STATE ex rel. KARBE et al. v. BADER et al.

No. 33955.

Supreme Court of Missouri.

Dec. 22, 1934.

1. Prohibition ⇐19

In prohibition proceeding to assert lack of jurisdiction in respondent judge to hear suit to enforce lien of state for taxes, adversary party to suit below, who was collector of revenue, was neither necessary nor proper party.

2. Pleading ⇐350(3)

On relators' motion for judgment on pleadings in prohibition proceeding, court would consider facts stated in return as facts of case, except allegations of fact pertaining to relationship to case of adversary party in suit below who was neither necessary nor proper party to prohibition proceeding.

3. Evidence ⇐33

Court may judicially notice history of legislation as reflected by record thereof in legislative journals of state.

4. Constitutional law ⇐46(2)

Points and authorities in brief, containing only bald assertion that certain law was unconstitutional, would not justify court's examination into constitutionality of such law in prohibition proceeding.

5. Statutes ⇐225¼

Where Legislature passed inconsistent laws at same session respecting enforcement of lien for taxes, message of Chief Executive at subsequent Extra Session of Legislature, referring to one of such laws as applicable law, and like construction by Legislature at Extra Session, though not controlling, is entitled to consideration in construing such inconsistent laws (Mo. St. Ann. §§ 9945, 9949 et seq., pp. 7988, 7991 et seq.; § 9952, p. 7993).

6. Statutes ⇐225¼

Where two acts are passed at same session of Legislature relating to same subject-matter, they are in pari materia, and to arrive at true legislative intent, they must be construed together.

7. Statutes ⇐158

Law does not favor repeals by implication, and if by any fair interpretation all sections of statute can stand together, there is no repeal by implication.

8. Taxation ⇐615

Nominal re-enactment of section of statute respecting suit for enforcement of lien for taxes, to amend section in so far as it related to back tax attorneys in counties of designated population, did not impliedly repeal statute enacted at same session providing for sale without judicial proceeding; and by attaching emergency clause, Legislature intended that it should be operative only until statute substituting sale without judicial proceeding took effect (Mo. St. Ann. §§ 9945, 9949 et seq., pp. 7988, 7991 et seq.; § 9952, p. 7993).

9. Statutes ⇐64(8)

In statute re-enacting section of statute respecting suit to enforce lien of state for taxes, to amend such section in so far as it related to back tax attorneys in counties of designated population, emergency clause *held* invalid on face and therefore wholly ineffectual to make it operative on being signed by Governor (Mo. St. Ann. § 9952, p. 7993).

The emergency clause, Laws 1933, p. 467, § 2, with which bill was passed, is as follows: "The financial condition of the counties and of the people therein to which this act applies, and relief of the same being imperative without delay, creates an emergency in the meaning of the constitution and this act shall be in force and effect upon its passage and approval."

10. Statutes ⇐64(1)

Where statute, containing emergency clause, was enacted with intent that it should be operative only until another statute, enacted at same legislative session without emergency clause, became operative, invalidity of emergency clause rendered entire statute invalid.

11. Constitutional law ⇐306
Taxation ⇐615

Statute providing for sale without judicial proceeding to enforce lien of state for taxes instead of enforcement by suit *held* not unconstitutional as denying landowner due process of law (Mo. St. Ann. § 9952b, p. 7995; Const. art. 2, §§ 20, 30).

12. Constitutional law ⇐70(3)
Eminent domain ⇐2(11)

Statute providing for sale without judicial proceeding to enforce lien of state for taxes instead of enforcement by suit *held* not unconstitutional as imposing obligation on collector to advertise and sell property without provision for any fund to compensate therefor (Mo. St. Ann. §§ 9952a-9952c, p. 7995; Const. art. 2, §§ 20, 30).

13. Constitutional law ⇐70(3)

Wisdom of legislation is not matter for determination by courts.

In Banc.

Original proceeding in prohibition by the State, at the relation of Otto F. Karbe and

Attachment A

another, against Arthur H. Bader, Presiding Judge of Division 1 of the Circuit Court for the Eighth Judicial Circuit of Missouri, and another.

