Weston Forum

No. 15 03 45

MARTHA W. FANNING GILSON, ET ALS

vs.

TOWN OF WESTON, ET ALS

SUPERIOR COURT,

FAIRFIELD COUNTY (BRIDGEPORT).

MAY 9, 1974.

MEMORANDUM OF DECISION

This is an action seeking a declaratory judgment [1] to determine whether the budget of the Town of Weston for the fiscal year commencing July 1, 1973, was validly adopted and whether the taxes levied pursuant thereto were legal. [2]

The defendants have filed an answer, certain special defenses, and a counterclaim for a declaratory judgment raising essentially the same issues which were set forth by the plaintiffs. [3]

The plaintiffs are residents, electors, qualified voters, and taxpayers of the Town of Weston, each owning property located in said Town which has been assessed for more than $1,000.00 on the Grand Lists of 1972 and 1973.

FILED

MAY 9 1974

J. LEO CAMPANA
CLERK

The defendants are the Town of Weston and the following town officials and Boards: John L. Breitweiser, Tax Collector; John J. Bross, Tax Assessor; the Board of Education; the Board of Finance; the First Selectman and the Board of Selectmen; Frederick Freedman, Town Moderator, and Edward J. Gannon, Treasurer and agent of the Town Deposit Fund, all of whom some times hereinafter may be referred to as the "town". F. George Brown, the State Tax Collector, is also a defendant.

The facts, on which there is no material dispute, are as follows. The charter of the Town of Weston was adopted in 1967 pursuant to the Home Rule Act, Chapter 99 of the Connecticut General Statutes (hereinafter some times referred to as the "charter"). The Town of Weston during the period in question was operating under the uniform fiscal year which commenced on July 1, 1973.

The provisions of Article 8 of the charter have to do with the finance and taxation processes of the Town. This article provides that preliminary budget estimates be submitted by each town agency to the First Selectman. He then prepares a proposed budget for the Board of Selectmen, the selectmen then submit the completed budget to the Board of Finance. After the Board of Finance makes its revisions, it then recommends " ... the same to the Annual Town Budget Meeting." Section 8.4 of the charter then provides for the following, after provision is made for notice of the meeting and other preliminary matters, to wit:

"The budget shall become effective when approved by resolution by the Annual Town Budget Meeting. No appropriation shall be made exceeding that for the same purpose recommended by the Board of Finance or for any purpose not so recommended except as specified in Section 8.5, 8.6 and 8.7 of this Charter. By a majority or more present and voting at such meeting, which majority constitutes at least five percent of the qualified voters, an amount of money less than that recommended may be appropriated.

If not amended, the appropriations recommended by said Board of Finance shall be construed as having been appropriated.

An official copy of the budget as finally approved shall be filed by the Board of Finance with the Town Clerk within one week following such approval. Within ten days after the Annual Town Budget Meeting the Board of Finance shall by resolution fix the tax rate in mills which shall be levied on the taxable property in the Town for the ensuing fiscal year."

The provisions of Article 2 of the charter have to do with town meetings. Section 2.3 provides, in part, the following:

"Except as otherwise provided in this Charter, action at all Town Meetings shall be by a majority of qualified voters present and voting."

And Section 2.4 sets forth when a town meeting is required and it provides that such town meeting "... shall be required for the approval ..." of "... the annual budget as provided in Section 8.4".

The annual town budget meeting was duly called and held on June 20, 1973, and all of the plaintiffs were present. Presented to the meeting was the budget which listed proposed revenue to be raised by taxation, other revenue, a proposed

tax rate necessary to produce the revenue, and proposed appropriations for the various departments and governmental activities. The gross budget for governmental operations other than education was $1,808,040.00 and the gross budget for the Board of Education was $3,624,105.00. This represented a total gross budget of $5,432,145.00.

At the meeting, the moderator pointed out that the budget cannot be increased. See Section 7-344 of the General Statutes; Section 8.4 of the charter. Although somewhat confusing, a fair reading of the minutes would also indicate that the moderator also held "... that it would require 243 affirmative votes to decrease any part of the budget." This was presumably based upon the estimate made by Ms. Gertrude Walker, the Town Clerk, that there were 4860 qualified voters and that no appropriation may be reduced unless voted by a "... majority or more present and voting at such meeting, which majority constitutes at least five percent of the qualified voters ...". Section 8.4 of the charter.

