

81-368

State of Minnesota
In Supreme Court

WAYNE C. McCUTCHEON, and PATRICIA A. McCUTCHEON, ART BERENS AND SONS, INC., and
THE CITY OF SHAKOPEE,

Appellants,

vs.

STATE OF MINNESOTA and COUNTY OF SCOTT,

Respondents,

and

STATE OF MINNESOTA, by WARREN SPANNAUS,
its Attorney General, Defendant-Intervenor,

Respondent,

and

METROPOLITAN COUNCIL, Defendant-Intervenor,

Respondent.

AMICUS CURIAE BRIEF OF THE CITIZENS LEAGUE

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AMICUS CURIAE BRIEF OF THE CITIZENS LEAGUE¹

SUPPORTING AFFIRMANCE OF
THE TAX COURT DECISION

1

The Citizens League is an independent, non-partisan educational organization working for better government in the seven-county Twin Cities metropolitan area. Its membership is open to all residents of the area. The Citizens League has approximately 3,000 individual members and 400 organizational members, mainly comprised of business firms of widely varying size, and a number of local foundations.

I.

INTRODUCTION

The Fiscal Disparities Law (hereinafter "the Act") has been good for the Twin Cities metropolitan area. As was predicted in the amicus curiae brief² of the Citizens League filed in the first Supreme Court case, the Act is functioning well -- precisely as intended by the Legislature -- in dramatic contrast to some heralded reforms which turn sour after a few years.

Today, the quality of life in the Twin Cities metropolitan area is receiving wide national acclaim. For example, in the last two years, four nationally known newspapers -- the Wall Street Journal,³ the New York Times,⁴ the Chicago Tribune,⁵ and the Milwaukee Journal⁶ -- have all

² Amicus Curiae Brief of the Citizens League, Burnsville vs. Onischuk. 301 Minn. 137, 222 N.W.2d 523 (1974).

³ Ingrassia, A Northern City That Works: How Minnesota Manages It, Wall St. J., Aug. 5, 1980, at 31.

⁴ Teltsch, Minnesota, A Model of Corporate Aid to Cities, N.Y. Times, July 27, 1981, at 1.

⁵ Gapp, The American City Challenge of the '80s, Chicago Tribune, March 31, 1980, at 1.

⁶ Beal, Twin Cities Enter 1980s with a Roar, Milwaukee J., Oct. 5, 1980, at 1.

written major articles on the good quality of life here. In November 1980, the Twin Cities area was called "the most livable metropolis in the United States" by the National Geographic⁷ magazine. Early in 1981, a quality-of-life survey -- this one involving 47 national authorities on urban affairs -- ranked Minneapolis fourth among 55 large cities in quality of life.⁸ More recently, a team of architects from the American Institute of Architects characterized Minneapolis and Saint Paul as "one of the nation's highest quality urban environments."⁹

The marketing magazine, Advertising Age¹⁰ has singled out the Twin Cities metropolitan area as "one of the most unique, vital and potentially rich metropolitan markets in the country," and praised the region for knowing how to capitalize on regional solutions to its problems. Minnesotans, moreover, are receiving attention for not just sitting back and resting on their laurels. "They are here to

⁷ Abercrombie, Tale of Two Cities, 158 National Geographic at 567 (1980).

⁸ Boroson, Wanderlust in Your Future? Then Check Out the Cities, 2 Next 19 (May/June 1981).

⁹ Goldberger, From Architects, Praise for Twin Cities, N. Y. Times, May 20, 1981, SA, at 16.

¹⁰ Minneapolis-St. Paul -- Cities Working Together, Advertising Age, Dec. 12, 1977, at 120.

enjoy what they have created and to make it even better,"¹¹ said one observer. "That's the Twin Cities success. They don't stop succeeding." Another national report¹² said that attempted efforts here to solve urban problems will likely get even more attention in coming years with less federal dollars available to states and local governments. The reason is that Minnesota is demonstrating that it is a state that can do things on its own.

In the 1973 Citizens League brief it was stressed that the Act is designed to benefit residents of the entire metropolitan area, not just some citizens in some taxing districts at the expense of others. It was pointed out that some localities may have started out as free-standing urban areas, but they now are circumscribed by boundaries which artificially distinguish groups of people as residents of different communities when in actuality they do not have any significant differences between them.¹³ This point was recognized by the Court in its decision in the first

¹¹ Quality Urban Environment Study Team, Urban Planning and Design, Committee, American Institute of Architects, Minneapolis-Saint Paul (May 14, 1977) at 10.

¹² Teltsch, supra, note 4, at 1.