Preliminary rule made absolute.

Albert E. Hausman, of St. Louis, for relators.

Albert D. Nortoni, Charles J. Dolan, and Frank H. Haskins, all of St. Louis, for respondents.

Roy McKittrick, Atty. Gen., and Harry G. Waltner, Jr., and Gilbert Lamb, Asst. Attys. Gen., amici curiæ.

Arthur U. Simmons, of Clayton, for Collector of St. Louis county, amicus curiæ.

LEEDY, Judge.

Original proceeding in prohibition. Relators are defendants in a tax suit brought by the state, at the relation and to the use of respondent Koeln, collector of the city of St. Louis, as plaintiff, in division No. 1 of the circuit court of the city of St. Louis presided over by respondent Bader, as judge. The purpose of said suit is to enforce the lien of the state for taxes (with interest and penalties) for the years 1929, 1930, 1931, and 1932 against certain real property situated in said city, owned by relators. Relators' petition for the writ alleges that the lower court is without jurisdiction because the Fifty-seventh General Assembly (Laws 1933, p. 429, § 2), repealed sections 9952, 9953, 9954, 9955, 9956, 9957, 9958, 9960, 9962, and 9963 of the Revised Statutes 1929, providing for the enforcement of the lien of the state for taxes by suit, and substituted therefor a method of sale without judicial proceedings, upon notice by the collector for three consecutive weeks in some newspaper of general circulation published in the county in which the land, lots, or tracts might be situated. Laws 1933, pp. 425–449, passed March 24, approved April 7, 1933, and which will hereinafter be referred to as Senate Bill No. 94, or the Jones-Munger Act (Mo. St. Ann. §§ 9945, 9949 et seq., pp. 7988, 7991 et seq.). It is further alleged that respondent Koeln, collector, relies upon and predicates his aforesaid suit for taxes upon section 9952, R. S. 1929, enacted by the Fifty-seventh General Assembly, passed April 1, approved April 28, 1933, with an emergency clause. Laws 1933, pp. 465–467, which will hereinafter be referred to as House Bill No. 44 (Mo. St. Ann. § 9952, p. 7993). The constitutionality of the act just mentioned is attempted to be raised by relators' petition.

[1, 2] Our provisional rule in prohibition was ordered, and respondents entered their appearance, waived issuance of the writ, and agreed that relators' petition be taken as and for such writ, and filed their joint return; whereupon relators filed their motion for judgment on the pleadings. We look, therefore, to the facts stated in the return as the facts of the case [State ex rel. v. McQuillin, 262 Mo. 256, 171 S. W. 72], subject, however, to this qualification: The adversary party to the suit below (in this instance, respondent Koeln, collector), being neither a necessary or proper party to an original proceeding in prohibition [State ex rel. v. Duncan, 333 Mo. 673, 63 S.W.(2d) 135; State ex rel. v. Barton, 300 Mo. 76, 254 S. W. 85], we disregard all allegations of fact contained in the return "insofar as they pertain to his relationship to the case"—to quote his oath respecting the facts stated in the return. So, as abbreviated, the return (summarized) is as follows: It admits the capacities of the parties, and pendency of the tax suit in question; that the respondent judge has assumed jurisdiction thereof and is about to proceed "by judicial hearing, judgment and decree to the end of ascertaining and establishing the tax lien on the said real estate of relators by finding, judgment and decree of said circuit court therein, and will proceed to do so unless prohibited and forbidden so to do," etc. It admits that Senate Bill No. 94 was enacted as alleged in relators' petition, and avers "that said statutes (Senate Bill No. 94) insofar as the provision for such advertisement and sale and so forth is concerned are insufficient, impractical, arbitrary in their application and in their failure to provide a fund for compensating for the publication of proper and adequate notice, and that such statutes are void and without force for such reasons * * * and because they contravene section 30 and also section 20, article 2 of the Constitution of Missouri."