During the town meeting it was moved that the budget as presented be adopted. The plaintiff Martha W. Fanning Gilson moved (and it was seconded) to amend the motion to reduce the Board of Education portion of the budget by $175,000.00. After considerable debate on the subject of the reduction, a vote on the amendment was taken. The minutes of the meeting state the following:

"The amendment was then put to vote and there were 181 in favor of the amendment. The chair announced that since 5% of the electorate which amounts to 243 had not voted in favor of the amendment the amendment was defeated. He did not see point in calling for the negative vote under the circumstances."

The main motion on the budget was then put to a vote. 159 voted in favor of adopting the budget and 187 voted against. The minutes then state the following:

"The moderator pointed out that this is a peculiar situation, that it took 243 votes to defeat the budget by the terms of the town charter so consequently this budget has been approved by this town meeting. He referred to Sec. 8.4 of the charter and Town Counsel and Town Counsel (sic) concurred. It would take court order to overrule."

Immediately after the annual budget meeting, the Board of Finance met and voted to levy a tax of 54.5 mills on the dollar on the Grand List of October 1, 1972, for the fiscal year commencing July 1, 1973. The rate bill signed by the Board of Finance also provided that the taxes were to be payable as follows: All motor vehicle taxes and such other taxes amounting to less than $50.00 were payable in full on July 1, 1973; all other taxes were payable in two installments on July 1, 1973, and January 1, 1974.

A tax warrant was issued to the tax collector pursuant to the rate bill directing him to collect all the taxes laid by the Board of Finance. As of the date of trial, substantially all of the taxes for the fiscal year of July 1, 1973, had been collected. All of the five plaintiffs paid the first half of their taxes without protest and some of the plaintiffs

paid the second half of their taxes under protest. The complaint in this matter is dated July 2, 1973, and was served on each defendant on July 3, 1973.

I

The town first questions the jurisdiction of this court; it claims the plaintiffs are not "aggrieved" parties and, therefore, have no standing to bring this action for declaratory judgment. Inaddition, the defendants claim that even if this court has jurisdiction, it should not be exercised and the parties should be left to other remedies at law which are available to them.

> "The court will not render declaratory judgments upon the complaint of any person:
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> (a) unless he has an interest, legal or equitable, by reason of danger of loss or of uncertainty as to his rights or other jural relations; or ...
>
> (c) where the court shall be of the opinion that the parties should be left to seek redress by some other form of procedure; ... "
>
> Section 309,
> Connecticut Practice Book

As to the first question pertaining to jurisdiction, there can be little question that these plaintiffs do have an interest in the subject matter. The issue before the court is whether or not the budget was legally adopted. The amount of the budget would have a direct affect upon the amount that must be raised in taxes from the plaintiffs and all

other property owners who are residents of Weston. For the court to hold under these circumstances the plaintiffs must prove more than that they are just taxpayers, would be tantamount to closing its eyes to reality. Certain positions in relation to certain acts speak for themselves. Browning v. Steers, 162 Conn. 623, 624-5; Ciglar v. Finkelstone, 142 Conn. 432, 435. The position of a taxpayer in relationship to the town's budget is such a position which speaks for itself and gives the plaintiffs in this case standing to bring this action for declaratory judgment.

The town relies upon four cases which are not applicable to the facts of this case. In the case of McGee v. Dunnigan, 138 Conn. 263, 266, the court held the plaintiffs' claim that the Board of Education was entitled to spend more money could not have any substantive affect on them. In fact, as pointed out by the court, if the plaintiffs succeeded in that suit, it would have meant an increase in taxes for them. Bassett v. Desmond, 140 Conn. 426, involved an alleged illegal parking meter contract and the court held that the plaintiffs could not show that their taxes would have been increased even if they proved the contract was, in fact, illegal. In Tellier v. Zarnowski, 157 Conn. 370, the plaintiffs challenged the legality of an appointment, and the case of Gannon v. Sanders, 157 Conn. 1, involved a school district dispute. In both of these latter cases the court properly pointed out that there would be no substantial affect upon the plaintiffs.

