

SUPREME COURT OF NEBRASKA

Metropolitan Utilities District v. City of Omaha, 171 Neb. 609

107 N.W.2d 397 (1961) · No. No. 34913 · Decided January 27, 1961

SUMMARY

The Nebraska Supreme Court considered whether a metropolitan utilities district and the City of Omaha were authorized to contract for the district to collect the city's sewer service charges and discontinue water service for nonpayment. The court upheld the constitutionality of the relevant legislation and the validity of the city's sewer-use ordinance, but held that the contract was inoperative because its service-cost allocation was not based on a reasonable method as required by statute. The cause was remanded for judgment consistent with the court's holdings, with appellate costs apportioned between the parties.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Wenke, Justice; Simmons, C.J.; Carter, J.; Messmore, J.; Yeager, J.; Chappell, J.; Wenke, J.; Boslaugh, J.
JURISDICTION	Nebraska
DECIDED	January 27, 1961
DOCKET	No. 34913
DISPOSITION	affirmed
PROCEDURAL POSTURE	Declaratory judgment action concerning the validity and enforceability of a contract between the Metropolitan Utilities District and the City of Omaha. The district court held portions of the authorizing legislation unconstitutional and held the contract inoperative because statutory cost-allocation requirements had not been satisfied. The city appealed from the overruling of its motion for new trial.
STANDARD OF REVIEW	De novo review because the action was equitable in nature.
PRECEDENTIAL VALUE	Published opinion; precedential Nebraska Supreme Court decision.
PARTIES	City of Omaha v. Metropolitan Utilities District

TOPICS

- municipal law
- public utilities
- statutory interpretation
- constitutional law
- contracts

PRACTICE AREAS

municipal law

public utilities

constitutional law

statutory interpretation

contracts

QUESTIONS PRESENTED

1. Whether L.B. 295 authorized Omaha and the Metropolitan Utilities District to enter into a contract for the district to collect Omaha's sewer-use charges.
2. Whether the statutory distinction between persons requesting sewer service and persons using sewer service constituted unconstitutional special or class legislation under article III, section 18, of the Nebraska Constitution.
3. Whether L.B. 295 and Omaha Ordinance No. 21141 validly authorized discontinuance of water service for failure to pay sewer-use charges.
4. Whether the contract complied with section 14-1041, R.R.S.1943, requiring the cost of consolidated utility operations to be allocated on a reasonable basis.
5. Whether the district court's allocation of costs should be modified on appeal.

HOLDINGS

1. L.B. 295 authorized and empowered the City of Omaha and the Metropolitan Utilities District to enter into a contract under which the district could use its water-utility facilities and services to collect sewer-use or rental fees lawfully imposed by the city.
2. The use of the phrases requesting the service and using the service in the applicable statutes did not create two distinct classes of sewer users and therefore did not constitute unconstitutional special or class legislation.
3. The Legislature could validly authorize the district to discontinue water service to customers who failed to pay sewer-use charges imposed by Omaha under the contract and ordinance.
4. The contract was inoperative and without force because the district's method of calculating its charge did not allocate the cost of the consolidated operation on a reasonable basis as required by section 14-1041, R.R.S.1943.

KEY QUOTATIONS

“The provision of a city ordinance for shutting off water furnished by the city to the premises of the consumer failing to pay sewer service charges is not unconstitutional as depriving persons of property without due process of law, as where water and sewer services are so interlocked neither can be effective without the other.” (at 406)

“We cannot see where such a basis for determining the cost of the operation is a reasonable one for the amount which the city would save by reason of the district performing these services has nothing to do with the cost thereof to the district.” (at 407)

FACTUAL BACKGROUND

The Metropolitan Utilities District managed and controlled the water and gas systems serving Omaha and surrounding territory, while Omaha managed and controlled its sewer system. After enactment of L.B. 295 in 1959, the parties contracted for the district to use its water-utility facilities and services to collect and remit Omaha's sewer-use charges, with Omaha paying the district on a per-bill basis. The district calculated its charge by combining its estimated out-of-pocket costs with one-half of the savings realized by Omaha, rather than allocating the actual consolidated-operation cost under a reasonable accounting basis.

