SUPREME COURT OF SOUTH DAKOTA

Zubke v. Melrose Township

2007 SD 43 (S.D. 2007) · No. No. 24279 · Decided April 25, 2007

SUMMARY

The Supreme Court of South Dakota considered whether Melrose Township lawfully reconsidered and restored a tax levy at a special meeting after reducing it at its annual meeting. The court held that the township could use the alternative reconsideration procedure under SDCL 8-3-10, that the special-meeting notice was sufficient, and that certification by October 1 was permitted when reconsideration made the earlier certification deadline impracticable. The circuit court's dismissal was affirmed.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Zinter, Justice; Gilbertson, Chief Justice; Konenkamp, Justice; Meierhenry, Justice; Sabers, Justice
JURISDICTION	South Dakota
DECIDED	April 25, 2007
DOCKET	No. 24279
DISPOSITION	affirmed
PROCEDURAL POSTURE	Jerald Zubke appealed the township's reconsideration and certification of a tax levy. The circuit court dismissed the appeal, and Zubke appealed to the Supreme Court of South Dakota.
STANDARD OF REVIEW	Questions of statutory interpretation are reviewed de novo.
PRECEDENTIAL VALUE	Published South Dakota Supreme Court opinion; precedential.
PARTIES	Jerald Zubke v. Melrose Township, Grant County, South Dakota

TOPICS

municipal finance · property tax · statutory interpretation · municipal law · appellate procedure

PRACTICE AREAS

municipal law · state and local taxation · statutory interpretation · appellate procedure

QUESTIONS PRESENTED

1. Whether SDCL 8-3-10 permitted Melrose Township to reconsider its tax-levy vote at a subsequent special meeting rather than within one hour of the original vote.
2. Whether SDCL 8-3-2(8) and SDCL 8-3-5 prohibited reconsideration and restoration of the tax levy at a special meeting or rendered the meeting notice insufficient.
3. Whether the township's April 11, 2006 certification of the reconsidered levy was untimely under SDCL 10-12-26 despite the October 1 certification deadline in SDCL 10-12-7.

HOLDINGS

1. SDCL 8-3-10 permits reconsideration after the one-hour period when the motion to reconsider is sustained by a number of voters equal to a majority of all names entered on the poll list up to the time of the motion. Because the township followed that alternative method, the reconsideration was timely.
2. SDCL 8-3-2(8) and SDCL 8-3-10 authorized the township to reconsider the tax levy at a subsequent special meeting because the levy had initially been set at the annual meeting. The special-meeting notice stating that its purpose was reconsideration of the tax motion was sufficient to permit a change in the levy.
3. The April 11 certification was timely under SDCL 10-12-7 because the October 1 deadline applies when a levy is reconsidered under SDCL 8-3-10 and the ten-day deadline following the last Tuesday in March cannot be met.

KEY QUOTATIONS

> "*The statute plainly provides that motions may be reconsidered within an hour "or [if] the motion . . . is sustained by a number of voters equal to a majority of all the names entered upon the poll list. . . ."*" (¶ 7)

> "*This is the only interpretation that gives effect to all of the statutes.*" (¶ 15)

FACTUAL BACKGROUND

At its March 7, 2006 annual meeting, Melrose Township voters reduced the township's tax levy from $20,000 to $10,000. After the township clerk learned that SDCL 10-13-35 would limit future increases following a reduction, the township held a special meeting on April 10, 2006, at which the voters reconsidered and restored the levy to $20,000. The township certified the restored levy to the Grant County Auditor on April 11, 2006, and the certification was accepted.

PROCEDURAL HISTORY

At its annual meeting, Melrose Township reduced its tax levy from $20,000 to $10,000. At a later special meeting, the township reconsidered that vote and restored the levy to $20,000, which it certified to the county auditor. Zubke challenged the reconsideration and certification; the circuit court dismissed, and the Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Anderson v. City of Tea, 2006 SD 112, ¶ 5, 725 N.W.2d 595, 597
- Wiersma v. Maple Leaf Farms, 1996 SD 16, ¶ 4, 543 N.W.2d 787, 789
- Whalen v. Whalen, 490 N.W.2d 276, 280 (S.D. 1992)
- Peterson, ex rel. Peterson v. Burns, 2001 SD 126, ¶ 30, 635 N.W.2d 556, 567-68
- Faircloth v. Raven Ind. Inc., 2000 SD 158, ¶ 9, 620 N.W.2d 198, 202