In the instant case, the adoption of the budget, which, in effect, sets the mill rate for the town, has a direct affect upon the plaintiffs. It certainly would be a narrow view to hold that the plaintiffs are not aggrieved and have no standing to bring this action.

In the case of New London v. Brainard, 22 Conn. 553, the court held that the plaintiff-taxpayer had standing to seek an injunction preventing the town from expending moneys for celebration of Independence Day as authorized by the city meeting. The court held that the plaintiff had standing to bring that action for injunction. "... It rests upon the indispensable need to keep public corporations, their officers, agents and servants strictly within the limits of their obligations and faithful to the service of the citizens and taxpayers. ..." See 18 McQuillin: Municipal Corporations, 3rd Ed., Sec. 52.29.

The defendants also seem to claim that because the plaintiffs paid their taxes, at least the first half of the taxes, without protest, they have no standing to maintain this action. Their contention is without merit. Although the first half of the taxes were paid "without protest", notice of the instant suit was served on the town on July 3, 1973. This made the position of the plaintiffs abundantly clear; they were in fact not paying their taxes voluntarily. To add the words "under protest" to the payment would be superfluous. See Bridgeport Hydraulic Co. v. Bridgeport, 103 Conn. 249.

It should further be noted that the defendants themselves claim a declaratory judgment seeking answers to principally the same questions posed by the plaintiffs. It appears that there is "... an interest, legal or equitable, by reason of danger of loss or of uncertainty as to (their) rights or other jural relations; ..." Connecticut Practice Book, Section 309.

The second aspect of this question involves the exercise by the court of its discretion. Is this the type of a case in which the court should leave the parties to seek relief by some other form or proceeding? Section 309, Connnecticut Practice Book.

In determining this, the court must look to the purposes of an action for declaratory judgment in relation to the problem presented in the instant case.

> "An action for a declaratory judgment is a special statutory proceeding ... Newington v. Mazzoccoli, 133 Conn. 146, 150, 48 A.2d 729. The relief thus afforded is highly remedial and the statute and rules should be accorded a liberal construction to carry out the purpose underlying such judgments. Sigal v. Wise, 114 Conn. 297, 301, 158 A. 891; Connecticut Savings Bank v. First National Bank, 133 Conn. 403, 409, 51 A. 2d 907. The object of the action is to secure an adjudication of rights which are uncertain or in dispute."
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> Bania v. New Hartford, 138 Conn. 172, 175.

Notwithstanding the foregoing general principles pertaining to declaratory judgments, this court has discretion as to whether or not it should entertain such a suit.

" ... Our courts have a wide discretion in such matters. Brewster v. Brewster, 152 Conn. 228, 232, 206 A.2d 106; Lipson v. Bennett, 148 Conn. 385, 390, 171 A.2d 83; Holt v. Wissinger, 145 Conn. 106, 113, 139 A.2d 353; Herald Publishing Co. v. Bill, 142 Conn. 53, 58, 111 A.2d 4; Connecticut Savings Bank v. First National Bank & Trust Co., 133 Conn. 403, 410, 51 A.2d 907."

Larke v. Morrissey,
155 Conn. 163, 167-68.

In exercising its broad discretion, this court takes into consideration the very practical problems confronting the Town of Weston. The Town is now well into its fiscal year, the moneys raised by the taxes in question have been expended for its operations, the vast majority of the taxpayers, if not all, have paid their taxes without protest, and periodically the legislature adopts validiting legislation to correct defective tax levies. So, in this case, " ... to adjudge it illegal would be to defeat the whole levy or assessment, the court should act with extreme caution, lest in awarding relief to one or several individuals all the operations of the government would be embarrassed by arresting the only supply of revenue. ..."

New London v. Perkins,
87 Conn. 229, 234.

