QUO WARRANTO: Disposition of fines assessed against fire insurance companies.

Opinion No. 98 (1947)

April 3, 1947

FILED
98

Honorable Robert W. Winn
State Treasurer
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office, which, for clarity, may be stated thusly:

> Into what fund, or funds, should the fines paid by the respondents in the case of State of Missouri ex inf. J. E. Taylor, Attorney General vs. American Insurance Company, a Corporation, et al., Respondents, be paid?

The moneys referred to in your request are to be paid into the treasury of the State of Missouri by the Clerk of the Supreme Court. A portion of the opinion in the case mentioned reads as follows:

> " * * * It is further ordered and adjudged that the respondents and each of them shall pay as a penalty for such misuse and abuse of their corporate franchises the fine indicated below, such fine to be paid to the Clerk of this Court within sixty days after the adoption of this opinion, and that respondents pay the costs of this proceeding. The clerk of this court shall pay the amount of the fines collected into the treasury of the state. * * *"

At the outset, it may be well to consider and dispose of any contentions that might be urged to the effect that the disposition of such moneys will be controlled by the provisions of Section 7 of Article IX of the Constitution of 1945. A portion of this constitutional provision reads as follows:

> " * * * the clear proceeds of all penalties, forfeitures and fines collected hereafter for any breach of the penal laws of the State, * * * shall be distributed annually to the schools of the several counties according to law." (Emphasis ours.)

It is our thought that this constitutional provision is inapplicable, however, for reasons that will appear subsequently. You will note that the constitutional provision relates only to penalties, forfeitures and fines arising from violation of the penal laws of the state. It is believed that the use of the words emphasized is significant as they are of a restricted and technical import.

It is a rule of constitutional construction, as well as of statutes, that words having a technical meaning are to be so construed. The term "penal laws" has, through long legal usage and by reason of judicial construction, acquired such a meaning. To determine whether or not the technical meaning accorded these words will have the effect of rendering the constitutional provision inapplicable will first require a consideration of the precise nature of a proceeding in the nature of quo warranto.

Although originally one criminal in nature, yet proceedings of this type have now lost, at least in Missouri, all of the characteristics of a criminal action. The general rule is stated thusly in 51 C. J., page 312:

> "Except in a few jurisdictions wherein the proceeding is regarded as quasi criminal, it is, and for some time has been, a rule that the remedy of quo warranto, or an action or proceeding in the nature thereof, whether denominated a quo warranto proceeding, an information in the nature of quo warranto, or a statutory remedy, is civil and not criminal. The ancient writ of quo warranto was strictly a civil remedy. Originally the information in the nature of quo warranto, which succeeded the ancient writ, was essentially a criminal prosecution instituted for the purpose of subjecting defendant to punishment by fine, as well as a judgment of ouster, but it has long since lost its character as a criminal proceeding in everything except form, the fine being omitted or limited to a nominal amount. * * *"

The statement contained in the quoted provision from Corpus Juris with respect to fines being omitted or limited to a nominal amount does not characterize the judgments of the courts of Missouri. This appears in the present instance, as fines totalling some two million dollars have been imposed. This but follows the course taken by the Supreme Court in prior proceedings similar in nature, particularly the case of Standard Oil Co. v. Missouri, 224 U. S. 270, 32 Sup. Ct. 406, 56 L. Ed. 760, affirming 218 Mo. 1.