Respondents further say that Senate Bill No. 94, which was passed without an emergency clause on March 25, 1933, and approved and signed by the Governor on April 7, 1933, and became effective July 24, 1933, and that thereafter the said General Assembly at the same session passed another and inconsistent act (House Bill No. 44) relating to the same subject-matter providing for the enforcement and foreclosure of the state's lien for delinquent taxes by suit by the collector, and judicial proceedings in a court of competent jurisdiction, which said act was passed with an emergency clause on April 1, 1933, and approved and signed by the Governor on April 28, 1933, and is a later and inconsistent law covering the same subject-matter, and,

therefore, because of such inconsistency and repugnancy said act approved April 28, 1933, repeals and supersedes the provisions of the act of April 7, in so far as it provides for the enforcement of the state's lien for delinquent taxes by sales by the collector, and confers jurisdiction on the said circuit court over which respondent Bader presides, and authorizes the collector to sue therein.

I. The ultimate question to be determined is whether the circuit court has jurisdiction of the subject-matter of an action brought by the state to foreclose its lien for delinquent taxes on real estate, and the determination of that question may be said to depend on:

(a) Whether House Bill No. 44, the later enactment, supersedes, repeals, or supplants the earlier and apparently inconsistent enactment, Senate Bill No. 94; and

(b) If not, is Senate Bill No. 94 (the so-called Jones-Munger Act) unconstitutional and void because of the defects said to inhere in it?

These propositions will be considered in the inverse order of their statement. All references to Revised Statutes of Missouri are to the revision of 1929, unless otherwise noted.

The method of foreclosing the state's lien for delinquent taxes, which for many years had been by suit in a court of competent jurisdiction in the county wherein the lands were situated, was radically changed by Senate Bill No. 94. It expressly repealed numerous sections of the former statute and particularly section 9952, authorizing such suits, and substituted a scheme for foreclosure by sale by the collector at the courthouse door on the first Monday in each year, upon published notice thereof, and without resort to judicial proceedings—the general statutory plan prevailing prior to the year 1877. Section 9952, supra, might be termed the basic section of the act under which suits were authorized and provides, in part, as follows: "* * * It shall be the duty of the collector to proceed to enforce the payment of the taxes charged against such tract or lot, by suit in a court of competent jurisdiction of the county where the real estate is situated, which said court shall have jurisdiction, without regard to the amount sued on, to enforce the lien of the state or such cities."

House Bill No. 44 provided in section 1 thereof (Laws 1933, p. 465, § 1): "That Section 9952 of Article 9, Chapter 59, of the Revised Statutes of Missouri, 1929, relating to Delinquent and back Taxes be and the same is hereby repealed and a new Section relating to the same subject matter enacted in lieu thereof to be known as Section 9952 and to read as follows." However, an examination of the bill discloses that the sole change contemplated was in relation to tax attorneys in counties having not less than 80,000 nor more than 95,000 inhabitants, by making the prosecuting attorney in such counties the back tax attorney, and this the bill sought to accomplish through the medium of a proviso (section 1 [Mo. St. Ann. § 9952, p. 7993]), in this language: "Provided, however, that in all counties of this State that now have or may hereafter have a population of not less than 80,000 nor more than 95,000, according to the last decennial census of the United States, the Collector shall have no power or authority to employ such attorneys, that the Prosecuting Attorney of such counties shall be the back tax attorney, and that all fees collected as such by the Collector shall be paid into the County Treasury; and each of the Prosecuting Attorneys in such counties shall be entitled to such additional temporary clerk and deputy hire as in the judgment of the Prosecuting Attorney and the County Court may be deemed necessary, for such time and at such salary as may be fixed by the Prosecuting Attorney and the County Court." The emergency clause (Laws 1933, p. 467, § 2) with which the bill was passed, is as follows: "The financial condition of the counties and of the people therein, to which this act applies, and relief of the same being imperative without delay, creates an emergency in the meaning of the Constitution and this act shall be in force and effect upon its passage and approval." Under the proviso quoted, in counties of the population mentioned, 80,000 to 95,000 inhabitants, the prosecuting attorney was made delinquent tax attorney. In all other respects, the terms and provisions of section 9952 remained intact and unchanged. Because Greene county is the only county in the state having a population between the figures mentioned, it alone would have been affected by the operation of the bill, and the legislative journals show the measure was introduced by a Representative from that county. In that connection, it is interesting to note the following language of this court in State ex rel. v. Riedel et al., Judges, 329 Mo. 616, 46 S.W.(2d) 131, loc. cit. 134, in reference to legislation designed to affect only one county or district: "It is common knowledge that, where a bill is introduced in a legislative body which after it becomes a law will affect only one county or district, such bill will not be subjected to the critical judgment of the body as a whole; if the member from the county or district to be affected desires it passed

it will be. The potential evils of that method of legislating are illimitable."

