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People v. City of Long Beach

Roger J. Traynor

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[L. A. No. 25119. In Bank. Apr. 22, 1959.]

**THE PEOPLE et al., Appellants, v. CITY OF LONG
BEACH, Respondent.**

[1] **Municipal Corporations—Property—Tidelands—Grant to City by State.**—The specific purpose set forth in the 1935 statute amending the trust terms of a grant to the city of Long Beach of the state's interest in tide and submerged lands within the city's corporate limits to promote "the moral and social welfare of seamen, naval officers and enlisted men, and other persons engaged in and about the harbor and commerce, fishery and navigation" (Stats. 1935, ch. 158, p. 794), is not only consistent with but in direct aid of the basic trust purpose set out in the original grant to establish and maintain a harbor and necessary or convenient related facilities for the "promotion and accommodation of commerce and navigation" (Stats. 1911, ch. 676, p. 1305). Personnel are as vital

[1] See Cal.Jur.2d, Municipal Corporations, § 456 et seq.

McK. Dig. References: [1, 2] Municipal Corporations, § 383; [3] State of California, § 33; [4, 5] Municipal Corporations, § 385.

to these activities as the ships and other facilities used therein, and no distinction can properly be drawn between providing dormitories and other facilities for maritime personnel and docks for ships, warehouses for goods, or convention, exhibition, and banquet halls for use by trade, shipping and commercial organizations.

- [2] **Id.—Property—Tidelands—Grant to City by State.**—Promotion “of the moral and social welfare of seamen, naval officers and enlisted men, and other persons engaged in and about the harbor and commerce, fishery, and navigation” (Stats. 1935, ch. 158, p. 794), such as by construction of a building on a tideland site to be leased to the Y.M.C.A., is of sufficient local concern to justify the expenditure of purely municipal funds therefor, but as purposes of a trust for commerce, navigation and fishery they are also for the benefit for all the people of the state, and accordingly trust income may properly be devoted thereto.
- [3] **State of California — Fiscal Matters — Limitations — Gift of Public Funds.**—Assuming that a grant in aid to a private organization is a “gift” to and “for the purpose and benefit of” such organization within the meaning of Const., art. IV, §§ 22 and 31, prohibiting such assistance to private institutions, even though the organization is thereby enabled to promote some public purpose, the performance of a bona fide contract by a public body is not the making of a gift, nor is it “for the purpose and benefit of” the private contractor within the meaning of such constitutional provision, since if it were, the state would be powerless to contract with any organization not expressly exempted from the constitutional limitations.
- [4] **Municipal Corporations—Property—Tidelands—Leases.**—Proposed construction of a building by the city of Long Beach on tidelands granted the city by the state for trust purposes and lease of the building to the Y.M.C.A. for 25 years for continued operation of the Armed Services Y.M.C.A. does not amount to a grant in fee or appropriation of money to a private organization where the Y.M.C.A. receives only the use of the building for 25 years on condition that it at all times carry out the trust purposes for the public benefit under the city’s supervision, its rights in the building terminating when it ceases to do so, where it can gain no monetary benefit from the lease in view of the fact that, other than the goodwill that it may engender for itself, the sole benefit it will derive is the ability to promote a public trust purpose that happens also to be its own, and where the public benefit that will result from its operation of the facility at its own expense is clearly sufficient consider-

[3] See Cal.Jur.2d, State of California, § 105; Am.Jur., Public Funds, § 61.

ation for its use of the building and such incidental nonmonetary benefits as it may receive.

- [5] **Id.—Property—Tidelands—Leases.**—A proposed lease of a building by the city of Long Beach, to be constructed by the city on tidelands granted the city by the state for trust purposes, is not objectionable as violating the civil service provisions of the city charter on the ground that those provisions require the city to execute the trust purposes itself by means of civil service personnel, since administration of the tidelands trust for the benefit of all the people of the state is not a municipal affair, the statutes creating the trust and regulating its administration expressly authorize leases to promote its purposes, and accordingly any conflicting limitations in the city charter are inapplicable.

APPEAL from a judgment of the Superior Court of Los Angeles County. A. Curtis Smith, Judge. **Affirmed.**

Proceeding by city to secure a declaration of its right to use trust funds to construct a building on tidelands to be leased to the Y.M.C.A. Judgment approving proposed expenditures and lease, affirmed.

