

1963

Municipal Borrowing - Pennsylvania Constitution

Follow this and additional works at: <https://dsc.duq.edu/dlr>



Part of the [Law Commons](#)

Recommended Citation

Municipal Borrowing - Pennsylvania Constitution, 1 Duq. L. Rev. 265 (1963).

Available at: <https://dsc.duq.edu/dlr/vol1/iss1/13>

This Recent Decision is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Duquesne Law Review by an authorized editor of Duquesne Scholarship Collection.

conviction and confinement.³⁰ The question of whether this holding was based on an underlying, extraordinary substantive limitation on the state's power to define crime is a problem requiring further clarification by the court. In any event it is clear that there is more underlying this decision than traditional "cruel and unusual punishment." Justice Harlan and Justice White both indicate this expressly, and the extraordinary extension of the "cruel and unusual" doctrine to apply to the instant fact situation demands an exacting dissection of its foundation and a careful prognosis of future effect. The traditional overt acts of use, possession, sale and purchase of narcotics, despite detection and proof difficulties, remain the only proper criminal fields of battle upon which the states may assault the narcotic problem.*

MUNICIPAL BORROWING — Pennsylvania Constitution — Legislative definition of assessed valuation to mean market value declared unconstitutional.

Breslow v. Baldwin Township School District, 408 Pa. 121, 182 A.2d 501 (1962)

On January 10, 1962, the Board of Directors of Baldwin Township School District, without the consent of the electorate, adopted a resolution authorizing the issue and sale of \$2,500,000 worth of general obligation bonds as permitted by Section 6203 of the Municipal Bor-

30. The District of Columbia, D. C. CODE ANN. 33-416a, provides a criminal punishment for an addict who is a vagrant. If there is sufficient evidence and power to convict the defendant for vagrancy, there would be no apparent need for the "vagrancy and addiction" statute. If the evidence would be insufficient to convict the addict of vagrancy, this case would apparently bar any conviction for vagrancy plus addiction. Oklahoma, OKLA. STAT. ANN. 63.470.11-12, provides a criminal conviction for any person who has so lost control as to abuse the use of a drug: Conviction here would be proper, according to this decision, only if it was the abuse of use of a drug which was punished, and not the status itself—loss of control— which was criminal.

* *EDITOR'S NOTE*: A petition for rehearing made by the State of California was denied by the Court in an opinion handed down November 13, 1962, reported at 83 S. Ct. 202. The state sought to have the Court vacate as a moot question the judgment reversing Robinson's conviction, on the ground that the defendant had died on August 5, 1961, some 10 days prior to the filing of his jurisdictional statement. The ruling decision, discussed above, was handed down on June 25, 1962, the Court having no notice of the defendant's demise. Nevertheless, the petition for rehearing was denied, Justice Clark, Justice Harlan, and Justice Stewart dissenting.

rowing Law.¹ Plaintiffs, residents and taxpayers of Baldwin Township School District, brought an action to enjoin the School District from selling the proposed bond issue on the grounds that the amendment to the Municipal Borrowing Law allowing a bond issue of this amount was unconstitutional. The Supreme Court of Pennsylvania held the amendatory act unconstitutional.

The Municipal Borrowing Law limits the debt that a school district may incur to seven per cent of the assessed valuation.² The law permits school districts to borrow up to two per cent of this assessed valuation, without the assent of the electors.³ Prior to 1961 "assessed valuation" had been defined as that value set on the property by the assessing authorities.⁴ In that year, the Pennsylvania Legislature amended the Municipal Borrowing Law by changing the definition of "assessed valuation" as used therein. The new definition provided:

'Assessed Valuation,' the market valuation of all property at such rates and prices for which the same would separately bona fide sell taxable in the municipality for the purposes

-
1. Act of June 25, 1941, P.L. 159, PA. STAT. ANN. tit. 53 § 6203.

(a) Any municipality may incur debt or increase its debt by the issue of general obligation bonds by vote of the corporate authorities thereof without the assent of the electors to an amount in the aggregate not exceeding two per centum of the assessed valuation.

Section 6102 defines the word municipality as used in the Municipal Borrowing Law as follows:

(a) 'Municipality', a county, city, borough, incorporated town, township, school district and a county institution district. The word does not include a city of the first class, a county of the first class or a city institution district.

