

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

RICHARD IZZI and)
ROBERT B. SANFORD, JR.,)
individually and on behalf of)
all others similarly situated,)

Plaintiffs,)

JEFFERSON STATE COMMUNITY)
COLLEGE and BIRMINGHAM-)
JEFFERSON CIVIC CENTER)
AUTHORITY,)

Defendants.)

CIVIL ACTION NO: CV 00-1768 TAW

FILED IN OPEN COURT ON THIS THE
7th DAY OF Sept., 2000

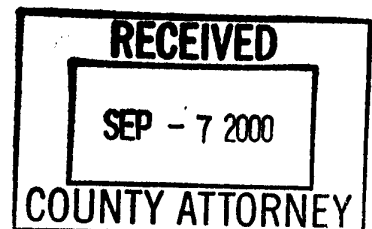
Thomas A. Woodall
THOMAS A. WOODALL, JUDGE

OPINION

This action is the latest chapter in the seemingly endless litany of complaints involving Jefferson County's occupational tax. Of course, the imposition of any tax is a legislative prerogative. This Court's function is limited to a determination of whether the relevant act "violates a limitation on legislative power imposed by the State or Federal Constitution." *Town of Brilliant v. City of Winfield*, 752 So. 2d 1192, 1201 (Ala. 1999). This Court recognizes that there is a strong presumption in favor of the validity of an act. The Alabama Supreme Court has held:

"[I]n passing upon the constitutionality of a legislative act, the courts uniformly approach the question with every presumption and intendment in favor of its validity, and seek to sustain rather than strike down the enactment of a coordinate branch of the government. All these principles are embraced in the simple statement that it is the recognized duty of the court to sustain the act unless it is clear beyond reasonable doubt that it is violative of the fundamental law."

Alabama State Fed'n of Labor v. McAdory, 246 Ala. 1, 9, 18 So. 2d 810, 815 (1944). With these principles in mind, this Court will address the dispositive issues raised in this action.



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The named plaintiffs are licensed attorneys who regularly engage in the practice of law in Jefferson County. This Court has certified the following class of plaintiffs pursuant to Ala.

R. Civ. P.23(b)(2):

...all persons who work or have worked in Jefferson County at any time from March 21, 2000 and who are required by law to pay a license or privilege tax to either the State of Alabama or a County in Alabama pursuant to the State Business License Code, Chapter 12, Title 40, Ala. Code, and all entities who, from March 21, 2000 forward, employ or employed persons who are required by law to pay a license or privilege tax to either the State of Alabama or a county in Alabama pursuant to the State Business License Code, Chapter 12, Title 40, Ala. Code.

Jefferson County began as a defendant in this action. However, on its own motion, it was realigned as a party plaintiff. The defendants are Jefferson State Community College and Birmingham-Jefferson Civic Center Authority which this Court allowed to intervene.

The plaintiffs have filed a motion for summary judgment alleging that Alabama Act No. 2000-215 violates Article IV, §105, of the Constitution of Alabama of 1901, to the extent that it imposes an occupational tax on attorneys and other professionals. The plaintiffs claim that Alabama statutes providing for a statewide license tax on persons practicing their professions render unconstitutional any local act that authorizes a separate levy of a county tax on such professionals.

Under Act No. 2000-215, the defendants would receive significant funding. Therefore, this Court allowed them to intervene to defend the constitutionality of that act. The defendants

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have objected to the plaintiffs' motion for summary judgment and have filed their own motion for summary judgment seeking a declaration that Act 2000-215 is constitutional in every respect. In response to the plaintiffs' §105 argument, the defendants contend that the occupational tax is not a license tax and that, therefore, the occupational tax can be imposed upon persons who are required to pay a statewide license tax in order to practice their professions without violating Article IV, §105 of the Constitution of Alabama of 1901.

Section 105 provides:

"No special, private, or local law, except a law fixing the time of holding courts, shall be enacted in any case which is provided for by a general law, or when the relief sought can be given by any court of this state; and the courts, and not the legislature, shall judge as to whether the matter of said law is provided for by a general law, and as to whether the relief sought can be given by any court; nor shall the legislature indirectly enact any such special, private, or local law by the partial repeal of a general law."

As provided in §110 of the Alabama Constitution of 1901, a "general law" is a law that applies to the whole state, while a "local law" is a law that applies to any political subdivision less than the whole state. Act No. 2000-215 is applicable to "any county of the State of Alabama having a population of 500,000 or more ... and to no other county." Act No. 2000-215, §1. The defendants concede that the act is a local law which applies only to Jefferson County.

The general laws at issue in this action are those statutes enacted as part of the General Revenue Act of 1935, codified in various sections of Title 40, Ala. Code 1975. These statutes impose a statewide license tax on those practicing certain professions, and they all contain the

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phrase "but no license tax shall be paid to the county" or "but none to the county."

