

logical harmony, inferred from the reasonable interpretation of the words, acts, or acquiescence of the parties.

CHILTON J. ESTES, '28.

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## THE TEXAS BOND CASE

Probably no other recent decision of the United States Supreme Court has been the source of such widespread discussion among the public generally, as has the Texas Bond Case.<sup>1</sup> Of late, numerous noonhour discussions in financial and legal circles have been devoted to this decision. Much if not all of the adverse criticism seems to be due to a lack of understanding of the powers of administrative tribunals, of the requirements of due process under the Fourteenth Amendment, and to a lack of knowledge of the pertinent facts in the case as set forth in Mr. Justice Butler's opinion.

The suit was filed in the United States District Court, northern district, of Texas, to enjoin the sale of a bond issue of \$300,000.00 for the purpose of paving and improving of roads, and to enjoin the levy of taxes on the property of the complainants. The issue presented was the constitutionality of the Texas statute under the Fourteenth Amendment. The act was upheld in the district court<sup>2</sup> and the complainant took an appeal directly to the Supreme Court, under section 238 of the Judicial Code.

The preliminary acts and the levy of taxes on the complainants' land, were had under the Complete Texas Statutes of 1920, articles 627 and 628, which provide, "Any county . . . or any political subdivision or defined district, now or hereafter to be described and defined, of a county," is authorized to issue bonds, not to exceed one-fourth of the assessed valuation of the real property in the district, for the construction of roads. (Article 627.) "Upon the petition of 50 resident property taxpaying voters of any defined district of any county, it is the duty of the commissioners' court to order an election in the district, as described in the petition to determine whether its bonds shall be issued for such road purposes, and whether a tax shall be levied upon the property of the district for their payment. (Article 628.)

Sections 631, 634, and 637, further provide, "If two-thirds of the

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1. *Browning et al. vs. Hooper et al.*, U. S. 46 Sup. Ct. 141.

2. 3 Fed. (2nd) 160.

votes cast are in favor of the proposition, the commissioners' court is required to issue and sell the bonds." (Article 631.) "But before they are put on the market, the court is required to levy a tax sufficient to pay the debt as it matures." (Article 634.) "For the purposes of the act, any district accepting its provisions by such vote is thereby created a body corporate which may sue and be sued." (Article 637.)

The complainants' land aggregated about 25,000 acres, all in the extreme northeast portion of Archer County. Their location with respect to the roads sought to be improved was such that no benefit and a possible detriment would result from the proposed expenditures.

In January, 1924, a petition containing 74 names was presented to the county commissioners, and requested an election pursuant to the provisions of the statute. The election was duly held and a majority vote cast in favor of the bond issue. A large part of the favorable votes came from Archer City, about the center of the county, where the roads in question converge. Practically all of the votes in the complainants' section of the county were unfavorable to the issue.

The road district which proposed to issue the bonds embraced approximately the north half of Archer County. For the purposes of electing county commissioners, the county was divided into four precincts, the road district thus including the two precincts of the northern half of the county. Although in existence some time, it will here be noted that these precincts were unincorporated; were not established by the legislature, but by the county board solely for the purpose of electing commissioners—one from each precinct. The precincts had no connection whatever with taxation, and had received no legislative sanction or recognition in any connection.

Under Article 637 (d.) of the Texas statutes, a legal inclusion of the complainants' land in the proposed district, would prevent creating a further district for the improvement of roads within the time for maturity of all the presently proposed issue of bonds; in this case 30 years.

Following the presentation of the petition, the commissioners' court (one county judge and four commissioners) by order, described the district's boundaries; determined that the proceeds from the sale of bonds, if voted, should be expended for the roads in question; declared the district a body corporate; then ordered the election, which resulted in practically a 3 to 1 vote in favor of the issue.

The District Court held, in effect, that the Texas statutes and proceedings thereunder provided the essentials of due process and that

the issue of bonds and the levy of taxes were therefore valid.<sup>3</sup> This was reversed by the Supreme Court.<sup>4</sup> An abstract of the opinion follows.

