

MISSOURI COURT OF APPEALS

Michel v. Taylor

143 Mo. App. 683 (1910) · Decided May 2, 1910

SUMMARY

The court considers a challenge to a special tax bill issued by the City of Joplin for sidewalk construction. It holds that the required one-week advertisement for bids had not elapsed before the contract was awarded, rendering the tax bill void. The judgment for the defendant is affirmed, and the court declines to dismiss the case for lack of writ-of-error notice.

CASE DETAILS

COURT	Missouri Court of Appeals
WRITING FOR THE COURT	Gray, J.
JURISDICTION	Missouri
DECIDED	May 2, 1910
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff sued in the Jasper County Circuit Court to recover on a special tax bill issued by the City of Joplin for sidewalk construction. After the defendant prevailed, the plaintiff's appeal was dismissed and the case proceeded in the Missouri Court of Appeals on a writ of error transferred from the Kansas City Court of Appeals.
STANDARD OF REVIEW	The appellate court reviewed whether the circuit court correctly held the special tax bill void based on noncompliance with the statutory and ordinance notice requirement for bids.
PRECEDENTIAL VALUE	Published Missouri Court of Appeals opinion; precedential value not otherwise specified in the opinion.
PARTIES	Michel v. Taylor

TOPICS

- appellate procedure
- municipal law
- construction law
- statutory interpretation

PRACTICE AREAS

- appellate procedure
- municipal law
- construction law
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QUESTIONS PRESENTED

1. Whether the failure to show service of statutory notice of the writ of error required dismissal of the proceeding.
2. Whether filing a brief on the merits waived the defendant's objection to the writ of error.
3. Whether publication of notice for bids on seven consecutive mornings, with the contract awarded on the seventh day, satisfied the requirement of not less than one week's advertisement.
4. Whether the statutory and ordinance requirements for notice of letting a public-improvement contract were mandatory or merely directory.

HOLDINGS

1. The filing of a merits brief together with a motion objecting to the writ of error does not waive the right to insist on the objection.
2. Publication of the notice on January 1 and each succeeding day through January 7 did not satisfy the requirement of not less than one week's advertisement because seven full days had not elapsed before the contract was awarded.
3. Statutory and ordinance requirements for notice of letting contracts for public improvements are mandatory rather than directory; failure to comply rendered the special tax bill void.

KEY QUOTATIONS

“In other words, from the time the notice was first published until the contract was let, seven full days had not elapsed.” (at 687)

“It is insisted by plaintiff that ordinances requiring notice of letting the contract for public improvements are directory and not mandatory. We are not of this opinion.” (at 688)

FACTUAL BACKGROUND

The City of Joplin published an advertisement for bids to construct a sidewalk on January 1, 1908, and on each of the next six mornings, including January 7. The bids were opened and the contract was awarded on the evening of January 7, approximately 8 p.m., before seven full days had elapsed from the first publication. The defendant challenged the validity of the resulting special tax bill, and the circuit court held the bill void.

PROCEDURAL HISTORY

The Jasper County Circuit Court held the special tax bill void and entered judgment for the defendant. Plaintiff initially appealed, later dismissed the appeal, and obtained a writ of error. The Missouri Court of Appeals declined to dismiss the writ for lack of notice and affirmed the circuit court's judgment on the merits.

DISPOSITION

affirmed

CASES CITED

- Burdette v. Dale, 95 Mo. App. 515, 69 S. W. 480
- Russel v. Croy, 164 Mo. 69, 63 S. W. 849
- Midland v. Linton, 82 N. W. 886
- Leach v. Burr, 188 U. S. 510, 47 L. Ed. 567
- Roth v. Hax, 68 Mo. App. 283
- Clapton v. Taylor, 49 Mo. App. 117
- Keane v. Cushing, 15 Mo. App. 96
- Galbraith v. Newton, 30 Mo. App. 380

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