In a recently released decision, the Alabama Supreme Court held that a local act was unconstitutional on the basis that it violated §105. The act in question authorized the Walker County Commission "to levy and collect ... certain additional privilege license and excise taxes and fees in Walker County, Alabama, including without limitation ... any license or excise tax or fee on engaging in or carrying on any business ... " The Supreme Court held that the local act conflicted with the statewide licensing statutes which prohibit the payment of any license tax to the county and that, therefore, the act violated §105 to the extent that it authorized the Walker County Commission to levy a privilege license fee on attorneys and other professionals. See *Walker County v. Allen*, Nos. 1990147 and 1990148, 2000WL1073721 (Ala. Aug. 4, 2000). Therefore, Act No. 2000-215 cannot survive the constitutional challenge if the tax imposed by it is a license tax.

A review of Black's Law Dictionary reveals striking similarities in the relevant definitions:

license fee. 1. A monetary charge imposed by a governmental authority for the privilege of pursuing a particular occupation, business, or activity. -- Also termed *license tax*.

privilege tax. A tax on the privilege of carrying on a business or occupation for which a license or franchise is required.

occupation tax. An excise tax imposed for the privilege of carrying on a business, trade, or profession. For example, many states require lawyers to pay an occupation tax -- Also termed *occupational tax*.

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Black's Law Dictionary 932,1471 (7th ed. 1999). Therefore, it is not surprising that many courts have used the terms interchangeably.

In *Bedingfield v. Jefferson County*, 527 So. 2d 1270 (Ala. 1988), the Alabama Supreme Court upheld the constitutionality of the original occupational tax which was promulgated by Jefferson County under Act No. 1967-406. Interestingly, the relevant portions of that act referred to "a license or privilege tax" and not to an "occupational tax". This Court must conclude that the Supreme Court was of the opinion that an occupational tax is a license or privilege tax.

The Alabama Legislature apparently interpreted Act No. 2000-215 to provide for a license tax. The published notice of the bill stated that the bill would levy "a license or privilege tax on the receipt of wages or earnings or other compensation by all natural persons from an occupation or profession conducted in such county." Section 15 of the act defines "occupational tax" as follows: "The privilege tax on the receipt of earned compensation of a natural person that is levied by a county pursuant to this act." This Court cannot ignore the words used by the legislature in order to arrive at a distinction between the tax levied by Act No. 2000-215 and the tax authorized by Act No. 97-903 at issue in *Walker Co. v. Allen, supra*. No meaningful distinctions exist between these two excise taxes. See *Estes v. City of Gadsden*, 266 Ala.166, 94 So. 2d 744 (1957).

This Court concludes that Act No. 2000-215 provides for a license tax which is in direct

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conflict with the general laws providing that no license tax shall be paid to the county. While §105 would appear to invalidate the local law, the defendants argue that they have shown local need that was not provided for by general law. This Court concludes that such contention is without merit.

The long-standing rule in Alabama is that "[i]f, in the judgment of the legislature, local needs demand additional or supplemental laws substantially different from the general law, the legislature is not prohibited by §105 from so enacting." *Opinion of the Justices No. 138*, 262 Ala. at 350-51, 81 So.2d at 283. However, Act No. 2000-215 is more than an additional or supplemental law; it levies license taxes which constitute a variance from the general law which states that certain professionals shall not be required to pay a county license tax. Therefore, the act cannot survive the constitutional challenge under §105. *Allen v. Walker Co., supra; Opinion of the Justices No. 342*, 630 So.2d 444 (Ala. 1994).

In light of this Court's conclusions with regard to §105, it is not necessary to consider the other grounds asserted by the plaintiffs in their pleadings. The Court also notes that §20 of Act No. 2000-215 provides that its provisions are not severable.

ORDER

Now, therefore, it is hereby ordered, adjudged and decreed as follows:

1. That defendants' motion for summary judgment is denied;

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2. That plaintiffs' motion for summary judgment, as amended, is granted and that judgment is entered in favor of the plaintiffs and against the defendants as follows:

a. That Act No. 2000-215 is declared to be null, void and of no effect because it is unconstitutional under Article IV, §105, of the Constitution of Alabama of 1901;


b. That Jefferson County is permanently enjoined from implementing or enforcing in any way Act No. 2000-215; and

c. That Jefferson County is ordered to refund any taxes collected pursuant to Act No. 2000-215;

3. That the Court reserves ruling on plaintiffs' request for attorney's fees; and

4. That the merits of this action having been resolved, the Court finds no just reason for delay and directs the entry of this order as a final judgment pursuant to Rule 54(b).

DONE and ORDERED this 7th day of September, 2000.



Thomas A. Woodall, Circuit Judge

TAW:hw