[3] It is competent for us to judicially notice the history of legislation as reflected by the record thereof in the legislative journals of the state. State v. Adams, 323 Mo. 729, 19 S.W.(2d) 671, 673; Utz v. Dormann, 328 Mo. 258, 39 S.W.(2d) 1053, 1055. Resort to which, in this instance, shows certain pertinent facts with respect to the two bills now under scrutiny. For convenience of reference, and because when placed in juxtaposition their importance and relevancy, chronologically, is more apparent, the facts relating to each are shown in parallel columns, as follows:

House Bill No. 44		Senate Bill No. 94	
Introduced	Jan. 17, (p. 62)	Introduced	Jan. 25, (p. 103)
Referred to Ways & Means	Jan. 20, (p. 80)	Referred to Ways & Means	Jan. 26, (p. 111)
Reported out	Feb. 23, (p. 596-7)	Reported out (favorably)	Feb. 9, (p. 213)
Committee Amendments Adopted & Bill perfected	Feb. 27, (p. 628-9)	Perfected	Feb. 28, (p. 416)
Passed House	Mar. 9, (p. 779-81)	Passed Senate	Mar. 17, (p. 669)
Passed Senate	Apr. 1, (p. 962)	Passed House	Mar. 24, (p. 948)
Approved by Governor (With emergency clause)	Apr. 28	Approved by Governor	Apr. 7

[4] As above indicated, the Jones-Munger Act (Senate Bill No. 94) was finally passed March 24, 1933, and approved by the Governor on April 7, and became effective, if at all, on July 24, 1933, or ninety days after the adjournment of the Fifty-seventh General Assembly. House Bill No. 44, with what purports to be an emergency clause, was finally passed April 1, and signed and approved by the Governor on April 28. If the emergency clause be held good, and if the bill be otherwise valid, it became effective upon being signed and approved by the Governor. In this anomalous condition of things, what can be said to have been the intention of the Legislature in the premises? We think the pleadings do not sufficiently raise the constitutionality of House Bill No. 44, and, even if they did, relators' "points and authorities" in their brief would not justify our examination into the question. They content themselves with the bald assertion that "House Bill 44, passed April 1, 1933, and approved April 28, 1933, is unconstitutional." The constitutional provisions with which the act is supposed to be in conflict are not even given by article and section numbers, nor is their substance stated. This alone is sufficient reason for us to decline to inquire into the question.

[5] It should be borne in mind that Senate Bill No. 94 did not even purport to repeal the section of the former statute relating to limitations (section 9961), reading as follows: "No action for recovery of taxes against real estate shall be commenced, had or maintained, unless action therefor shall be commenced within five years after delinquency, excepting taxes now delinquent, on which suit may be commenced at any time within five years after this chapter shall take effect, but not thereafter." But at the Extra Session of the Fifty-seventh General Assembly, which convened October 17, 1933, the Chief Executive, on December 4, delivered a message to the House and Senate in joint session wherein it was stated: "The subjects and purposes to be considered by the 57th General Assembly are hereby enlarged and supplemented to include the consideration of enactment of said legislation as may to the General Assembly seem proper concerning the following subjects and purposes. * * *

"(C) An Act to repeal Section 9961 of Article 9, Chapter 59 of the Revised Statutes of Missouri, 1929, relating to limitation of actions in connection with delinquent and back taxes, and to enact a new section in lieu thereof, to be known as Section 9961, relating to limitation of sales for delinquent taxes and validity thereof."