2. Act of February 28, 1961, P.L. 59, PA. STAT. ANN. tit. 53 § 6201. Whenever the net debt of any municipality shall be equal to ten per centum, in the case of municipalities authorized by the provisions of section fifteen, article nine of the Constitution to incur debt to said amount, and seven per centum, in the case of all other municipalities . . . of the assessed valuation, it shall be unlawful to increase the same by borrowing money . . . and any such increase shall be void, and any general obligation bonds issued to evidence such increase of debt shall be of no binding force upon such municipality.
3. PA. STAT. ANN. tit. 53 § 6203 *supra* note 1.
4. Act of June 29, 1951, P.L. 949, PA. STAT. ANN. tit. 53 § 6102.
 (h) 'Assessed valuation' the assessed valuation of all property taxable in the municipality for the purposes of the municipality, as last determined by the board, bureau or persons charged by law with the duty of determining the valuation of such property for tax purposes.

of the municipality, as last determined by the board, bureau or persons charged by law with the duty of determining the valuation of such property for tax purposes, . . . does not fix the market valuation of property, such market valuation shall be the market valuation fixed and certified by the State Tax Equalization Board.⁵

The value of the taxable property in Baldwin Township School District has been fixed by the assessing authorities at \$93,243,741. Two per cent of this amount is \$1,864,874. The market value of the taxable property in the School District was fixed and certified by the State Tax Equalization Board⁶ at \$168,572,600. Two per cent of this amount is \$3,371,452. Thus, the proposed bond issue was within the limitation of two per cent of assessed valuation on the basis of market value, but above the limitation of two per cent of assessed valuation as fixed by the assessing authorities.

The plaintiffs argued that "assessed valuation" as used in the Pennsylvania Constitution means the value at which property is actually assessed for tax purposes, and not the market value, and thus the Amendatory Act⁷ is unconstitutional since it increased the borrowing capacity of the defendant School District beyond the limit set by the Constitution.

The basic issue in the case was the meaning of the words "assessed valuation" as used in Article IX, Section 8 of the Pennsylvania Constitution.⁸ The Supreme Court of Pennsylvania interpreted these words to mean the value at which property is actually assessed for tax purposes.

5. Act of July 28, 1961, P.L. 917 §1 amended section 6102 of the Municipal Borrowing Law, *supra* note 4.

6. The State Tax Equalization Board was created by the Pennsylvania Legislature in 1947. See PA. STAT. ANN. tit. 72 § 4656. It is an independent administrative board created for the purpose of providing for equalization of assessed valuations of real property in Pennsylvania for use in determining the amount and allocation of the State subsidies to school districts. See *Newport Twp. School Dist. v. State Tax Equalization Board*, 366 Pa. 603, 79 A.2d 641 (1951).

7. *Supra* note 5.

8. PA. CONST. Art. IX § 8 provides:

The debt of any county, city, borough, township, school district, or other municipality or incorporated district, except as provided herein, and in section fifteen of this article, shall never exceed seven (7) per centum upon the assessed value of the taxable property therein, nor shall any such county, municipality or district incur any debt, or increase its indebtedness to an amount exceeding two (2) per centum upon such assessed valuation of property, without the consent of the electors thereof at a public election in such manner as shall be provided by law.

In arriving at this conclusion, the Court emphasized the meaning given the words "assessed value" by the people of Pennsylvania. "When the words are plain, they must be given their common and popular meaning."⁹ The people of Pennsylvania understand the words "assessed value" to mean the value at which property is actually assessed for tax purposes, and this is the proper meaning of the words. The Court also noted that the Uniformity Clause of the Pennsylvania Constitution requires all property to be uniformly assessed.¹⁰ The Supreme Court also stressed the interpretation given the words "assessed value" by Courts¹¹ and text book writers,¹² and stated that both have interpreted these words to mean the value at which property is assessed for tax purposes rather than market value. Finally, it concluded that defendant's interpretation of the words "assessed value" would create a double standard of assessment, one for tax purposes, and another for borrowing purposes, and that this was unreasonable as each is based upon and limited by the assessed value of the taxable property as set by the Constitution.¹³

Notwithstanding these reasons, the Supreme Court of Pennsylvania in declaring the Amendatory Act unconstitutional appeared to overlook the crucial argument presented by the defendant. The Court, while pointing out that a Legislative Act is presumed to be constitutional,¹⁴ actually gave little weight to this presumption. The defendant maintained that the Amendatory Act made no change in the law as it existed at the framing and adoption of the Pennsylvania Constitution. At the time of the adoption of the Constitution in 1874, the Act of May 15, 1841¹⁵ regulated the method to be used by assessors when assessing property for tax purposes. Section 4 of that Act provided in part:

. . . it shall be the duty of the several assessors and assistant assessors, to assess, rate, and value all objects of taxation, whether for state, county, city, district, ward, township, or borough purposes according to the actual value thereof, and at such rates and prices, for which the same would separately bona fide sell, . . .

