South Carolina Law Review

Volume 10 | Issue 1 Article 6

Fall 1957

Constitutional Law

Huger Sinkler
Sinkler, Gibbs & Simons (Charleston, SC)

CONSTITUTIONAL LAW

HUGER SINKLER*

Jurisdiction of Courts in Controversies Ecclesiastic

The case of *Bramlett v. Young*[1] might well be one of unusual significance for presumably the schism which divides the country over the question of segregation might well extend itself into the churches. Actually, it seems that the controversy here arose at least in part because of the fears of the majority of the congregation of the McCarter Presbyterian Church that the Presbyterian Church in the United States (Southern) might merge with the Northern branch of that denomination.

From the facts it appears clear that the McCarter Presbyterian Church was a member of the Presbyterian Church in the United States and of the Enoree Presbytery of that Church, and thus subject to the government and control of the Enoree Presbytery and the Synod of South Carolina.

Being without a regular pastor, the congregation of the McCarter Church had employed, on a temporary basis, a minister who was an instructor at Bob Jones University. This temporary arrangement had been approved by the Enoree Presbytery but finally, after a considerable period of time had elapsed, the Presbytery notified the McCarter Church that the arrangement should be discontinued. As a result of this action, and by vote of 38 to 2 (out of a total membership of 67) the McCarter Church proposed to withdraw from Enoree Presbytery and set itself up as McCarter Independent Presbyterian Church.

The action here was commenced by a loyal minority of 11 members who sought to be declared the real McCarter Presbyterian Church and to be entitled to the possession and control of the church property.

The Court upheld the claim, noting that the question was basically one of ecclesiastic jurisdiction and not one for the

*B.A., College of Charleston; Legal Education, University of South Carolina, School of Law; member City Council of Charleston, 1939-43; member State Legislature, 1932-36 and 1945-46; member of Charleston County, South Carolina, and American Bar Associations. Member of firm of Sinkler, Gibbs & Simons, Charleston, South Carolina.

1. 229 S. C. 519, 93 S. E. 2d 873 (1956).

civil courts to assert jurisdiction over. It had as a valid precedent the almost identical situation which had arisen over a hundred years ago on Johns Island in Charleston County, where the majority of a congregation of a Presbyterian church sought to secede from the Charleston Union Presbytery and to take over for themselves the church property in order that they might conduct a so-called Independent Presbyterian Church.

In addition to the Johns Island case the Court referred to much authority elsewhere supporting its views.

As a lawyer, one cannot but agree with this holding of the Court. None the less, it is interesting to speculate upon the consequences that may result from the decision.

Governor's Power to Suspend Public Officials

The case of *Thompson v. Seigler*[2] involves the Governor's right to suspend a public officer. In pursuance of a 1956 enactment which provided that any State or County officer indicted in any court for any crime might, in the discretion of the Governor, be suspended by the Governor, Governor George Bell Timmerman, Jr. issued an executive order suspending Sheriff Thompson of Colleton County from office following his indictment by the Grand Jury of the U. S. District Court for the Eastern District of South Carolina. Conformable to the 1956 statute, the Governor appointed Seigler in the stead of Thompson, to act for Thompson until he might be acquitted.

Thompson first sought a restraining order against Seigler. Seigler, for his part, sought the issuance of a Rule to Show Cause requiring Thompson to deliver the office to him. The Supreme Court passed an Order assuming original jurisdiction in the case and promptly in the public interest disposed of the questions which had thus arisen.

Thompson contended that since the office of Sheriff was created by the State Constitution the Governor had no power to suspend him from office unless there was a method of removal or suspension provided in the Constitution itself. The Court did not accept this contention and held that the language of Section 23 of Article III permitted a mode of removal or suspension by legislative enactment. This Constitutional provision reads as follows: "Officers shall be re-

2. 230 S. C. 115, 94 S. E. 2d 231 (1956).

moved for incapacity, misconduct or neglect of duty, in such manner as may be provided by law when no mode of trial or removal is provided in this Constitution." It must be noted that the quoted language from the Constitution employs the word "removed" and omits reference to "suspension." The Court held, however, that the right to suspend preliminary to removal was a step incident to removal and was implied in the power to remove.

The Court made short shrift of Thompson's contention that the Act deprived him of his office without process of law, noting that the right to hold public office is not a vested property right which is protected by the State and Constitutional provisions prohibiting the taking of property without due process of law.