Pursuant to that authorization, there was enacted at such Extra Session a bill known as Senate Bill No. 54 (Laws 1933-34, p. 154 [Mo. St. Ann. § 9961, p. 8006]), which expressly repealed section 9961, supra, relating to limitations of actions for the recovery of taxes against real estate, and enacted a new section in lieu thereof, limiting the period in which "proceedings for the sale of lands and lots for delinquent taxes"—phraseology repeatedly used in the Jones-Munger Act—might be commenced; and which (omitting a proviso not here relevant) is in words and figures as follows: "No proceedings for the sale of land and lots for delinquent taxes under the

provisions of Chapter 59, Revised Statutes of Missouri, 1929, relating to the collection of delinquent and back taxes and providing for foreclosure sale and redemption of land and lots therefor, shall be valid unless initial proceedings therefor shall be commenced within five (5) years after delinquency of such taxes, and any sale held pursuant to initial proceedings commenced within such period of five (5) years shall be deemed to have been in compliance with the provisions of said act in so far as the time at which such sales are to be had is specified therein, provided that proceedings for the sale of lands and lots on which taxes are delinquent for the year 1928 may be commenced at any time prior to December 31, 1934." Manifestly, the authority given the special session by the message referred to constituted an executive construction of the legislation in question—a construction that Senate Bill No. 94 was the applicable law—which, together with a like construction on the part of the Legislature in adopting Senate Bill No. 54, while not controlling, is entitled to consideration. State ex rel. v. Baker et al., 316 Mo. 853, 293 S. W. 399; State ex rel. v. Cupples, etc., 283 Mo. 115, 223 S. W. 75.

[6, 7] We deem it unnecessary to enter into an exhaustive review or discussion of the several rules of construction urged upon us by the parties and amici curiæ who have filed numerous briefs. We think the applicable rule is: "That where two acts are passed at the same session of the Legislature, relating to the same subject-matter, as here, they are in pari materia, and, to arrive at the true legislative intent, they must be construed together. Forry v. Ridge, 56 Mo. App. 615; State ex rel. v. Clark, 54 Mo. 216; State ex rel. v. Klein, 116 Mo. 259, 22 S. W. 693; St. Louis v. Howard, 119 Mo. 41, 24 S. W. 770, 41 Am. St. Rep. 630. The law does not favor repeals by implication. If by any fair interpretation all the sections of a statute can stand together, there is no repeal by implication." Gasconade County v. Gordon, 241 Mo. 569, 145 S. W. 1160, 1163. The opinion in which case says further:

"In Black on Interpretation of Laws, in speaking of statutes in pari materia, it is said: 'Especially is it the rule that different legislative enactments passed upon the same day or at the same session, and relating to the same subject, are to be read as parts of the same act.'

"To like effect is 2 Lewis' Sutherland on Statutory Construction (2d Ed.) p. 845, whereat it is said: 'It is observed that in the comparison of different statutes passed at the same session or nearly at the same time this circumstance has weight; for it is usually referred to as indicating the prevalence of the same legislative purpose, as rendering it unlikely that any marked contrariety was intended.'

"It is easy to see why the rule of construction pertaining to statutes in pari materia applies with peculiar force to statutes passed at the same session of a legislative body. In such case we have, in fact, the same minds acting upon the one subject. It is not to be presumed that the same body of men would pass conflicting and incongruous acts. The presumption is that they had in mind the whole subject under consideration; that, whilst the one general subject is touched in several separate acts, yet the legislative intent was that of a harmonious whole. In such case, it is the duty of the courts to so construe all the act in such manner that each and every part thereof may stand, if such construction can be attained, without doing violence to the language used in the several acts.

"We take it that there can be no serious question as to these rules of construction. Under them, can these two acts (the stamp act and the general state road fund act) stand as written? If they are absolutely inconsistent and repugnant, then, of course, the latter prevails and the former falls. But is such the case? We think not."

