

Opinion No. 47.

State Board of Equalization—Federal Social Security Act—Federal Security Administrator—Taxes—Duties Relating to Taxation—General Welfare—Public Purpose—Titles—State Sovereignty—House Bill 111, Chapter 44, Montana Session Laws of 1953.

HELD: 1. Contributions exacted under the provisions of the Social Security Act are "taxes" and fall within the province of Section 15, Article XII of the Montana Constitution, setting forth the duties of the State Board of Equalization.

2. The omission in the title to Chapter 44, Laws of 1953, of the word "social" does not render the title repugnant to Section 23, Article V of the Montana Constitution.

3. Chapter 44, Laws of 1953, is a constitutional delegation of administrative authority to the State Board of Equalization.

November 12, 1953.

State Board of Equalization
Capitol Building
Helena, Montana

Gentlemen:

You have requested my opinion as to the validity of House Bill No. 111, Chapter 44, Laws of 1953. You particularly question:

(1) The right of the legislature to impose administrative duties on the State Board of Equalization with respect of Title II of the Federal Social Security Act.

(2) The validity of the title to House Bill No. 111, Chapter 44, Laws of 1953.

(3) Whether House Bill No. 111, Chapter 44, Laws of 1953, is invalid as an attempt to surrender or delegate sovereign power to the federal government by means of a contract.

Section 15, Article XII of the Montana Constitution creates the State Board of Equalization. Among the duties imposed on the Board, and as set out in Article XII, are the following:

"... The State Board of Equalization shall adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of the county assessors and county boards of equalization; change, increase, or decrease valuations made by county assessors or equalized by county boards of equalization; and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties, between the different classes of property, and between individual taxpayers. **Said state board of equalization shall also have such other powers, and perform such other duties relating to taxation as may be prescribed by law.**" (Emphasis supplied.)

This latter clause was considered in the case of *Butte and Superior Mining Co., vs. McIntyre*, 71 Mont. 254, 229 Pac. 730, wherein the court stated:

"The intention of the people to confer amplified power upon the State Board of Equalization by the amendment of 1922 is noteworthy. A mere casual inspection of the section as it appeared, originally as amended in 1916, and as amended in 1922, confirms the statement. The concluding

sentence of the 1922 amendment: 'Said State Board of Equalization shall also have such other powers, and perform such other duties relating to taxation as may be prescribed by law,' certainly indicates the intention of the electorate to permit the legislature to entrust the board with comprehensive powers respecting taxation."

Contributions exacted under the provisions of the Social Security Act are not only related to taxation, but same are taxes and have been held in a number of cases to be taxes. *Gillum vs. Johnson*, 7 Cal. (2d) 744, 62 Pac. (2d) 1037; *Helvering vs. Davis*, 301 U.S. 619, 57 S. Ct. 904; *State vs. Sims*,..... West Va....., 65 S.E. (2d) 730; *Steward Machine Co. vs. Davis*, 301 U.S. 548, 75 S. Ct. 883.

The original Act of Congress, establishing the social security system, was enacted and approved on August 14, 1935 (49 Stat. 620). Its purpose was to provide for the general welfare by establishing a system of federal old age benefits, and by enabling the several States to make more adequate provision for aged and other designated persons. The Montana Legislature in the enactment of House Bill No. 111, Chapter 44, Laws of 1953, set forth the purposes of said act in Section 1 thereof, as follows:

"In order to extend to employees of political subdivisions of the state and to the dependents and survivors of such employees, the basic protection accorded to others by the old age and survivors insurance system embodied in the social security Act, it is hereby declared to be the policy of the legislature, subject to the limitations of this act, that such steps be taken as to provide such protection to employees of the political subdivisions of the state on as broad a basis as is permitted under the social security Act."

Section 11, Article XII of our Constitution provides that:

"Taxes shall be levied and collected by general laws and for public purposes only. . ."

What is and what is not a public purpose is for the legislature to determine in the first instance and the courts indulge every reasonable presumption in favor of the legislature's determination in the matter. *Lewis and Clark County vs. Industrial Accident Board*, 52 Mont. 6, 155 Pac. 268. The question whether taxes levied to provide a fund for the relief of injured county employees under the provisions of the Workmen's Compensation Act were repugnant to Section 11 of Article XII was raised in the *Lewis and Clark* case (*supra*), the court holding that such a tax was for a "public purpose."

The State Board of Equalization is a constitutionally created body skilled in the science of, and devoted to the principles of taxation. As such, the legislature was justified in imposing on the State Board of Equalization the duties of administering House Bill No. 111, Chapter 44, Laws of 1953.