But, on the other hand, the court recognizes that another annual budget meeting for the fiscal year commencing July 1, 1974, will soon be held. These plaintiffs and all taxpayers of the Town of Weston have a right to a judicial construction of the town's charter in regard to the voting and other requirements for adopting the budget. To fail to answer this issue would certainly be in derogation of the judicial duties entrusted to this court by our constitution.

When entertaining an action for declaratory judgment, the court is not bound to the issues presented by the parties.

In the case of Stueck v. Murphy Co., 107 Conn. 656, 661, the court held: " ... In an action for a declaratory judgment, we are not limited by issues joined, or by the claims of counsel. ..." The court may exercise some, but not all, its jurisdiction. 26 C.J.S. Declaratory Judgments, §11. Accordingly, five questions which the court itself has framed, pertaining to the construction of the charter of the Town of Weston, will be answered. They are as follows:

1. Is the Town of Weston required to adopt a budget at its annual town budget meeting?

2. At such meeting, is the vote of the majority of qualified voters present and voting controlling?

3. If the answer to No. 2 is yes, must such majority constitute a minimum of five percent of the town's eligible voters?

4. Must a budget be adopted before appropriations can be made?

5. If a budget has not been adopted, are the specific recommended appropriations within the proposed budget deemed to have been appropriated?

II

Turning first to the question of the requirement that a budget be adopted, it would be helpful to review the purpose of a budget and the difference between a budget and an appropriation.

The statute sets forth the specific requirements for a budget, which gives some insight to its purposes. The information required to be included in the budget is " ... (1) an estimate of the receipts and expenditures of the year during which the budget is being prepared, (2) a statement of the actual receipts and expenditures of the year prior to the year in which the budget is being prepared and (3) an estimate of the receipts and expenditures for the ensuing year. ..." Section 7-390 of the General Statutes; see also Section 7-344 of the General Statutes.

The general purpose of a budget is to determine on a business-like basis the amount of money necessary to be raised in order to carry on the governmental operations and to control all expenditures. 15 McQuillin: Municipal Corporations, 3rd Ed., Sec. 39.39. It would appear under Connecticut law that its purpose is also to enable the taxpayers to compare the proposed income and expenditures for the budget year with that of the prior year.

"The purposes, generally, of statutory municipal budgeting requirements are to inculcate sound business principles and practices into the municipal economy, with particular reference to avoidance of waste, extravagance, and ill-considered expenditures, and to give the members of the tax paying public a better understanding of the financial affairs of the municipality and the anticipated disposition of public moneys. 15 McQuillin, Municipal Corporations, §39.39, at 125 (3d ed. 1950); 2 Antieau, Municipal Corporation Law §15.31, at 453 (1965)."

Edwards v. City of Renton,
67 Wash. 2d 598,
409 P. 2d 153, 157.

It is apparent that the budget is important and serves a very vital function in the fiscal affairs of a political subdivision such as the Town of Weston. It is a manner by which the legislative body, whether it be the annual town meeting or the representative town meeting or the Board of Aldermen, is able to review the overall fiscal affairs of the town for the year in question on a business-like basis.

But a budget represents more than just an estimate. "A budget ... is more than a mere estimate of probable revenues and expenditures. It is a method whereby expenditures are controlled and limited during the fiscal period by designating the amounts of money legally at the disposal of the commissioners, and the purposes for which they may be expended." Kistler v. Carbon County, 154 Pa. Super. 299, 35 A. 2d 733.

There is a significant difference between a budget and an appropriation. Our Supreme Court has had occasion to define an appropriation.

> "To 'appropriate,' according to one of the meanings given to the words by Webster, is 'to set apart a sum of money for a particular object.' In State v. Bordelon, 6 La. Ann., 68, the court asks what is the meaning of the word 'appropriate,' and answers as follows: - 'It is to allot, assign, set apart, or apply anything to the use of a particular person or thing or for a particular purpose.' ..."
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> Woodward v. Reynolds, 58 Conn. 486, 490.

See also Hunt v. Callaghan, 32 Ariz. 235, 257 P. 648, 649. This should be compared to a budget which sets the limitations for the entire fiscal operations of the Town. See Carter County v. Williams, 28 Tenn. App. 352, 190 S.W. 2d 311; Kistler v. Carbon County, supra, p. 735.