[8-10] There was nothing in House Bill No. 44 in the nature of new legislation. Its sole object was to amend section 9952 (the effective law at the time House Bill No. 44 was introduced) in so far as it related to back tax attorneys in counties of a designated population. It seems obvious, and we hold that the nominal re-enactment of section 9952 by House Bill No. 44 was not intended to, nor did it have the effect of impliedly repealing or otherwise disturbing the Jones-Munger Act. We think that by attaching an emergency clause to House Bill No. 44, the Legislature intended that it should be operative only until such time as Senate Bill No. 94 took effect, the latter measure not having received executive approval at the time the former was passed. But we must hold bad, as the parties tacitly concede, the emergency clause just mentioned because invalid on its face and, therefore, wholly ineffectual to make House Bill No. 44 operative upon being signed by the Governor, and so upon the happening of the latter event, House Bill No. 44 became nugatory, and as if never passed. This ruling is in harmony with controlling canons of construction, and, as we

believe, causes the true legislative intent to speak.

[11, 12] II. Relators make the contention that Senate Bill No. 94 is unconstitutional because violative of the provisions of sections 20 and 30 of article 2 of the Constitution "insofar as it imposes an obligation upon the Collector to advertise and sell property without provision for any fund to compensate therefor." And further, that said statutes are void because unworkable in that the "provisions for such advertisement and sale are insufficient, impractical, arbitrary in their application, and in their failure to provide a fund for compensating for the publication of proper and adequate notice."

In support of these contentions, respondents say: "That the provision made by Senate Bill No. 94, as finally adopted, for the payment of the cost for printing is unworkable, and that since publication of notice is an integral part of the whole scheme for the selling of delinquent lands, and since without notice, both to the taxpayer and to prospective buyers, such taxpayers would be deprived of their property without due process of law, if such property should be sold, it is the contention of respondents that Senate Bill No. 94 cannot be carried into effect, and is for this reason null and void."

The particular provisions of the statute assailed are contained in section 9952b (Mo. St. Ann. § 9952b, p. 7995), reading as follows: "The expense of such printing shall be paid by the purchaser or purchasers of the lands and/or lots sold and shall not exceed the rate fixed in the county printing contract, if any, but in no event to exceed the legal rate for the entire notice, as such legal rate is fixed by Section 13773, which cost of printing at the rate specified shall be taxed as part of the costs of the sale of any land or lot contained in such list and disposed of at such sale, and the total cost of printing such notice shall be prorated against all such lands or lots so sold or redeemed prior to any such sale."

We think it sufficient answer to the proposition that the bill is unconstitutional because denying the landowner due process of law, to say that until the notice provided for is given, the collector has no right to sell. If there is no notice, no sale can be made; and certainly, if not sold, the landowner would not be deprived of his property without due process of law.

We understand respondents' other constitutional question to be "that sections 9952a, 9952b and 9952c [Mo. St. Ann. §§ 9952a–9952c, p. 7995] providing for advertisement and sale of lands by the Collector impinge upon the property right, that is to say, the right of contract, * * * insofar as these sections of the statute impose an obligation upon the Collector to proceed to advertise real estate at a certain time and provide no fund for the compensation with respect to that subject-matter."

It is said that the collector might be subjected to suit on his official bond for his failure to make publication of the notice provided, when such duty is impossible of performance because the newspapers might decline to accept the advertising under the terms imposed by the statute. In that connection respondents say: "No doubt each party has a right to contract for himself with respect to such matters, and although it was within the power of the Legislature to regulate, it is certainly not within its power to impose a contractual obligation upon a party willy-nilly. * * * It overlooks the fact that newspapers are privately owned and privately operated, and are not subject to public control. They are not even quasi public corporations."

It would seem that these are matters going more to what might be called the workability of the act rather than its constitutionality. Because newspaper might refuse to publish the advertisement on the terms and conditions prescribed by the statute, would not render the act unconstitutional and we, therefore, rule the point against respondents.

