SUPREME COURT OF NEW JERSEY

Lance v. McGreevey

180 N.J. 590 (2004) · Decided July 26, 2004

SUMMARY

The Supreme Court of New Jersey held that contract bond proceeds used to fund general State operating expenses do not constitute “revenue” under Article VIII, Section 2, paragraph 2 of the New Jersey Constitution and therefore cannot be used to balance the annual budget. The Court applied that holding prospectively, allowing the bond sales authorized for Fiscal Year 2005 and preserving prior bond authorizations. The Court did not revisit the Debt Limitation Clause because it had addressed that issue in earlier litigation.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Per curiam; Chief Justice Poritz; Justice Verniero; Justice Zazzali; Justice Wallace; Justice LaVecchia
JURISDICTION	New Jersey
DECIDED	July 26, 2004
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiffs appealed from a Law Division judgment rejecting their constitutional challenge to the use of contract bond proceeds to balance the State's fiscal-year budget and rejecting their challenge to the related debt under the Debt Limitation Clause. The Supreme Court of New Jersey granted direct certification.
STANDARD OF REVIEW	Constitutional interpretation and review of the Law Division's legal conclusions de novo.
PRECEDENTIAL VALUE	Published New Jersey Supreme Court opinion; precedential.
PARTIES	Honorable Leonard Lance, Honorable Alex DeCroce, Honorable Joseph M. Kyrillos, Jr., Honorable Steven M. Lonegan, Honorable Bret Schundler, Robert Lindmark v. Honorable James E. McGreevey, Honorable John E. McCormac, New Jersey Economic Development Authority, Honorable Richard J. Codey, Honorable Albio Sires

TOPICS

constitutional law · statutory interpretation · legislative intent · appellate jurisdiction · appellate procedure

PRACTICE AREAS

constitutional law · state finance · public finance · appellate procedure

QUESTIONS PRESENTED

1. Whether contract bond proceeds used to fund general operating expenses constitute revenue under Article VIII, Section 2, paragraph 2 of the New Jersey Constitution's Appropriations Clause.
2. Whether the judiciary should decline to decide the revenue issue because defining revenue falls exclusively within the executive branch.
3. Whether the challenged contract or appropriations debt violated the Debt Limitation Clause absent voter approval.

HOLDINGS

1. Contract bond proceeds used to fund general expenses in the State budget are not revenue under Article VIII, Section 2, paragraph 2 of the New Jersey Constitution and cannot be used to balance the State's annual budget.
2. The court had a constitutional and judicial obligation to resolve the dispute over the meaning of revenue; the issue was not exclusively committed to the executive branch.
3. The court did not revisit the Debt Limitation Clause issue because its resolution was unnecessary to the disposition of the case and the court had previously addressed the relevant question.

KEY QUOTATIONS

> *"contract bond proceeds used to fund general expenses in the State budget do not constitute "revenue" for purposes of Article VIII, Section 2, paragraph 2 of the New Jersey Constitution (the Appropriations Clause), and cannot be used to balance the annual budget."* (180 N.J. at 590-91)

> *"The requirement that the State enact a balanced budget each fiscal year "cannot in any sense be regarded as merely providing governmental housekeeping details, necessary and important but not truly vital.""* (180 N.J. at 595)

> *"borrowed monies, which themselves are a form of expenditure when repaid, are not income (i.e., revenues) and cannot be used for the purpose of funding or balancing any portion of the budget pertaining to general costs without violating the Appropriations Clause."* (180 N.J. at 598-99)

FACTUAL BACKGROUND

For Fiscal Year 2005, the Legislature and executive branch adopted an appropriations act and related securitization legislation authorizing more than $1.9 billion in bond proceeds for lawful purposes, including ordinary operating expenses of State government. The New Jersey Economic Development Authority was authorized to issue the bonds and transfer the proceeds to the State General Fund, while repayment depended on future legislative appropriations. The Governor certified the expected bond proceeds as anticipated revenue; without counting them as revenue, the budget would show an approximately $1.5 billion deficit.

PROCEDURAL HISTORY

The Law Division ruled against plaintiffs on both the Appropriations Clause and Debt Limitation Clause issues. The Supreme Court granted direct certification and dismissed as moot plaintiffs' related motion to stay issuance of the bonds after the State represented that no bonds would be issued before the court's anticipated decision. The Supreme Court reversed the Law Division judgment in part, holding that its revenue ruling would operate prospectively only.

DISPOSITION

reversed

CASES CITED

- Lonegan v. State, 174 N.J. 435, 809 A.2d 91 (2002)
- Lonegan v. State, 176 N.J. 2, 819 A.2d 395 (2003)
- White v. Township of N. Bergen, 77 N.J. 538, 555, 391 A.2d 911 (1978)
- City of Camden v. Byrne, 82 N.J. 133, 146, 151, 411 A.2d 462 (1980)
- State v. Trump Hotels & Casino Resorts, Inc., 160 N.J. 505, 527, 536, 734 A.2d 1160 (1999)
- Pub. Mkt. Co. of Portland v. City of Portland, 171 Or. 522, 130 P.2d 624, 644 (1942), supplemented on reh'g, 171 Or. 522, 138 P.2d 916 (1943)
- Cabell v. Markham, 148 F.2d 737, 739 (2d Cir.), aff'd, 326 U.S. 404, 66 S.Ct. 193, 90 L.Ed. 165 (1945)
- Vreeland v. Byrne, 72 N.J. 292, 302, 370 A.2d 825 (1977)
- Kosak v. United States, 465 U.S. 848, 867 n. 5, 104 S.Ct. 1519, 79 L.Ed.2d 860 (1984)
- In re New Jersey Am. Water Co., 169 N.J. 181, 197, 777 A.2d 46 (2001)
- Salorio v. Glaser, 93 N.J. 447, 462-69, 461 A.2d 1100 (1983)
- State v. Kemp, 365 Mo. 368, 283 S.W.2d 502, 513 (1955) (en banc)
- N.J. Ass'n of Correction v. Lan, 80 N.J. 199, 213, 218, 220, 403 A.2d 437 (1979)