PROCEDURAL HISTORY

The Metropolitan Utilities District brought the action in the Douglas County District Court before the parties implemented their agreement. The district court upheld the statutory authority to enter the contract but found portions of the legislation unconstitutional and determined that the contract was inoperative because the district had not allocated the cost of the consolidated operation on a reasonable basis. The Nebraska Supreme Court reviewed the equitable declaratory action de novo, affirmed the statutory and ordinance authority, agreed that the contract was unauthorized as formed, modified the costs ruling, and remanded for judgment consistent with its holdings.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

Remanded to the district court to render judgment consistent with the Supreme Court's holdings. Each party was to pay its own costs in the Supreme Court, except that the cost of the bill of exceptions was to be taxed equally between the parties.

CASES CITED

- *Michelson v. City of Grand Island*, 154 Neb. 654, 48 N.W.2d 769, 26 A.L.R.2d 1346
- *Lynn v. Kearney County*, 121 Neb. 122, 236 N.W. 192
- *Nebraska Mid-State Reclamation Dist. v. Hall County*, 152 Neb. 410, 41 N.W.2d 397
- *State Farm Mutual Automobile Ins. Co. v. Kersey*, 171 Neb. 212, 106 N.W.2d 31
- *State ex rel. Miller v. Bryant*, 94 Neb. 754, 144 N.W. 804
- *Wagner v. City of Omaha*, 156 Neb. 163, 55 N.W.2d 490
- *United Community Services v. The Omaha Nat. Bank*, 162 Neb. 786, 77 N.W.2d 576
- *Wilson v. Marsh*, 162 Neb. 237, 75 N.W.2d 723
- *Dorrance v. County of Douglas*, 149 Neb. 685, 32 N.W.2d 202
- *State ex rel. Garton v. Fulton*, 118 Neb. 400, 225 N.W. 28
- *Nebraska District of Evangelical Lutheran Synod v. McKelvie*, 104 Neb. 93, 175 N.W. 531, 7 A.L.R. 1688
- *Davis v. State*, 51 Neb. 301, 70 N.W. 984
- *Starman v. Shirley*, 162 Neb. 613, 76 N.W.2d 749
- *Nelson-Johnston & Doudna v. Metropolitan Utilities District*, 137 Neb. 871, 291 N.W. 558

- Garver v. City of Humboldt, 120 Neb. 132, 231 N.W. 699
- Omaha Nat. Bank v. Jensen, 157 Neb. 22, 58 N.W.2d 582
- McConnell v. McCook Nat. Bank, 142 Neb. 451, 6 N.W.2d 599
- Nebraska Central Bldg. & Loan Ass'n v. Yellowstone, Inc., 141 Neb. 679, 4 N.W.2d 762
- Hansen v. Dakota County, 135 Neb. 582, 283 N.W. 217
- State ex rel. Marrow v. City of Lincoln, 101 Neb. 57, 162 N.W. 138
- Halstead v. Rozmiarek, 167 Neb. 652, 94 N.W.2d 37
- Roy v. Bladen School Dist. No. R-31, 165 Neb. 170, 84 N.W.2d 119
- Howell v. Fletcher, 157 Neb. 196, 59 N.W.2d 359
- Federal Farm Mtg. Corp. v. Adams, 142 Neb. 202, 5 N.W.2d 384
- Laverents v. City of Cheyenne, 67 Wyo. 187, 217 P.2d 877
- Stewart v. Barton, 91 Neb. 96, 135 N.W. 381
- Beisner v. Cochran, 138 Neb. 445, 293 N.W. 289
- Omaha Parking Authority v. City of Omaha, 163 Neb. 97, 77 N.W.2d 862
- Nagle v. City of Grand Island, 144 Neb. 67, 12 N.W.2d 540
- Axberg v. City of Lincoln, 141 Neb. 55, 2 N.W.2d 613, 141 A.L.R. 894
- Galloway v. Wolfe, 117 Neb. 824, 223 N.W. 1, 62 A.L.R. 637
- State ex rel. Douglas County v. Frank, 61 Neb. 679, 85 N.W. 956
- State ex rel. Wheeler v. Stuht, 52 Neb. 209, 71 N.W. 941
- State ex rel. Jones v. Graham, 16 Neb. 74, 19 N.W. 470
- Garner v. City of Aurora, 149 Neb. 295, 30 N.W.2d 917