III. The publication of the notice provided for by the statutes under discussion is not unlike the publication of sundry other public notices required by law to be given in that manner—for example, sheriff's sale under execution, orders of publication, grant of letters of administration, settlements, and a wide variety of others. An argument similar in some respects to that here advanced was made in State ex rel. v. Schmoll, 313 Mo. 693, 282 S. W. 702, 706, wherein it was contended that a statute fixing the rate for publication of certain legal notices was unconstitutional, as interfering with the freedom of contract, because newspapers are not impressed with public interest, and the rates they charge are not rates of public service nor monopoly rates. The court in that case, however, sustained the act under consideration, holding the matters mentioned had "nothing to do with the subject."

[13] The wisdom of legislation is not a matter for our determination. "It [the courts] cannot run a race of opinions upon points of right, reason, and expediency with the law-making power." State ex rel. v. Board of Curators, 268 Mo. 598, 188 S. W. 128, 133. And

even though the method of fixing the amount of compensation to be paid the publisher, or the time and manner thereof may not be altogether desirable, or the most expedient plan, it does not follow that for such reason the law is unworkable and void. The statute says "the expense of such printing shall be paid by the purchaser or purchasers of the lands and/or lots sold * * * which * * * shall be taxed as a part of the costs of the sale of any land or lot contained in such list and disposed of at such sale." So there is nothing in the argument that lots might not bring the amount of the costs. Under the statute, the purchaser is liable for the expense of printing, regardless of what his bid may have been, which expense is to be "prorated against all such lands or lots so sold."

For the reasons above noted, the preliminary rule in prohibition is made absolute.

All concur except GANTT, J., who concurs in result only.

TAYLOR et al. v. DIMMITT, Mayor, et al.
No. 32445.

Supreme Court of Missouri, Division No. 2.
Jan. 7, 1934.

1. Courts ⇐231(6)
Where Supreme Court's jurisdiction rests upon constitutional issues, court will determine the entire case irrespective of the issue upon which the case may turn.

2. Municipal corporations ⇐57, 58
Missouri cities can exercise only such powers as are conferred by express or implied provisions of law, since their charters are a grant and not a limitation of power and are subject to strict construction, with doubtful powers resolved against the city.

3. Municipal corporations ⇐57, 59
Municipality can exercise only those powers granted in express words, those necessarily or fairly implied in, or incident to, powers expressly granted, those essential to the declared objects and purposes of the corporation, and which are not simply convenient but are indispensable.

4. Municipal corporations ⇐277
Municipalities in rendering electric service to consumers outside their corporate boundaries perform no municipal function, but enter a field of private business, and authority for such action must clearly appear.

5. Municipal corporations ⇐59
A municipality has no implied power to engage in private business.

6. Municipal corporations ⇐277
Municipality *held* without statutory authority to construct, maintain, and operate an electric transmission line for the purpose of furnishing service to consumers outside its corporate boundaries (Mo. St. Ann. §§ 7641–7644, pp. 6030, 6031).

Appeal from Circuit Court, Shelby County; V. L. Drain, Judge.

Action by A. S. Taylor and others against Frank Dimmitt, Mayor of the City of Shelbina, Missouri, and others. From an adverse judgment, defendants appeal.

Affirmed.

Rice G. Maupin and Harry J. Libby, both of Shelbina, for appellants.

Lane B. Henderson, of Shelbina, for respondents.

BOHLING, Commissioner.

Shelbina, Mo., a city of the fourth class, owns, maintains, and operates a municipal electric plant, furnishing light, heat, and power for its own use and for sale to its inhabitants. Lakenan, Mo., is an unincorporated village, located outside of and approximately five miles east of the corporate limits of Shelbina, and is without electric service. The city of Shelbina, having a surplus of electric energy from its municipal plant, contracted with prospective consumers residing in Lakenan and along a proposed electric transmission line to furnish electric service and construct an electric transmission line from its plant in Shelbina to Lakenan therefor. The city of Shelbina purchased materials for such transmission line and was proceeding to execute the contract and carry out the project. Thereupon, certain resident taxpayers (respondents here) of Shelbina instituted this action against the mayor and aldermen of the city of Shelbina (appellants here) to enjoin and restrain the erection or operation of said proposed electric transmission line.

Respondents, by appropriate pleadings, presented the contention, among others, that the city of Shelbina is without authority to construct, maintain, and operate the proposed electric transmission line for the purpose of