With this exception, however, the general rule is followed in Missouri in so far as determination of the type of a proceeding in the nature of quo warranto is concerned. This appears from the opinion in State ex inf. Attorney General v. Drainage District, 234 S. W. 344, l. c. 347, wherein the Supreme Court of Missouri, in Banc, said:

> " * * * Quo warranto is one of the most ancient writs known to the common law. Formerly a criminal method of prosecution, it has long since lost its criminal character, and is now a civil proceeding, expressly recognized by statute, and usually employed for trying the title to a corporate franchise or to a corporate or public office. * * *"

With this historical background, it now becomes pertinent to determine the technical meaning of the words "penal laws" incorporated in the constitutional provision. Many definitions of this term are found in Words and Phrases, Vol. 31, Perm. Ed., pages 585-587, inclusive, and 1947 Pocket Part, page 145. Probably the most concise of these definitions is the one found on page 145 of the 1947 Pocket Part, which reads as follows:

> "'Penal laws,' strictly and properly, are those imposing punishment for an offense committed against the state, and which by the English and American constitutions, the executive of the state has the power to pardon, * * * Salzman v. Boeing, 26 N. E. 2d 696, 699, 304 Ill. App. 405."

It appears throughout the many definitions which appear in the work mentioned that, to constitute a penal law, there must be a penalty imposed for an act detrimental to the state, and as a corollary thereto the punishment for such act must be one to which the executive power of pardon extends.

With this definition in mind, and taking due cognizance of the nature of a proceeding in quo warranto in Missouri as being one of a civil nature, it immediately becomes apparent that the fine, penalty or forfeiture imposed upon the respondent in such actions is not one for the breach of a "penal law." Upon this premise, it therefore seems quite clear that the constitutional provision quoted above, that is to say, Section 7 of Article IX of the Constitution of 1945, is not determinative of the disposition to be made of fines, penalties and forfeitures imposed in proceedings in the nature of quo warranto.

Comes, then, the question of what disposition should be made of the fines assessed in the instant case. As appears from the opinion of the Supreme Court of Missouri, and particularly that portion quoted verbatim above, the fines are to be paid by the Clerk of the Supreme Court into the treasury of the state. This is but in accord with the constitutional provision requiring moneys received by the state to be deposited in the state treasury. Your attention is directed to the provisions of Section 15 of Article IV of the Constitution of 1945, reading, in part, as follows:

> "All revenue collected and moneys received by the state from any source whatsoever shall go promptly into the state treasury, and all interest, income and returns therefrom shall belong to the state. Immediately on receipt thereof the state treasurer shall deposit all moneys in the state treasury to the credit of the state in banking institutions selected by him and approved by the governor and state auditor, and he shall hold them for the benefit of the respective funds to which they belong and disburse them as provided by law. * * *"

You will note that the State Treasurer is required to hold such moneys for the benefit of the respective funds to which they belong. This, then, squarely presents the question as to what funds the fines assessed in the instant case properly belong. In this regard, your attention is directed to a portion of Section 3(b) of Article IX of the Constitution of 1945, reading as follows:

> " * * * but in no case shall there be set apart less than twenty-five per cent of the <u>state revenue</u>, exclusive of interest and

> sinking fund, to be applied annually to the support of the free public schools." (Emphasis supplied)

This provision represents a readoption of Section 7 of Article XI of the Constitution of 1875.

At first blush, it might be thought that the moneys being paid into the state treasury and arising from the fines imposed upon the respondents in the instant case would be considered "state revenue" within the meaning of the constitutional provision quoted, and therefore that twenty-five per cent of such moneys should be set apart to the free public school fund. However, we are of the opinion that such moneys are not within the purview of the constitutional provision.

We are persuaded to this view by reason of the opinion of the Supreme Court of Missouri in State ex rel. v. Gordon, 266 Mo. 394. This was an action brought by the State Superintendent of Public Schools against the State Auditor for the purpose of determining to what extent the free public school fund was entitled to apportionment with respect to a great many miscellaneous items received into the state treasury. Among such items were the fines paid into the state treasury pursuant to judgments of the Supreme Court of the State of Missouri based upon violations of the state anti-trust law. We think the moneys derived from those sources bear characteristics so similar to the moneys received in the instant case as to compel the view that exactly the same principles should be applied in determining whether or not such moneys are subject to apportionment to the free public school fund.

In the case mentioned, the Supreme Court of Missouri said, l. c. 418:

> "From the rules which we are impelled to formulate from our view of the law, we are of opinion that the fines assessed against the Arkansas Lumber Co. and others in the suit of State ex inf. v. Arkansas Lumber Co., 260 Mo. 212, are not to be taken into account but wholly excluded."

