resolution passed by the Common Council on the 22d instant, requesting the Mayor to remove City Marshal D. W. Stone from office, and by authority in me vested by city charter, I hereby remove said D. W. Stone from the office of City Marshal, subject to your approval and consent.

Respectfully, yours,
F. W. CRONENBOLD, Mayor.

Mr. Werner moved that the communication lay over until a quorum be present.

Mr. Wells moved a call of the House, which was carried and the Sergeant-at-arms was directed to bring in absent members.

By Mr. Driscoll: An ordinance for restoring money to the Wharf Fund, taken out for the benefit of soldiers. Read once.

Ordinance in relation to paving streets with wooden pavements was read a third time.

A remonstrance from property owners on Biddle street, asking the rejection of so much of ordinance as contemplated the paving of Biddle from the Levee to Broadway, with the Nicholson pavement. The ordinance and remonstrance were referred brck to the committee.

The ordinance opening alley in block 154 was passed.

Mr. Wells moved that on next Friday judges of Election be elected by the Council. Agreed to.

An ordinance for the paving of Sixth and guttering of Twelfth street. Passed.

The Mayor's communication in relation to the removal of Marshal Stone, was taken up, a quorum being present by the arrival of Mr. McKee, who was brought in by the Sergeant-at-Arms.

The question being taken on the adoption of the Mayor's communication in relation to the removal of Stone, was carried unanimously—ayes 15.

Mr. Wells moved that a committee of one be appointed to inform the Mayor of the action of the Council. Agreed to.

Mr. Wells was appointed as said committee, and immediately proceeded to perform the solemn duty.

An ordinance to provide for the grading of Montgomery street, from Eleventh to Twelfth street, was passed.

Mr. Werner moved that the bill in relation to improvements in the Tenth Ward, which was vetoed by the Mayor, be taken up.

The bill was so taken up and passed.

An ordinance appropriating money for the payment of the police force. The sum of $18,000 is credited to the Police Department. Passed.

Mr. Wells did not approve the way this bill was passed through the Legislature. Some $500 were paid to log-roll it through that body. The County Court has refused point blank to appropriate the money, and he could not see why the City Council should not do the same.

The ordinance was passed—ayes 13; nays 2.

An ordinance, amendatory of ordinance in relation to markets, gives parties power to lease certain fish stalls. Passed.

An ordinance for the laying of cross-walks in the Ninth ward. Passed.

An ordinance to improve Chambers street, between Fourteenth and Fifteenth streets. Passed.

Adjourned to Friday next.

The Police Court
of the City of St Louis
vs
The County Court
of St Louis County

Copy all

Respondents Brief

E. A. Gardner
for Respdt

Filed May 3rd 1864
A. W. Mead
Clk

The Police Commissioners of the
City of St Louis
vs }
The Circuit Court of St Louis County

The General Assembly, by an act approved March 27th 1861, "established within and for the City of St Louis, a Board of Police, to be called the Police Commissioners of the City of St Louis".
This board was charged with the duties, within the City of St Louis, to preserve the public peace, prevent crime and arrest offenders, protect the rights of persons and property, guard the public health, preserve order at every public election and at all public meetings and places and on all public occasions, prevent and remove nuisances in all streets, highways waters and other places, provide a proper police force at every fire for the protection of firemen and property, protect emigrants and travellers at steamboat landings and railway stations, see that all laws relating to elections and to the observance of Sunday and regulating pawn-brokers, gamblers, intemperance, lotteries and lottery policies, vagrants, disorderly persons, slaves and free negroes and the public health are enforced and also all laws and ordinances of the City of St Louis which may