¹³ Amicus Curiae Brief supra, note 2, at 6.

Fiscal Disparities case. As the opinion stated,¹⁴ "The seven-county metropolitan area . . . has a high degree of mobility and political, social and economic interdependence. . . . Defendants argue effectively that the indiscriminate encouragement of commerce and industry in a particular municipality may detrimentally and irretrievably affect policies and plans for development of parks and open spaces and frustrate well-considered housing policies for both low-income and moderate-income residents."

From actual experience it can now be demonstrated that the operation of the Fiscal Disparities Law has reinforced the interdependence of the citizens and communities of the region.

¹⁴ Burnsville vs. Onischuk, 301 Minn. 137, 152-53, 222 N.W. 2d 523, 532 (1974).

II.

WITHOUT THE ACT, THE TWIN CITIES METROPOLITAN
AREA WOULD EXPERIENCE FORMS OF URBAN GROWTH
WHICH WOULD RESULT IN SEVERE ADVERSE CONSE-
QUENCES TO THE QUALITY OF LIFE TO ALL ITS
CITIZENS.

The Tax Court's opinion in the instant case pointed out that as of 1980 the ratio of the high to the low communities in commercial-industrial tax base per capita had been narrowed to 5.4 to 1. Without the Act, the Tax Court noted, the ratio would have been 10.7 to 1. If the most recent figures available are used, for taxes payable in 1982, the ratio has now declined to 5.1 to 1 for these communities.¹⁵ Without the Act, the ratio now would be 11.1 to 1.¹⁶ This illustrates that, if the Twin Cities area were to return to a situation without the tax-base sharing law, the range in commercial-industrial tax base per capita among the communities would get even wider each year.

It is evident that, though the Act has reduced, it clearly has not eliminated the advantages enjoyed by the

¹⁵ 20% of Commercial-Industrial Tax Base Now in Metro Pool, Citizens League News (Citizens League, Minneapolis, MN), Oct. 13, 1981, at 1.

¹⁶ Id.

communities which are wealthier in commercial-industrial tax base than their neighboring communities. It is difficult to see how such a situation is "hostile and oppressive" to Shakopee. Taking into consideration the most recently available data, if the Act were not in effect, Shakopee would have a commercial-industrial valuation per capita of \$4,052; Minneapolis would have \$1,960, and Saint Paul, \$1,675. But, as a matter of fact, with the Act in effect, Shakopee's commercial-industrial valuation per capita is \$2,960; Minneapolis' is \$2,089; and Saint Paul's, \$1,822.¹⁷ Thus, even after redistribution of the commercial-industrial valuation, Shakopee's commercial-industrial valuation per capita is 42 per cent more than Minneapolis' and 62 per cent more than Saint Paul's. That can hardly be deemed "hostile and oppressive."

If the Act were not now in operation, municipalities in the seven county metropolitan area would be driven to unprecedented cut-throat competition for tax base. The rules of the game would change so that, inevitably, the strong would get stronger and the weak would get weaker. A community with an existing large tax base would be able

¹⁷ Id.

to attract even more tax base, because it could offer industry lower tax rates, and possibly better services than its competing communities. The addition of even more tax base then would force the tax rates down even further in that community, thereby increasing that community's competitive advantage even more. As a result of this "leverage effect," the "have-not" communities would find their tax rates going even higher, thus reducing their competitive position still further. Communities would find that they would be rewarded -- not penalized -- for abandoning sensible planning.

If the Act were not in operation, communities would have a disincentive to allow low or moderate-priced housing because of its relatively low yield in property taxes when compared to more expensive housing or commercial-industrial development. Consequently, such communities would be more likely to encourage higher-priced housing which "pays its own way" in property taxes. Fortunately, under the Act, the presence of more housing of whatever value represents an advantage to communities because "population" is a major factor in determining each community's share of the metropolitan pool of valuations. A significant shift in the distribution of low and moderate-priced housing is evident in the last several years. According to the Metropolitan Council, as of December 31,

1980, about 41 per cent of subsidized housing was located in suburbs.¹⁸ In 1971, only about 10 per cent of subsidized housing was located there.¹⁹ A report for the U. S. Department of Housing and Urban Development has praised the Council's plan for allocation of subsidized housing as a "national model."²⁰

A return to the old system would add to public costs in the metropolitan area, with negative consequences on the quality of life for all citizens. These higher costs would be brought about in the following ways:

1) A regional growth control strategy, such as that embodied in the Metropolitan Land Planning Act,²¹ would be difficult to sustain. If the Metropolitan Council were to lose its ability to influence where development goes, it would, thereby, lose its corresponding ability to hold down the public investment in roads, streets, sewers, and other elements of the metropolitan infrastructure. A few years

¹⁸ Memorandum from Audrey Anderson, Housing staff, Metropolitan Council, to Paul Gilje, Citizens League, Oct. 21, 1981.