Stanley Mosk and Edmund G. Brown, Attorneys General, Leonard M. Friedman, Assistant Attorney General, and F. G. Girard, Deputy Attorney General, for Appellants.

Theodore R. Gabrielson as *Amicus Curiae* on behalf of Appellants.

Walfred Jacobson, City Attorney, O'Melveny & Myers and Pierce Works for Respondent.

TRAYNOR, J.—In 1911, the State of California granted to the city of Long Beach the tidelands and submerged lands lying within the city's boundaries in trust for certain uses and purposes connected with the development of Long Beach Harbor. (Stats. 1911, ch. 676, p. 1304.) The original grant stated "That said lands shall be used by said city and by its successors, solely for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and said city, or its successors, shall not, at any

time, grant, convey, give or alien said lands, or any part thereof, to any individual, firm or corporation for any purpose whatsoever; *provided*, that said city, or its successors, may grant franchises thereon, for limited periods, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, for purposes consistent with the trusts upon which said lands are held by the State of California and with the requirements of commerce or navigation at said harbor. . . ." (Stats. 1911, ch. 676, p. 1305.) The terms of the original trust were amended by the Legislature in 1925 (Stats. 1925, ch. 102, pp. 235-236) and 1935. (Stats. 1935, ch. 158, pp. 793-795.)

Following the discovery of oil under the tidelands in 1937, it was determined in *City of Long Beach v. Marshall*, 11 Cal. 2d 609 [82 P.2d 362], that the city had the right to produce oil and gas from these lands, and in *City of Long Beach v. Morse*, 31 Cal.2d 254 [188 P.2d 17], that the oil and gas revenue could be used only for trust purposes. In 1951, the Legislature found that approximately 50 per cent of the oil and gas revenue was no longer needed for trust purposes and declared such part of the revenue free from the public trust for navigation, commerce, and fisheries. (Stats. 1951, ch. 915, pp. 2444-2445.) In *Mallon v. City of Long Beach*, 44 Cal.2d 199 [282 P.2d 481], it was determined that the state, not the city, was entitled to the revenue freed from the trust by its partial revocation.

Thereafter the state brought an action against the city to recover the funds to which it was entitled under the decision in the Mallon case. In 1956 the Legislature took note of this litigation and concluded that the public interest would best be served by its prompt settlement. Accordingly, it authorized a settlement dividing the oil and gas revenue between the state and the city, and provided that the latter's share should continue to be held in trust and expended for trust purposes. It set forth a nonexclusive list of trust purposes that were declared to be matters of state, as distinguished from local, interest and benefit, and it expressed its belief "that the Attorney General and said city should seek judicial determinations further defining said city's rights and duties in the premises." (Stats. 1st Ex. Sess. 1956, ch. 29.) Pursuant to this legislation a consent decree was entered settling the main points of dispute between the state and the city, but the trial court reserved jurisdiction to determine whether given proposed expenditures were or were not within the power of the city to

make as trustee in possession of its share of the oil and gas revenue.

Thereafter the city commenced the present proceedings to secure a declaration of its right to use trust funds to construct a building to be leased to the National Board of the Young Men's Christian Association. The trial court entered judgment approving the proposed expenditures and lease. The state appeals.

Since 1936 the Y.M.C.A. has been operating a facility known as the Armed Services Y.M.C.A. on tidelands leased from the city at a rental of \$1.00 per year. This facility was erected without cost to the city, and the lease was executed pursuant to the 1935 amendment to the trust terms, which provided "That nothing herein contained shall be so construed as to prevent . . . the leasing or use of such tidelands or submerged lands for limited periods for the construction, maintenance, and operation of nonprofit benevolent and charitable institutions organized and conducted for the promotion of the moral and social welfare of seamen, naval officers and enlisted men, and other persons engaged in and about the harbor and commerce, fishery, and navigation." (Stats. 1935, ch. 158, p. 794.) Owing to freeway construction, the relocation of the Navy Landing, and soil subsidence, the Armed Services Y.M.C.A. requires a new building at a new location if it is to continue adequately to serve its purposes. The city proposes to construct this building on a tideland site with tideland revenue at a cost of over \$900,000 and lease it for 25 years to the Y.M.C.A. for the continued operation of the Armed Services Y.M.C.A.