be properly enforcable by a police force.
To enable the board to perform these duties it was authorized to employ a permanent police force, the officers of which were designated by the act, and the pay of officers and ordinary policemen fixed by it. The board was authorized to provide such office and furniture and such clerks and subordinates as it might need; and to have and use a common seal and to provide station houses and requisites for the same. It was also authorized in extraordinary emergencies to raise such additional force as the exigency may demand, and for the preservation of the public peace and quiet to require the sheriff of the County of St Louis to act under their control and if ordered by them to do so to summon the posse comitatus and employ such posse subject to their direction. They were also authorized to call to their aid any military force lawfully organized in the City, and they were authorized to make arrests in any part of the State. The City of St Louis was deprived of all control over the police.
The Commissioners were authorized to make requisitions upon the City of St Louis, from time to time, for such sums of money as they might deem necessary for executing their duties which the City was required to pay.
The General Assembly by another act

approved Dec 12 - 1863, increased the pay of the policemen and also provided for an increase of their number. This act also required the City of St Louis to pay the ~~additional~~ requisitions of the Commissioners for the additional expense and limited the whole amount of appropriations for police purposes to one hundred and seventy five thousand dollars.
The General Assembly by another act, approved February 5th 1864, enacted as follows: "Sec 3. The County of St Louis shall be chargeable with one fourth of the whole expense of the police force of said City of St Louis for the year eighteen hundred and sixty four, and for each year thereafter, and the County Court of said County shall from time to time appropriate money out of the County Treasury to meet that proportion of said expense; and whenever the said Board of Police Commissioners shall need money to meet the expenses of said police force, they shall make requisition upon said County for one-fourth and upon said City for three fourths thereof."
On the 18th day of February 1864, the Police Commissioners made a requisition upon the County of St Louis for seven thousand dollars, for one fourth of the said police expenses for the

months of January and February in the year 1864, which the County Court refused to allow or to make any appropriation for. The Police Commissioners then applied to this Court for a mandamus, commanding said County Court to pay said sum and make an appropriation therefor.

A conditional mandamus having issued, the County Court made return to it that. 1st

1st The act of Feby 5th 1864 is in violation of common right and of the constitution of the State, in that it appropriates private property without just compensation; that it is retro-spective in its operation and that it violates the principles of taxation as laid down in the Constitution.

2d There is no money in the County Treasury, that can legally be appropriated to pay the same, the money in the treasury having been raised by taxation prior to the passage of said act and for certain specific purposes set forth in the order for the assessment and levy of the taxes from which such funds were derived and cannot be diverted from the purpose for which they were collected; that it would be necessary to levy a special tax to pay said police force and no such special tax can be levied without first making application to the General Assembly for permission to do so.

3d – The sum of money required is sought to be recovered and applied for the purpose of paying a debt already incurred by said Police Commissioners or the City of St Louis, prior to the passage of said act and in so far said act is retrospective in its nature and is inoperative and void.
4th It is not stated or shown to this Court what the expense of said Police force has been or will be (for the year 1864 or that the City of St Louis has made the appropriations contemplated by said act.
5th The expense of said police for the months of January and February 1864 had already been paid in the manner provided by law at the time of the passage of said act and of the issuing of said writ.

1. In respect to the first cause assigned why a peremptory mandamus should not issue, that is, ~~that is~~ that the act of Feby 5th is repugnant to the Constitution, it is said to violate the Constitution in three respects which will be examined in the order in which they are stated – The first is that it is an appropriation of private property without just compensation. I remark in the first place

that the act does not designate any particular fund (described by the source of its derivation or otherwise) which is made chargeable with this expense. It says that the County of St Louis shall be chargeable with one fourth of the expense of the police force of the City of St Louis, and that the County Court shall appropriate money to pay it. It is therefore immaterial, in considering of the Constitutional, ~~right~~ authority of the General Assembly to pass the act in question, to inquire how the County has acquired or may acquire the money necessary to make the payments required by the act. The money belongs to the County by virtue of acts of the General Assembly and is expended ~~by the~~ under the direction of the same authority. Counties are subdivisions of the State in which some of the powers of the State Government are exercised by local functionaries for local purposes, in this instance, and generally, the functionary being the County Court. The funds of the County are not strictly private property. They certainly do not belong to the citizens who may have contributed them. They are rather public property — the property of the State, acquired from the ~~locality~~ people and the property in the County and to be used and expended for the benefit of the same people and property. The General Assembly having the legislative power of the State determines to what