The title to House Bill 111, Chapter 44, Laws of 1953, reads as follows:

"An Act Providing for the Coverage of Certain Officers and Employees of the Political Subdivisions of the State of Montana, Under the Old Age and Survivors Insurance Provisions of Title II of the Federal Security Act, as amended; Authorizing the State Board of Equalization to Act as the State Agency for the Administration Thereof; Authorizing the State Board of Equalization to Enter Into an Agreement With the Federal Security Administrator for the Purposes of This Act; Providing that the Political Subdivisions of the State which operate under this Act Shall Pay the Cost of Administration Thereof; Excluding from the Operation of This Act All Employees of the State of Montana, and All Employees of the Political Subdivisions Thereof Operating Under the Provisions of the Public Employees Retirement Act of the State of Montana, or Under Any Retirement Plan for Firemen, Policemen, Teachers or Highway Patrolmen and Repealing All Acts of Parts of Acts in Conflict Herewith."

The question presented is whether said title clearly expresses the subject of the act as is required by Section 23

of Article V of the Montana Constitution in view of the apparent omission of the word "Social" preceding the words "Security Act." Section 23 of Article V of the Montana Constitution reads so far as is pertinent, as follows:

"No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any Act which shall not be expressed in the title. . ."

The test of the sufficiency of a title to an act has been aptly stated in the case of *Lewis and Clark County vs. Industrial Accident Board*, 52 Mont. 6, 11, 155 Pac. 268. It was there said that a title is sufficient if it "fairly indicates the general subject of the Act, is comprehensive enough in its scope reasonably to cover all the provisions thereof, and is not calculated to mislead either the legislature or the public." The court in that case cited with approval the language as contained in *Evers vs. Hudson*, 36 Mont. 135, 92 Pac. 462.

A case somewhat similar to the instant question inasmuch as it involved an omission of words in a title was that of *Western Ranchers vs. Custer County*, 28 Mont. 278, 72 Pac. 659. It was argued in that case that a legislative act entitled "An Act Providing for Unlawful Levy and Collection of Public Revenue" did not clearly express the subject matter of the Act. The court construed the title as meaning "Providing a remedy for unlawful levy," and used as a test that "If the title of an Act is single, and directs the mind to the subject of the law in a way calculated to direct the attention truly to the matter which is proposed to be legislated upon, the subject of the provision (constitutional) is satisfied." The court went on to state:

"... Neither the legislature nor the public could have been misled by the title to the Act. Any other interpretation of the language employed would have been absurd. . ."

Applying the tests as set forth in the cases (*supra*) to the instant case, it becomes apparent that neither the legis-

lature nor the public could have been misled by the title. There is only one federal Act concerned with old age and survivors insurance, that Act being administered by the Federal Social Security Administration. The subject matter of the entire chapter is concerned principally with the furnishing of old age and survivors insurance benefits to certain classes of public employees. Any other interpretation would border on the absurd and would make a mockery of legislative intent.

Moreover, it is a well settled rule of statutory construction that where the reference in an adopting statute is to the law generally which governs the particular subject and not to a particular Act by title or otherwise, the reference will be regarded as signifying and including the law in force on the subject at the time it is invoked. *People vs. Kraver*, 328 Ill. 512, 160 N.E. 60; *People vs. Crossley*, 261 Ill. 78, 103 N.E. 537; *Culver vs. People ex rel. Kochersperger*, 161 Ill. 89, 43 N.E. 812; *State vs. Buckingham*, Nev., 80 Pac. (2d) 910.

It is therefore my opinion that the omission in the title to Chapter 44, Laws of 1953, of the word "Social" does not render the title repugnant to Section 23, Article V of the Montana Constitution.

Your question as to whether the Act constitutes a surrender of state sovereignty is analagous to the question of whether the operation of the Unemployment Compensation Commission on a state level is a surrender of state sovereignty. It should be remembered that our unemployment compensation law is a phase of the Social Security Act and that the unemployment compensation commission has administered the U.C.C. Act since 1937 with no appreciable detriment to state sovereignty in the U.C.C. field.

The arguments which have so long sustained the state operations of the U.C.C. Act are therefore equally applicable to the instant Act. These arguments can be found in annotations in 48 Am. Jur., *Social Security, Unemployment Insurance, Etc.*, Section 6, pp. 518, 519.

The argument that any cooperative enterprise undertaken between State and Federal government is a surrender of state sovereignty is nothing more

than a strawman used to substitute fear for logic.

A careful reading of the Act fails to disclose any portion which could even be considered a surrender of state sovereignty. Certainly none of the administrative phases of the Act are delegated by our Act to any federal agency. The Act does not permit the federal government to make any levy or demand on the state or any of the political subdivisions of the state. The nearest thing to be found to a delegation of state sovereignty is the utilization of the federal social security Act as a point of reference and a basis for computation of sums to be paid under the state Act. (Section 3 (a) (2), Chapter 44, Laws of 1953.) Additionally in Section 3 (a) (5) of Chapter 44, Laws of 1953, report forms in compliance with the provisions of the federal security administrator are provided. This is an unsequential requirement.

Therefore, it is my opinion that Chapter 44, Laws of 1953, is a constitutional delegation of administrative authority to the State Board of Equalization.