There can be no question that under the statutes the budget must be submitted to the annual town budget meeting. Section 7-388 of the General Statutes applies to a town which has adopted the uniform fiscal year and provides in part that "(t)he budget-making authority ... shall thereafter submit any estimates and recommendations required by section 7-344, section 12-122 or any provisions of special acts to the annual budget meeting rather than to the annual town meeting. ..." Section 7-344 of the General Statutes states, in part, the following:

"... The board shall submit such estimate with its recommendations to the annual town meeting next ensuing, and such meeting shall take action upon such estimate and recommendations, and make such specific appropriations as appear advisable, but no appropriation shall be made exceeding in amount that for the same purpose recommended by the board and no appropriation shall be made for any purpose not recommended by the board. ..."

The act of submission has been variously defined. The words of the charter should be given common and ordinary meaning. Sutherland, Statutory Construction, 3rd Ed., §6710. Webster's 3rd In. Dictionary defines the word "submit" as follows: "to yield to the will or authority of". "To submit means to present and leave to the judgment of the qualified voters." Noland v. Hayward, 69 Colo. 181, 192 P. 657, 658. It, therefore, follows that since the budget as defined by Section 7-390 of the General Statutes must be submitted to the annual town budget meeting, that body must approve the budget.

Appropriations cannot be made at the annual budget meeting unless the budget is in fact adopted otherwise the entire purpose of the budget would be defeated. 15 McQuillin: Municipal Corporations, 3rd Ed. Sec. 39.62.

This interpretation of the requirement that the budget must first be approved before appropriations can be made is given further support by the charter of Weston. "A Town Meeting shall be required for approval of any of the following: (a) the annual budget as provided in Sec. 8.4; ..." Sec. 2.4 of the charter.

The town charter, without ambiguity, restates the statutory requirements and specifically requires approval. "The same rules apply to the interpretation of charters that apply to statutory enactments generally, and their purpose is to arrive at the intention of such charter's framers." Jones v. Bayless, 208 Okla. 270, 255 P. 2d 506, 507. " 'Where the language of a statute is plain and unambiguous, the enactment speaks for itself and there is no occasion to construe it. ...' " Meriden v. Board of Tax Review, 161 Conn. 396, 402. The expressed intent in the charter controls. Adams v. Vaill, 158 Conn. 478, 483.

The court next turns to the vote which is required in order to adopt the budget for the Town of Weston at its annual budget meeting.

The town meeting is a rare privilege in this day and age. It represents true democracy as compared to a representative form of government. Commonwealth v. Town of Hudson, 315 Mass. 335, 52 NE 2d 566, 572; 56 Am. Jur. 2d, Municipal Corporations, Sec. 157. The common law was quite clear in regard to the quorum and vote necessary in order to adopt any matter that came before such meeting. "Following the rule of common law applied to indefinite corporate bodies, where the meeting has been duly warned and called, those who attend and participate in its proceedings, notwithstanding they may be less than a majority of all of the inhabitants legally qualified, have full power to act for and

bind the town; the absence of the others is equivalent in law to their consent to any legal action. ..." 4 McQuillin: Municipal Corporations, 3rd Ed., Section 13.10; see also Whiting Co. v. City of Burlington, 106 Vt. 446, 175 A. 35, 41.

It is further clear that under the common law a majority of those present at such town meeting is sufficient to prevail on any issue. "Where no statute has required a contrary result, the courts have applied the common-law rule that municipal action may be taken or legislation be enacted by a majority vote of the members of the legislative body present, provided, of course, that they are sufficient in number to constitute a quorum of the body. ..." 56 Am. Jur. 2d, Municipal Corporations, Sec. 170.