Justice Oxner noted a dissent in this case based upon the ground that the delegation to the Governor of the power to suspend in his discretion was too broad and sweeping to be sustained. While perhaps an argument, entirely legalistic in nature, might be advanced to sustain the dissenting view, the salutary effect of the decision of the majority is to be applauded. The Constitutional nature of the office of Governor of necessity implies that the executive must have broad discretion in the administration of the laws. The situation here seems properly distinguishable from one where the legislative enactment delegates powers to administer an Act without defining specific standards for the guidance of an administrative board or commission to whom the enforcement of the law is delegated.

State's Power to Regulate the Practice of Medicine

The case of *Dantzler v. Callison*[3] involves the validity of an Act of the General Assembly seeking to outlaw the practice of Naturopathy.

The suit was instituted by members of that profession, who alleged that they were and had been regularly licensed Naturopathic practitioners for many years, and that their practice was their means of livelihood for themselves and their families. They alleged that they had invested much time and great sums of money in perfecting themselves for the practice of their profession, and contended that the provisions of the Act which curtailed their practice deprived them of

3. 230 S. C. 75, 94 S. E. 2d 177 (1957).

basic rights under the due process clauses of the State and Federal Constitutions.

The statute, obviously designed to protect the ignorant and unwary from persons not regarded as competent to practice preventive and curative medicine, approached the problem in somewhat oblique fashion. It first prohibited persons previously licensed to practice Naturopathy from continuing to practice, but provided that one authorized to practice Naturopathy who had certain qualifications might, upon successfully passing the examination therein provided for, become licensed to practice medicine.

Presumably the litigants would have difficulty in qualifying under the new standards and for that reason probably in all good conscience declared that the effect of the statute would be to put them out of business.

The basic question before the Court was the power of the State to regulate the practice of medicine, notwithstanding that in so doing it might deprive certain individuals then engaged in the practice of medicine from continuing to practice. The Court concluded that the problem was one peculiarly for the Legislature and held that in the exercise of its powers it might impose the additional qualifications set forth in the Act. It observed that the Act here dealt not with the profession of medicine but with those who should be permitted to practice medicine, and cited authority from many states sustaining as a valid exercise of police power the imposition of additional requirements upon those engaged in the practice of any profession.

There can be no quarrel with the result here. Obviously one has no absolute right to practice any profession. In all instances it is a right granted upon condition that the practitioner meet qualifications then or thereafter imposed.

In this case the Court aptly observed that the area in the field of Naturopathic practice had increased much more rapidly than the required educational qualifications of those who proposed to practice.

Notwithstanding the decision, the writer is of the view that the "root doctors" of certain of our Sea Islands along the coast will long continue to have an abundant calling.

Power of Grand Jury to Incur Indebtedness

To understand the result arrived at by the Court in the case of *Gregory v. Rollins*[4] one has to reach back into the Reconstruction era. In this case, and upon the basis of earlier decisions, the Court in effect denied the power of a Grand Jury of Lancaster County to conduct an audit of the public records of that County. At the instance of the Lancaster County Grand Jury, evidenced by a unanimous vote of that body, there was presented to the Judge of the Sixth Judicial Circuit a petition seeking an Order empowering the Grand Jury to audit the fiscal affairs of Lancaster County. The action taken was in accordance with the provision of the Code (Section 38-409) which declares that Grand Juries may, whenever in their judgment it becomes necessary, employ one or more expert accountants to aid them to examine and investigate the offices, books, papers, vouchers and accounts of any public officer of that County, and to fix the amount of compensation therefor upon the approval of the court given before such accountant is employed.

An ex parte Order of the court was issued approving an expenditure of $4,000 for such purpose. Thereupon the audit was made and a bill for some $3,570 presented for the services of the auditing firm. The bill was duly approved by ex parte Order and thereafter a copy of the Order approving the bill was forwarded to the County Board of Directors. At this stage the County Board of Directors sought to have the Order directing them to effect payment to the accountants vacated. This was denied. Thereafter, this proceeding, being one in mandamus, was commenced to require the issuance of warrants to pay the claim.

Issue was raised by the County Board upon the ground that the County Supply Bill for the then fiscal year allocated all monies appropriated thereunder and failed to provide for the payment of this particular claim.

On appeal to the Supreme Court, after the court below had directed payment of the claim, it was held that since appropriation of public funds is a legislative function it was beyond the power of the Grand Jury to bind the County, notwithstanding the positive language of the statute which authorized the Grand Jury to employ accountants.