¹⁹ Berkeley Planning Associates, for the U. S. Department of Housing and Urban Development, Assessment of the Impact of the Housing Opportunity Plan Program (Nov. 1, 1979).

²⁰ Id. at 1.

²¹ 1976 Minn. Laws, Ch. 127, § 1-26.

ago the Metropolitan Council projected that, in the absence of a growth control strategy, the total cost of additional facilities might be on the order of \$2 billion by the year 2000.²² In testimony before the Tax Court,²³ Charles Weaver, Chairman of the Metropolitan Council, testified that the Metropolitan Land Planning Act would not be possible without the Fiscal Disparities Law, because communities which were denied certain kinds of growth would not be able to receive other benefits.

2) Efforts to acquire land for such regional programs as "open space" would, in all likelihood, be more expensive. The price would be higher because communities would insist that they receive excess compensation, perhaps from the state or region, because of the loss of tax base when privately-owned land is purchased for public open space purposes.

3) The cost of transportation would increase. Communities would, in all likelihood, insist that there be more freeway interchanges within their borders, to open more land for development, thereby adding to the cost of

²² Metropolitan Council, Development Framework Policy, Plan, Program, (Sept. 1975).

²³ Vol. II, Transcript p. 323.

construction of highways. In addition, of course, this would result in greater safety problems for motorists entering or exiting freeways.

Because the impact of the Act is to give every community in the metropolitan area a share of all growth in commercial-industrial valuation -- irrespective of where that valuation is physically located in the area -- these additional costs need not be incurred.

III.

NOT ONLY DOES THE ACT SERVE MODESTLY TO RESTRUC-
TURE FINANCIAL INCENTIVES SO AS TO ENCOURAGE
MAINTENANCE OF HIGH QUALITY OF LIFE, BUT IT DOES
SO WITHOUT NECESSARILY IMPOSING ADDITIONAL STATE
RESTRICTIONS ON THE RIGHT OF EACH LOCAL GOVERN-
MENT TO MAKE ITS OWN DECISIONS ON TAXATION AND
SPENDING, WITHIN THE CONTEXT OF A SMOOTHLY-WORKING
ADMINISTRATIVE STRUCTURE.

The current financial dilemmas facing the State Legislature because of substantial cutbacks in federal and state revenues are likely to mean that local governments will be required to make more use of the property tax than they have in recent years. Consequently, it is even more important now than it was when the Act was passed to provide for an equitable distribution of the tax base among the communities of the metropolitan area.

In its 1973 amicus brief the League pointed out that the Act does not interfere with any powers of a local unit of government.²⁴ The Act only modestly affects the tax base with which each local unit of government has to

²⁴ Amicus, supra, note 2, at 14.

operate. Significantly, it affects the local government's capacity to raise revenue, but it does not raise revenue *per se*. That responsibility falls on the local government. Local governments in 1981 are finding the responsibility to raise money locally a much more significant factor than it had been when more federal and state funds were available. Thus, the question of whether or not the local governments have an adequate tax base to support their revenue-raising is of central importance. Unlike other forms of assistance for local governments, the Act is not dependent upon appropriations to succeed. Thus, it is not subject to problems which arise when the Legislature cuts state aids. That peculiar advantage will become increasingly significant during the 1980s. All of the citizens of the metropolitan area are benefited when local governments are allowed to make their own decisions on taxation and spending, and when each of these local governments has adequate resources on which to draw.

The Act is now in its eighth year of implementation. During that time its administrative structure has been working very smoothly. Before the Act went into effect, it was attacked as administratively unworkable. Even the Court's opinion upholding its constitutionality in 1974

called the Act "complex in the extreme."²⁵ Happily, fears of serious administrative problems were not realized. The officials responsible at the county and state levels have carried out their functions precisely as prescribed in the Act. Further evidence of how well the Act has operated is the limited extent it has been amended since its enactment. With the exception of one technical amendment made in 1976,²⁶ to ease some of the administrative load for the county auditors, and some further technical amendments related to tax-increment financing passed in 1979,²⁷ there has been virtually no legislative concern paid to the Act in terms of correcting any significant problems.

Thus, the Act has been well integrated into the local government finance system, both in terms of its non-interference in the powers of taxation held by local governments and in terms of its administration.

²⁵ Burnsville, 30 Minn. at 140, 222 N.W.2d at 525.

