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Scalise v. Sewell-Scheuermann

Supreme Court of Kentucky - November 1, 2018 - S.W.3d - 2018 WL 5732156

Taxpayer brought action against mayor for violation of the Kentucky Constitution, seeking to recover surplus sanitation assessment revenue that was not devoted to trash collection and recycling.

Mayor filed a motion to dismiss, which the Circuit Court granted. Taxpayer appealed and the Court of Appeals reversed the Circuit Court and remanded. Mayor sought discretionary review, which the Supreme Court granted.

The Supreme Court of Kentucky held that:

- Sanitation assessment was not a user fee;
- Excess revenue generated by sanitation assessment was a tax;
- Repeal of state statute on cities' use of excess revenues did not indicate Legislature's intent to hold city officials strictly liable for using revenues collected for one purpose on another lawful purpose; and
- Recognition of an offset defense for mayor was not unwarranted, overruling *City of Newport v. Rawlings*, 289 Ky. 203, and *City of Newport v. McLane*, 256 Ky. 803.

Sanitation assessment imposed by city ordinance was not a user fee and could be considered a tax, and thus taxpayer could establish action against mayor based on allegedly unconstitutional use of excess revenues collected under the ordinance for general city purposes, where excess fees had historically been treated as taxes by the Supreme Court.

Excess revenue generated by city's sanitation assessment, which was diverted to a general fund for other city expenditures, was a tax, and thus taxpayer could bring action against city's mayor based on constitutional prohibition against collecting taxes for one purpose and spending them for another; when the annual sanitation assessment ordinance was passed and monies were collected, it was abundantly clear that excess funds would be generated, such that the predictable excess regularly devoted to general city expenditures took the form of a tax.

Repeal of state statute on cities' use of excess tax revenues did not indicate intent by Legislature to hold city officials strictly liable for collecting tax revenues for one purpose and then using them for different lawful purposes, and thus mayor could invoke an offset defense in action brought by taxpayer based on city's use of excess revenues from a sanitation assessment for general city purposes; the statute in question did not create the offset defense and its repeal therefore did not eliminate the defense, in that the statute was simply a repackaging of an older statute which already provided for offset, and subsequent statutes on city tax assessments made no effort to prohibit offset in plain and unmistakable language.

Recognition of an offset defense for mayor in an action brought by taxpayer based on city's use of excess revenues from a sanitation assessment for general city purposes was not unwarranted and did not render city taxation statutes limiting the use of revenues meaningless; the offset defense

shielded city officials acting in good faith from shouldering significant personal liability for using excess funds on municipal obligations that benefited all taxpayers, but it also placed a burden on these officials to account for excess funds and imposed personal liability for any expenditures not made for valid municipal obligations, such that the offset defense did not relieve city officials from having to defend their actions in a court of law.

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