4. 230 S. C. 269, 95 S. E. 2d 487 (1956).

In reaching this conclusion the Court referred to earlier decisions which do uphold their position.

The result reached is a curious one. A general statute exists defining the functions of the Grand Jury. Included among their functions is that of investigating the fiscal conditions of the County wherein they function. Obviously something as complicated as an audit cannot be accomplished without the help of experts. Consequently, if there is no means provided for the payment of such experts, the provisions of the statute authorizing the investigations are rendered nugatory.

It seems to the writer that a different result should have been reached. Of course, it must be recognized that when the Constitution of 1895 was written the framers of that document had before them a record of waste and extravagance from the Carpetbagger era, brought about in large measure from corrupt county governments. Furthermore, at the time of its adoption there were many counties of the State which had not then shaken free from the misrule of Negro and Carpetbag government. As a consequence, framers of the Constitution of 1895 envisaged county control from the state capitol where by that time a White majority had been assured. Only through that means could the White majority of the State protect the less fortunate in counties where the threat of Carpetbag rule continued. It was with this situation principally in mind that in drafting the present Constitution no provision was made for local government at the county level. For many years a single Bill was enacted making appropriation for all of the counties. It was well after the turn of the century before the practice of County Supply Acts sprang up.

What the Court seems to have overlooked in this case is that the Legislature, acting through the general statute, had authorized the appropriation when it empowered Grand Juries to conduct audits. The Legislature, not the Grand Jury, effected the appropriation.

The Court also attempted to justify its result on the ground that the Lancaster County Supply Act for the particular fiscal year made provision for an audit upon the approval of the Senator and one of the members of the county legislative delegation from Lancaster County. Does this reference indicate that the Court has forgotten its decision of some 20 years

ago in *Bramlette v. Stringer*[5] wherein it declared that a county delegation might not exercise executive functions? Clearly, the provisions in the Lancaster County Supply Bill run counter to the holding in the *Bramlette* case. Moreover, they would seem invalid as a special law where a general law existed.

Submission of Amendments

In the case of *Tipton v. Smith*[6] the Supreme Court held that a proposed amendment to Section 5 of Article 10, which had been voted upon favorably by a majority of those voting upon the question in the general election held in November of 1954 was not properly adopted for the reason that the question posed did not fairly state the proposition upon which the electorate was voting. It appears that in 1954 the General Assembly proposed an amendment to Section 5 of Article 10 of the Constitution, which was intended to relieve Greenville Memorial Auditorium District in Greenville County from the limitation of the fifteen percent overlapping debt limitation in Section 5 of Article 10. The proposing resolution had directed that the question be submitted in specific form. Through error the question submitted did not follow the form set forth in the proposing resolution but merely incorporated as the question, the title of the proposing resolution. The Court stated that the result of this was obvious misapprehension and uncertainty on the part of the electorate and, as a consequence, held the election a nullity. It stated as the law that it was necessary for the ballot to describe the amendment plainly, fairly, and in such words that the average voter might understand its character and purpose. It noted that this might be done by printing the title of the proposing resolution if the title fairly set forth the purpose of the amendment. In this particular case it found that the title did not fairly apprise the voters of the intent of the amendment and that as a consequence it was manifestly erroneous and misleading.

This case points up the necessity of the lawyer who seeks to determine whether a provision of the Constitution has been amended to examine not only the text of the amendment in the Code or in the statutes but the necessity for him to ex-

5. 186 S. C. 134, 195 S. E. 257 (1937).
6. 229 S. C. 471, 93 S. E. 2d 640 (1956).

amine the proceedings of the two Houses as well as the proceeding in the election at which the amendment itself was proposed. In this connection, the writer wishes to direct attention to the fact that his own study of state constitutional amendments has brought forth the conclusion that there are more than one amendment to the Constitution set forth in the Code which have not been properly adopted, and, therefore, would probably be rejected as valid amendments to the original text of the Constitution. Extreme caution is required in any study of a constitutional amendment, and there is no presumption in favor of the validity of the text which appears in the bound volume of the Code.