9. *Breslow v. Baldwin Twp. School Dist.*, 408 Pa. 125, 126, 182 A.2d 504 (1962). (This is the instant case.)

10. *Id.* at 126, 182 A.2d at 504.

11. *Ibid.*

12. *Id.* at 126-27, 182 A.2d at 504.

13. *Id.* at 127, 182 A.2d at 505.

14. *Id.* at 125, 182 A.2d at 504.

15. Act of May 15, 1841, P.L. 393 § 4.

The Act of July 27, 1842,¹⁶ also in effect at that time, set forth the assessor's oath. This oath specified that in assessing property, the assessors must:

. . . assess and value every separate lot . . . at the rate or price which you shall, after due examination and consideration, believe the same would sell for, if sold singly and separately at a bona fide sale, after full public notice; . . .

The term "actual value" as used in these Acts means "market value."¹⁷

Thus, at the time of the adoption of the Pennsylvania Constitution, assessors were required by law to assess property at market value. This was the law, and this is still the law in Pennsylvania today.¹⁸ The Supreme Court of Pennsylvania has not been blind to these facts in the past.¹⁹ In fact, the Supreme Court has even stated that:

. . . if the question could be squarely raised as to the proper value to be placed upon real estate in any district, or in all

16. Act of July 27, 1842, P.L. 441 § 9.

17. *Hudson Coal Company's Appeal*, 327 Pa. 247, 193 Atl. 8 (1937); *Vollmer v. Philadelphia*, 350 Pa. 223, 38 A.2d 266 (1944); *Park Drive Manor Tax Assessment Case*, 380 Pa. 134, 110 A.2d 392 (1955).

18. Act of May 22, 1933, P.L. 853, PA. STAT. ANN. tit. 72 § 5020-402. This section provides in part:

It shall be the duty of the several elected and appointed assessors, . . . to assess, rate, and value all objects of taxation, . . . according to the actual value thereof, and at such rates and prices for which the same would separately bona fide sell.

The Oath of Assessors, Act of May 22, 1933, P.L. 853, PA. STAT. ANN. tit. 72 § 5020-302, provides in part:

You do (swear or affirm) . . . that you will justly and honestly, to the best of your judgement, assess and value every separate lot . . . at the rate or price which you shall, after due examination and consideration, believe the same would sell for if sold singly and separately at a bona fide sale.

19. *Philadelphia and Reading Coal and Iron Co. v. North Cumberland County Comm'rs.*, 229 Pa. 460, 466, 79 Atl. 109 (1911). In this case the Court stated:

Third that assessors and all other taxing authorities are required to assess, rate and value every subject of taxation for local purposes according to the actual value thereof, and at such rates and prices as the same would bring at a bona fide sale after due notice. This is the law. It is so provided in the acts of 1841 and 1842 under the authority of which the valuation and assessment of lands are made These statutes have thus declared the rule for the valuation of real estate and the courts as well as all other authorities having to do with the enforcement of the law are bound and limited by it.

districts, the courts would necessarily hold that actual selling value was the proper standard for fixing assessable value.²⁰

In spite of the law in this area, assessors, at an early date, took it upon themselves to ignore it. They have consistently fixed the value of property for tax purposes at a level below market value. This practice was already established when the Pennsylvania Constitution was framed. The delegates to the Constitutional Convention were aware of this practice and they were also aware of the law.²¹ The Courts of Pennsylvania, while recognizing that the law required assessments to be made at market value, validated this practice of assessing at less than market value, because the Uniformity Clause of the Pennsylvania Constitution²² prevented this practice from becoming harmful. This clause requires all taxes to be uniform within the territorial limits of the authority levying the tax. Thus, if your property was assessed at 80% of market value for tax purposes, and the property around you had been assessed at 40% of market value, your assessment would be lowered to 40% of market value to keep your taxes at the same level as those paid by the surrounding property owners. The Courts considered the principle of uniformity more important than the standard of valuation.²³

The Supreme Court, in this decision, appears not to have considered these points. In dismissing the defendant's argument, the Court said:

20. *Delaware, Lackawanna & W. R.R. Tax Assessment (No. 1)*, 224 Pa. 240, 247, 73 Atl. 429 (1909). Here the Court states:

. . . There can be no doubt of the legislative intention which finds expression in the act of 1842 and the earlier statutes, that actual selling value shall be the standard to determine assessable value, and if the question could be squarely raised as to the proper value to be placed upon real estate in any district, or in all districts, the courts would necessarily hold that actual selling value was the proper standard for fixing assessable value. However, the Constitution and the Act of 1889 have emphasized the principle of uniformity as more important than the standard of valuation.