²⁶ 1976 Minn. Laws, ch. 191 § 1-15.

²⁷ 1979 Minn. Laws, ch. 322 § 18-22.

IV.

NATIONAL AUTHORITIES HAVE RECOGNIZED THAT THE
ACT REPRESENTS AN INNOVATIVE AND REASONABLE
APPROACH TO THE PROBLEM OF DISTRIBUTION OF TAX
RESOURCES AMONG COMMUNITIES IN THE METROPOLITAN
AREA.

The Court in its 1974 decision upholding the constitutionality of the Act called it a "bold and imaginative departure from conventional devices for balancing the benefits and burdens of taxation."²⁸ Since then, the Act has received considerable favorable attention nationally. It was mentioned as one of two new approaches for state action on urban problems in the President's 1978 National Urban Policy Report.²⁹ Early in 1981, a national journal for public administrators focused on various ideas to cope with resource scarcity in urban communities.³⁰ The journal singled out the Act, as did a national business magazine in a special report on policies available to help the states and cities cure their financial ills.³¹

²⁸ Burnsville, 301 Minn. at 152, 222 N.W.2d at 532.

²⁹ The President's 1978 National Urban Policy Report, (U. S. Department of Housing and Urban Development, Washington, D. C., August 1978) at 79.

³⁰ McCaffrey, The Impact of Resource Scarcity on Urban Public Finance, 41 Pub. Ad. R. 125 (1981).

³¹ Policies to Help the States and Cities Cure Their Ills, Business Week (October 26, 1981) at 180.

As the Act itself provides, it affects only a portion of the region's value because it involves the sharing of only 40 per cent of the net growth of one type -- commercial-industrial -- of property, not 100 per cent of the total value of all types of property. This means that the Act represents gradual change over time -- not revolutionary change, all at once. This is exactly what the Legislature intended. It is difficult to discern much significant impact of the Act's effects when comparing the changes in tax base from year to the next. But meaningful change becomes evident over time.³²

The modest and reasonable approach taken by the Act is often noticed by scholars and other analysts in other parts of the nation who seem to have even greater expectations for the Act that ever had been intended by the Legislature. A host of scholarly journals, including Public Finance Quarterly,³³ National Tax Journal,³⁴ Social Science Quarterly,³⁵

³² Citizens League News, supra, note 15, at 1.

³³ Plosila, Metropolitan Tax-Base-Sharing: Its Potential and Limitations, 4 Public Finance Q. 205 (1976).

³⁴ Bahl and Puryear, Regional Tax Base Sharing: Possibilities and Implications, 29 Nat'l Tax J. 328 (1976).

³⁵ Gilbert, Property Tax Base Sharing: An Answer to Central City Fiscal Problems?, 59 Soc. Sci. Q. 68 (1979).

Journal of Urban Economics,³⁶ and the Journal of the American Institute of Planners,³⁷ have reported on studies of the law. What is surprising about the analyses made by these journals, and others, is the recurring comment that the law does not seem to go far enough! In many cases, the authors were seeking devices that would provide substantial sums of new money quickly to depressed sections of metropolitan areas. The articles might be best summarized by a comment made in a 1981 massive volume dealing with problems of Urban America. "The evidence to date suggests that tax-base sharing, while it should not be looked to as a fiscal bail-out for distressed urban areas, may well be a modest tool for longer-term stabilization and revitalization of metropolitan areas."³⁸

³⁶ Fischel, An Evaluation of Proposals for Metropolitan Sharing of Commercial and Industrial Property Tax Base, 3J. of Urban Economics 253 (1976).

³⁷ Lyall, Base-Sharing: A Fiscal Aid Towards More Rational Land Use Planning, 41 Am. Inst. Planners 90 (1975).

³⁸ Burchell and Listokin, Cities Under Stress, The Fiscal Crises of Urban America (The Center for Urban Policy Research, the State University of New Jersey, Piscataway, N.J., 1981) at 499.

V.

CONCLUSION

The Act improves equally the quality of life for all citizens of the metropolitan area. It reduces the need for communities to engage in cut-throat competition for tax base, thereby avoiding higher public costs. It addresses the problem of distribution of tax resources without having to rely on state appropriations. Consequently, the Act is not affected by the cutback in aids to local government. In fact, the need for the Act is greater now, as communities must rely more upon the property tax than they did when state aids were more plentiful. The Act carefully preserves to local units of government their taxing and spending powers. While the Legislature has produced a nationally-acclaimed piece of legislation, the Act itself is modest in its approach, with its impact felt gradually over time and not all at once.

For all of the above reasons the order of the Tax Court should be affirmed.

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