Short Statute of Limitations

In the case of *Morgan v. Feagin*[7] the Court's opinion upholds as valid a thirty-day statute of limitations relating to a contest involving a bond election in the School District of Berkeley County. In accordance with the provisions of an Act of the General Assembly, an election was held in the School District of Berkeley County to determine if bonds of that school district might be issued. The statute provided for publication in a newspaper published in Berkeley County, and also required publication in a newspaper published in the City of Charleston with circulation in Berkeley County. The notice was properly published in the Berkeley County paper but the provisions of the statute relating to publication in the Charleston paper were not complied with. The election resulted favorably, and acting in pursuance of the statute, the result was declared by resolution and a copy of the resolution filed in the office of the Clerk of Court. More than thirty days following the action by the Board in filing the results of the election in the office of the Clerk of Court for Berkeley County, the action here was instituted. In the action it was contended that the election was void because of the failure to observe the provisions of the statute relating to publication. The Court did not pass upon this question but simply held that since the action had been begun beyond the thirty day limitation provided in the Act, it could not be successfully maintained. Thus the Court upheld the validity of this short statute of limitations. The Court stated that the practical necessity of a statute of this sort was obvious. It

7. 230 S. C. 315, 95 S. E. 2d 621 (1956).

observed that purchasers of bonds could hardly be found if the bonds were subject in their hands to attack for alleged illegality in the proceedings upon their issuance. It further noted that it was common knowledge that the sale of bonds is frequently time to take advantage of the market and that this might be hindered by long delays. The Court held that the Legislature was the primary judge as to whether the time allowed by a statute of limitations is reasonable, and that although the determination in the legislature was reviewable by the Courts, that the Courts would not inquire into the wisdom of the legislative decision in establishing the period of the legal bar unless the time allowed is manifestly so insufficient that the statute becomes a denial of justice. The action of the Supreme Court in this case seems entirely justified and its decision is both practical and sound. While it is the first decision of this Court on this specific point, it was to some extent predictable following the opinion of the Court in the case of *Hite v. Town of West Columbia*[8] which upheld a sixty-day statute of limitations involving a question of annexation of territory by a municipality. The decision is in accord with decisions of Courts of Last Resort elsewhere.

Limitation of Actions Arising From a Constitutional "Taking"

The provision of the South Carolina Constitution providing that private property may not be taken for public use without just compensation being first made therefor has received from our Court an extremely liberal interpretation. In its opinion in the case of *Webb v. Greenwood County*[9] the Court characterizes that interpretation as being "broad." Under the decisions of our Court there is no distinction between "taking" and "damaging" property. These decisions hold that the deprivation of the ordinary beneficial use and enjoyment of one's property is equivalent to the taking of it, and is as much a "taking" as though the property were actually appropriated.

In this case the Plaintiff sought damages from such a Constitutional taking by reason of the construction and operation of the so-called Buzzard's Roost Hydro-electric project operated by Greenwood County. The project was constructed

8. 220 S. C. 59, 66 S. E. 2d 427 (1951).
9. 229 S. C. 267, 92 S. E. 2d 688 (1956).

during the 1930's and was in operation in 1940 when he first complained of injuries to his pasture land by reason of the irregular flow of water resulting from its operation of the project, which periodically flooded his pasture lands.

In answer to a plea of the six-year statute, the Plaintiff asserted that since the taking of private property for public use without compensation was prohibited by Section 17 of Article I, no statute of limitations could be imposed by the Legislature which would cut into the constitutional right to compensation.

The Court did not agree with this contention, holding that the statute of limitations affected merely the remedy and not the right and therefore was operative against a consequential taking such as that involved in this case.

Not passed upon by the Court, was the Defendant's third contention that since the Saluda River was a navigable stream of the State of South Carolina the overflow within its banks is an exercise of the dominant servitude of the State and any injuries resulting to a lower riparian owner are *damnum absque injuria.*

Noting that the question had become academic by reason of its conformance of the non-suit on the ground that the six-year statute was applicable, the Court merely remarked that the rights of the individual and the sovereign power had been fully discussed in several South Carolina cases, including those of *Rice Hope Plantation v. South Carolina Public Service Authority*[10] and *Early v. South Carolina Public Service Authority.*[11]

The obvious lack of harmony between these last two decisions was the subject of critical comment in a review of the *Early* case in Vol. 9 of the Law Quarterly published last year. However, in this particular case it would seem that there had been an actual invasion of the lands of the Plaintiff, resulting from the operation of the hydro-electric project which clearly constituted a taking, within the language of the Constitutional provision.

10. 216 S. C. 500, 59 S. E. 2d 132 (1950).
11. 228 S. C. 392, 90 S. E. 2d 472 (1955).