The reasoning which controlled the opinion is discussed at greater length at l. c. 421-422, and appears in the following language:

> " * * * While on first blush an apparently though not really arbitrary rule may seem to

> be invoked as to such items as come into the general revenue fund of the State * * * occasionally and adventitiously (e. g., fines accruing from prosecutions of lumber companies, State ex inf. v. Arkansas Lumber Co. et al., 260 Mo. 212), yet upon more careful thought and consideration it will be seen that a crying necessity exists for a general rule to use in setting apart this fund, which will forever dissipate the dark obscurity which has heretofore befogged it, and that no such rule can be logically formulated, which will serve to measure all cases, if these items are to be included. This is the administrative difficulty; if it be wrongly resolved a word from the Legislature can correct it. Besides, it may well be that these rules which we have formulated as the only consistent interpretation of the legislative intent derivable from the language of the appropriation act under discussion, will serve to obviate fat and lean years in public school revenues, and that it was so intended. That those in charge of such schools may confidently rely upon a fairly fixed and stable income, and that they may not be induced to lavish and waste funds this year and be forced to a too lean and scrimping economy next year, is a desideratum to be wished for. The conclusions here reached bring this to pass and are yet, we think, in line with the law both here and elsewhere. The rule allows full latitude for a growth of the State, a condition fully demonstrated by the fact that the amount below set apart from State revenues for the support of the public school system exceeds by many thousands of dollars any appropriation for any one year ever before so devoted, from this source." (Emphasis ours.)

What has been said heretofore applies with equal force to the appropriation act, found as Section 2.120 of House Bill 987 of the 63rd General Assembly, which reads as follows:

> "The State Comptroller is hereby authorized and directed to set aside one-third (1/3) of the ordinary general revenue paid into the state treasury for the period beginning July

> 1, 1946 and ending June 30, 1947, into a fund to be known as the public school moneys fund; the same to be used for the support of the free public schools." (Emphasis ours.)

From the language used in the appropriation act, it is apparent that the General Assembly has accorded to this constitutional provision the interpretation which we have placed thereon. We refer particularly to the incorporation in the appropriation act of the words "ordinary general revenue." In construing the effect of the usage of these words, the Supreme Court of Missouri, in Banc, in State ex rel. v. Gordon, 266 Mo. 394, l. c. 411, gave this definition thereof:

> "The regular and usual annual income of the State, however derived, which is subject to appropriation for general public uses."

Such construction placed upon the constitutional provision, as evidenced by the action of the General Assembly, is entitled to great weight in interpreting the constitutional provision in accord with general rules relative to the determination of the meaning of constitutional provisions.

In accord with what has been said previously, and considering the nature of the moneys to be paid into the state treasury in the instant case as being derived from sources which are neither regular nor usual, it becomes clear that the appropriation act will not serve to require the apportionment of any part thereof to the free public school fund.

Having determined that the moneys paid into the state treasury in the instant case are not subject to apportionment in any part to the free public school fund, we reach the conclusion that such moneys are to be held by the State Treasurer for the benefit of the general revenue fund of the state, subject to appropriation by the General Assembly for public uses.

## CONCLUSION

In the premises, we are of the opinion that the moneys paid into the state treasury by the Clerk of the Supreme Court of Missouri, arising from fines imposed upon fire insurance companies in the proceeding in the nature of quo warranto, entitled "State of Missouri ex inf. J. E. Taylor, Attorney General v. American

Insurance Company, a Corporation, et al., Respondents," are, under the Constitution of 1945 and the provisions of Section 2.120 of House Bill 987 of the 63rd General Assembly, to be held for the benefit of the general revenue fund of the State of Missouri, subject to appropriation therefrom by the General Assembly for general public uses.

Respectfully submitted,

WILL F. BERRY, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

WFB:HR:BJ