local uses the county funds shall be applied. Its determination and direction may operate unwisely, harshly and unjustly but that is no argument against its power to direct. — It authorizes and causes the funds to be collected and requires their expenditure for purposes which it determines to be of local interest and benefit, and its determination is final. The judiciary cannot review this determination of the legislative power, — cannot inquire whether the legislature in directing an expenditure of county funds, judged correctly or not as to its being for the accomplishment of an object of interest or advantage to the inhabitants of the County. In the present case the legislature has thought proper to direct that the County of St Louis shall pay one fourth of the expenses of a police in the City of St Louis, which is wholly within and forms a part of the County of St Louis. This Court cannot say ~~but that~~ that this is not a legitimate use of County funds, or that it is a taking ~~of for~~ or application of private property to public use without just compensation and it certainly is not an application of property to private use, for the police commissioners are an agency of the State Government and required to perform within a specified locality some of the most important duties of the Government.

Secondly, the act is said to be retrospective in its operation in that it requires the county to pay a ~~portion~~ proportion of the expense of the police force, for the whole year 1864, when a portion of that year had elapsed at the time the act was passed, February 5th.
No vested right is taken away or impaired by the act, nor does it impair the obligation of any contract. It simply directs the application to a particular purpose of funds collected by the authority of the ~~state~~ legislature and over which the legislature could exercise a power to direct their application within certain limits, which include the object of this act. The previous acts of the legislature which provided the objects for which county funds could be expended were at all times subject to repeal or alteration so as to appropriate the funds in a manner or to objects different from those before provided. No rights had been vested under the previous acts, which can be disturbed by this act.
The act is not retrospective in its operation.
Thirdly, the act does not violate the principles of taxation as laid down in the Constitution. This point is fully covered by the decision of this Court in the case of Hamilton and Great against the St Louis County Court 15 Mo 3, which case is also of authority upon the other points decided. The case of Wells v The City of Boston 22 Mo 384

merely decides that the General Assembly cannot authorize a municipal corporation to tax for its own local purposes lands lying beyond the limits of the corporation, and does not conflict with this case.

2. As to the second cause shown in the return. It is understood to mean, not that there is in fact no money in the treasury to pay this requisition, but, that as matter of law all the money which is in the treasury was collected for specific purposes from which they cannot be diverted. — The specific purposes for which the money was collected were those, heretofore directed by the legislature, and this act being a later expression of the will of the legislature controls the subject and so far as it conflicts with previous acts repeals them.

The County is not a private corporation, but an agency of the State government and ~~it holds~~ though as a public corporation it holds property, such holding is subject to a large extent to the will of the legislature. Whilst the legislature cannot take away from a county its property, it has full power to direct the mode in which the property shall be used for the benefit of the County.

3. The third cause assigned is included in the previous allegation that the act is retrospective in its operation.

4. As to the fourth cause assigned, the act does not require that the Commissioners shall show to the County at any one time what is or will be the whole expense for a year, but only that the County shall from time to time make appropriations to pay the requisitions of the Commissioners, thus showing an expectation that the requisitions will be made at several different times. Nor does the County's liability at all depend upon the fact that the City has or has not paid its liability.

5. The fifth cause is based upon the same idea as the third and has been considered as it was presented in the first.

No good cause having been shown why the County should not pay the requisition of the Police Commissioners, let the peremptory mandamus issue.

Martin Bates

Judges Bay & Dryden Concur

C

The Police Commissioners
of St Louis
vs
The St Louis County Court

Opinion
Mandamus awarded

Filed June 16. 1864
A. W. Mead
Clk

Barton & Bates

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