Anything contrary to the foregoing principles would be in derogation of the common law and, therefore, must be strictly construed. " ... It restricts a common right ... and thus derogates from the common law and should be strictly construed in favor of the right. ..." Hart v. Board of Examiners of Embalmers, 129 Conn. 128, 132. See also Melody v. Zoning Board of Appeals, 158 Conn. 516, 521; Park Construction Co. v. Planning & Zoning Board of Appeals, 142 Conn. 30, 35. " ... They are not to be construed as taking away such a right in a given case, unless the intention to do so is manifest. ..." State v. Costello, 61 Conn. 497, 499.

The court now turns to the charter provisions. It clearly appears that Sec. 2.3 of the charter controls the issue before the court. That section in part provides the following: "Except as otherwise provided in this Charter, action at all Town Meetings shall be by a majority of qualified voters present and voting."

The town claims that since the budget is made up of individual appropriations and since there was no action taken on the budget at the annual meeting, the appropriations recommended by the Board of Finance should be construed as having been appropriated under Sec. 8.4. In this section, it is provided that if not amended, the appropriation recommended by the Board of Finance shall be construed as having been appropriated. This argument fails to recognize that before there can be such appropriations, the budget must first be accepted by the Town Meeting. It might very well be that once the budget is adopted, the individual items in the budget then constitute approrpriations. Donnelly v. Shea, 50 Misc. 2d 787, 272 N.Y.S. 2d 196, 200, aff'd 18 N.Y. 2d 589, 272 N.Y.S. 2d 365. Therefore, after the budget is adopted at the annual meeting and if nothing further is done, the individual items would then be deemed to have been appropriated.

Furthermore, since the individual items constitute such recommended appropriations, they could not be increased, Section 7-344 of the General Statutes, and to be decreased

would require a majority vote equal to at least five percent of the qualified voters. Section 8.4 of the charter.

The defendants point out that the results of such an interpretation mean that a simple majority could reject an entire budget, but to reduce an appropriation would require a majority equal to five percent.

There is good reason to require a minimum vote before a recommended appropriation within a budget may be decreased at a town meeting just as there is good reason to prohibit an increase in an appropriation as provided in Section 7-344 of the General Statutes. Changes for such specific requirements for a particular department or governmental activity may require detailed analysis which can only be done by a Board of Finance which is aware of such matters as the town's contractual and legal obligations. On the other hand, there is no reason why taxpayers at an annual town meeting cannot show their complete dissatisfaction with a budget by refusing to adopt it and thereby return it to the finance committee for further analysis and consideration. The town has elected to be governed in part by its town meeting; there is good reason to hold that the entire fiscal scheme which will guide the town during the ensuing year and determine the amount each taxpayer must pay should be left to the determination of a majority of those interested enough to attend a duly summoned annual town budget meeting. Charters are to be construed to promote their ultimate purpose.

Connelly v. Bridgeport, 104 Conn. 238, 256.

The court answers the questions as follows:

1. Is the Town of Weston required to adopt a budget at its annual town budget meeting? Yes.

2. At such meeting, is the vote of the majority of qualified voters present and voting controlling? Yes.

3. If the answer to No. 2 is yes, must such majority constitute a minimum of five percent of the town's eligible voters? No.

4. Must a budget be adopted before appropriations can be made? Yes.

5. If a budget has not been adopted, are the specific recommended appropriations within the proposed budget deemed to have been appropriated? No.

Judgment may enter on the complaint and counterclaim for declaratory judgment accordingly, without costs to either party.

Robert I. Berdon, J.

FOOTNOTES:

1 Initially the plaintiffs also claimed an injunction against the town from collecting taxes for the fiscal year in question. The court (Levine, J.) sustained a demurrer to the claim for injunctive relief.

2 The questions the plaintiffs request answered in their complaint for declaratory judgment are as follows:

1. Was the budget of the Town of Weston for the fiscal year commencing July 1, 1973, approved by resolution by the Annual Town Budget Meeting?

2. Was said budget properly and legally approved?

3. Was the action by the defendants, Board of Finance, voting to lay a tax of 54.5 mills on the grand list of October 1, 1972, valid and legal?

4. Was the Tax Warrant issued to the defendant, Tax Collector, valid and legal?

5. Are the taxes scheduled to be collected in semi-annual installments during the fiscal year commencing July 1, 1973, legally due and payable?