### I.

Funds for the building of roads are obtainable by either general taxes or special assessments. *R. R. vs. Road District*.<sup>5</sup> The proceedings in question cannot be sustained as a general tax. An entirely different section of the State statutes empowered the levying of a general tax up to a stated maximum per \$100 valuation. Money so raised was not limited, as here, to any specific roads. The reason and purpose of the levy in question was special. "It is clear that the burdens here sought to be imposed on the appellants' lands are special assessments for local improvements," citing *Embree v. Road District*,<sup>6</sup> and *R. R. v. Decature*.<sup>7</sup>

### II.

The road district, the tax levy and amount were not in this instance fixed by the legislature. The act in question does not require a road district thereunder to conform to any political subdivision. Nothing therein governs the action or choice of those framing and signing the petition. The commissioners cannot modify nor deny it, but are bound by the petition, by the decisions in Texas under the Act. *Huggins v. Vaden*,<sup>8</sup> *Meurer v. Hooper*.<sup>9</sup> If the required vote is cast, the commissioners must levy on the property within the district sufficient to provide the required amount. As to what took place in the instant case, it is enough to say that the Texas courts had held that a mere political subdivision of a county, defined by a county board, as here, is not a "defined district" within the meaning of the Act. The Legislature had not defined it. It is not a body corporate.

Clearly the amount of the bonds to be issued, and the property to be taxed—and by these the burden is determined—were in no way defined by the legislature. The difficulty is not that the legislature lacked this power (*Valley Farms v. Westchester*<sup>10</sup>), but that it was not here exercised by the Legislature. The idea had its origin in the minds of the private citizens, the petitioners; they present the scheme to the county board, and under the statutes the latter cannot exercise discretion but must proceed. "The requirement that the burden shall be so spread is not a legislative assessment."

3. 3 Fed. (2nd) 160.

4. U. S. 46 Sup. Ct. 141.

5. 266 U. S. 187.

6. 240 U. S. 242.

7. 174 U. S. 190.

8. 253 S. W. 877 (Tex. Civ. App.).

9. 271 S. W. 172.

10. 261 U. S. 155.

## III.

A tax burden may be determined by the Legislature as to the local improvement territory, or a municipality having legislative power over the property may apportion, and property owners cannot, of constitutional right, be heard to object. (Valley Farms Case, *supra*; Hancock v. Muskogee;<sup>11</sup> Withnell v. Construction Co.;<sup>12</sup> Wight v. Police Jury,<sup>13</sup> cited.) But such is not the present case. When we find no legislative determination as to the burden, due process requires notice and opportunity for hearing on the question of the benefit to the property owners. Complainants were denied all opportunity to be heard. There was no means, no tribunal, empowered to hear them and exercise discretion as to the benefits derived. The Act was thus declared to violate the due process of law requirement of the Fourteenth Amendment. (Embree v. Road District, *supra*, cited.)

The decision and the grounds for it, as set forth in Mr. Justice Butler's opinion, are of course unquestionable. The court, however, seems to have almost ignored several points touched on in the briefs of counsel, especially on the motion for a rehearing. Some of these may be of interest in future litigation, particularly points relating to the essential differences between general property taxes and special assessments.

The only Missouri case cited in the opinion of the court is that of Withnell v. Construction Company,<sup>14</sup> *supra*. This case came before the court when officials of the City of St. Louis, acting under the authority of the charter, made without notice, assessments for street improvements. Since the charter had been adopted by a vote of the people, under the authority of the State constitution, it was held that the assessment was made under the authority of an act which was legislative in character and that notice was not necessary. This is in perfect harmony with prevailing decisions and is authority for the proposition that where the legislative power has been vested in a subordinate agency by the organic law, the assessments of such agency do not require notice to the property owner to render them valid.

FORREST M. HEMKER, '27.

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11. 250 U. S. 454.

12. 249 U. S. 63.

13. 264 Fed. 705.

14. 249 U. S. 63.