21. *Debates of the Convention to amend the Constitution of Pennsylvania (1873)* Vol. 3 at 286, Mr. White, a delegate to the Convention said:

I do not believe anywhere in the State of Pennsylvania property is assessed, as a regular rule, up to its cash value. Although the law requires that, everybody knows that in the State of Pennsylvania that has not been our custom for many years.

22. PA. CONST. Art. IX § 1.

All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, . . .

23. *Delaware, Lackawanna & W. R.R. Tax Assessments (No. 1)*, *supra* note 20.

More ingenious is defendant's contention that the law has always required assessments for taxation purposes to be made at market value, and even though assessments have not been normally so made, they should have been so made and consequently the Legislature is not constitutionally prohibited from using market value as the proper yardstick for determining debt limitations. For reasons above mentioned, this is unsound. If this were sound, all that any Legislature would have to do, in order to circumvent the Constitution is to pass an Act defining or redefining any term or any language used in the Constitution to suit its purpose or objective.²⁴

This conclusion does not follow from an acceptance of defendant's argument. The Legislature could not define any term in the Constitution to suit its own purposes, but it should be able to give a term the same definition that it had when the Constitution was adopted. Furthermore, the "reasons above mentioned" to which the Court alludes do not render defendant's argument unsound. These reasons are concerned with what assessors have been doing; they do not focus on the real issue—what assessors should have been doing in the light of the statutes.

The fact that the people of Pennsylvania understand "assessed value" to mean the value at which their property is assessed for tax purposes only indicates that the people are familiar with the practice of assessors. It does not prove that this practice is correct or that it should be utilized as a basis for delimitating the borrowing power of a municipality. The Uniformity Clause of the Pennsylvania Constitution requires that all taxes must be uniform on the same class of subjects within the territorial limits of the authority levying the tax. It is difficult to perceive how this requirement can be used as evidence of the meaning of the words "assessed valuation" in a section of the Constitution dealing with the borrowing power of municipalities. The Uniformity Clause applies only to taxation not to borrowing. The two are distinct and separate powers.

A court, in deciding which of two preceding assessments, both made at less than market value, is the "last preceding assessed valuation" for the purpose of debt limitation, is not concerned with the constitutional meaning of assessed valuation. It is merely deciding which of two improper assessments will be used.

The Pennsylvania Supreme Court, in this case, relies on text authorities by stating:

24. *Breslow v. Baldwin Twp. School Dist.*, *supra* note 9, at 127, 182 A. 2d 505.

This has likewise been the meaning given to the words 'assessed value' by the leading text authorities. In speaking of debt limitation, 15 McQuillin, *Municipal Corporations* (3rd. ed. 1949) states (page 311): 'The standard is generally the assessed value of the property for taxation rather than the actual value, where the two are different; . . .'²⁵

It is interesting to note that the remainder of this quotation is also significant:

. . .; but where the Constitution or statute uses the term 'actual value' such value governs rather than the taxable value.²⁶

The Supreme Court's dismay at the prospect of having a double standard of assessment, one test for borrowing and another for taxation, is unfounded. The Legislature has simply attempted to raise the borrowing capacity of municipalities to its proper level without compelling assessors to assess at market value. Actually, there is no need for assessed value for taxation and assessed value for borrowing to be correlated.

This decision compels us to conclude that the framers of the Constitution, knowing that the law required assessors to assess at market value, decided to sanction an illegal practice, and make this practice the guide for determining the borrowing capacity of municipalities throughout the State. This is a bizarre conclusion and one that does not speak highly of the framers of our Constitution. Surely, they did not intend to give such power to assessors at the expense of the Legislature.

PATENTS — Patentability of Combinations — Unobvious Subject Matter Under 35 U.S.C. § 103.—Unobvious results are evidence of patentability in a combination but unexpected results which are inherent from an obvious structure do not satisfy this requirement.

In Re Alford, 300 F.2d 929, 133 U.S.P.Q. 281 (C.C.P.A. 1962); certiorari denied, 83 S. Ct. 255.

Applicant claimed a disc-type coaxial cable choke couple for connecting two coaxial cable sections to transmit electrical energy therebetween at high frequencies with slight energy leakage. The Patent

25. *Id.* at 126, 127, 182 A.2d 504.

26. 15 MCQUILLIN, *MUNICIPAL CORPORATIONS* (3d ed. 1949), at 311.