The proposed lease provides that the "Lessee shall use the demised premises, together with the building and facilities located thereon, solely and exclusively for the purposes of, and it shall devote its special knowledge and experience to, managing, operating, conducting and maintaining therein and thereon, without compensation for its services in so doing, a rest, recreation and entertainment center for the use and accommodation of, and for the benefit and for the promotion of the moral and social welfare of, members of the Armed Forces of the United States, merchant seamen and other persons engaged in and about the harbor and in commerce and navigation. . . ." It shall provide suitable dormitory and sanitary accommodations; adequate meal service; suitable entertainment; and "such additional services and facilities, including a social room, lounge, game room, lockers, showers, telephone booths,

the meaning of section 22, for if it were, the state would be powerless to contract with any organization not expressly exempted from the constitutional limitations.

[4] In the present case, the state contends that the carrying out of the city's plan must be regarded as a gift of the use of a valuable building for 25 years to the Y.M.C.A. to enable it to perform its private charitable purposes and that such a gift cannot be justified solely because a public purpose will also be served. The city contends that the benefits derived by the Y.M.C.A. are merely incidental to the public purpose and that the Y.M.C.A.'s performance of its obligations under the lease will constitute full and adequate consideration for its use of the building.

County of Los Angeles v. Southern Calif. Tel. Co., 32 Cal. 2d 378 [196 P.2d 773], compels the resolution of these conflicting contentions in favor of the city. In that case the court sustained the grant of a franchise to a public utility pursuant to Civil Code, section 536, and drew a distinction between such a grant and an absolute grant in fee or an appropriation of public money. "A franchise such as is authorized by section 536 is not an absolute grant in fee or an appropriation of money, but is merely a limited right to use the highways and only to the extent necessary for the furnishing of services to the public. Also, the privilege must be exercised 'in such manner and at such points as not to incommode the public use of the road or highway.' (Civ. Code, § 536.) It is obvious that the right acquired by the company is of less substance than the transfers involved in the cited cases which condemn appropriations of money and grants in fee.

"Moreover, the state is assured of a continuing benefit in return for the privilege granted under section 536, whereas this may not be true in transactions involving an outright appropriation or transfer in fee. The company must not only construct a telephone system but it must render service, and if it fails to do so the franchise terminates. Thus the state receives benefits during the life of the franchise, since in order to retain it the company must continue to serve the public. If and when the public benefit ceases and the franchise expires, the state is in as good a position as it was before the limited privilege was granted. The building of a public utility and consequent benefit to the people may not be a sufficient consideration to support a grant in fee, but it does not follow that the benefit received from the construction and continued operation of a telephone system is not an adequate consideration for

the use of the highways so long as the public service continues." (32 Cal.2d at 387-388.)

In the present case there is also no grant in fee or appropriation of money to a private organization. The Y.M.C.A. receives only the use of the building for 25 years on condition that at all times it carries out the trust purposes for the public benefit under the supervision of the city. When it ceases to do so its rights in the building terminate. Moreover, it can gain no monetary benefit from the lease. Thus, other than the goodwill that it may engender for itself, the sole benefit it will derive is the ability to promote a public trust purpose that happens also to be one of its own. Under these circumstances, the public benefit that will result from the Y.M.C.A.'s operation of the facility at its own expense is clearly sufficient consideration for the Y.M.C.A.'s use of the building and such incidental nonmonetary benefits as it may receive.

[5] Finally the state contends that the lease will violate the civil service provisions of the Long Beach city charter on the ground that those provisions require the city to execute the trust purposes itself by means of civil service personnel. There is no merit in this contention. The administration of the tidelands trust for the benefit of all of the people of the state is not a municipal affair, and the statutes creating the trust and regulating its administration expressly authorize leases to promote its purposes. Accordingly, any conflicting limitations in the city charter are inapplicable. (*Civic Center Assn. v. Railroad Com.*, 175 Cal. 441, 445 [166 P. 351]; *Pasadena v. Charleville*, 215 Cal. 384, 388 [10 P.2d 745].)

The judgment is affirmed.

Gibson, C. J., Shenk, J., Schauer, J., Spence, J., McComb, J., and Peters, J., concurred.