CIRCUMVENTING EQUAL PROTECTION: SPOT ASSESSMENT BY THE SCHOOL BOARD

Frank Shepard, Clarion University of Pennsylvania
Jerry Belloit, Clarion University of Pennsylvania

ABSTRACT

Pennsylvania's Commonwealth Court has recently made a very novel interpretation of the equal protection clause of its constitution. If upheld, the decision allows school boards to seek spot reassessments on any individual properties where they expect to be successful in increasing the tax revenue from that property. By failing to treat property owners uniformly, the ruling appears to violate the equal protection clause of the United State Constitution as well as Commonwealth's uniformity clause of the State or Pennsylvania Constitution.

INTRODUCTION

Pennsylvania's Commonwealth Court has recently made a very novel interpretation of the Equal Protection Clause of the United States Constitution and the Uniformity Clause of the Pennsylvania Constitution. The state constitution specifically states that "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws." Pa. Const. Article VIII Section 1. Pennsylvania courts have traditionally analyzed Equal Protection and Uniformity Clauses in the same manner. *Appeal of Armco*, 100 Pa. Commw. 452, 515 A.2d 326 (1986). The test being whether or not the government has treated similarly situated people similarly. In this spirit Pennsylvania enacted a statute, 72 Pa. C.S. Section 5348.1, which specifically forbids "spot reassessment". This practice is forbidden because it logically violates both the state and federal constitution. Spot reassessment was a practice whereby taxing authorities would select one or more properties to reassess, ignoring the remainder of the County. This practice does not treat similarly situated people the same since all property in the given county were not assessed during the same time period. Therefore one property owner would pay real estate taxes based upon a 1995 value while his neighbor paid taxes based upon a 2005 value. This practice certainly violated both Pennsylvania's Uniformity Clause and the Federal Equal Protection Clause.

The case which allowed the Commonwealth Court to turn spot reassessment on its head arose out of Carbon County. The county, as a result of a Pennsylvania Commonwealth Court determination, was required to reassess all real estate in the county in 2001. The court based this decision on the fact that the last county wide reassessment had been completed in 1969. Therefore the assessments were so far out of date that they violated both the Uniformity Clause and the Equal Protection Clause. *Ackerman v. Carbon County*, 703 A.2d 82 (1997).

The County reassessed all property and the piece of property at issue here was given a market value by the Carbon County Board of Assessment of $92,250.00, this created an assessed value of $45,000.00. One year after the assessment Kathleen and Raymond Vee purchased the property for $170,000.00. Following the purchase, the Carbon County Board of Assessment Appeals increased the property's assessed value to $80,950.00 from $45,000.

Pennsylvania has a statute which has a number of triggering mechanisms, one of these triggering events must occur before a county board of assessment may revalue property. The fourth to eighth class county assessment law requires that prior to the reassessment of one particular property there must be there either a division of the land; a situation where the overall economy of a given area has increased or decreased enough to affect property values; or improvements have been added or existing improvements have been raised that alter the value of the property. None of these triggering events occurred, and yet the Board raised the value of the property without any pretext that one of the triggering events had occurred. No one else's property was reassessed and no one else's property values were increased. Therefore, the land owners appealed the decision arguing a violation of statute and the Pennsylvania and United States Constitutions.

Interestingly enough the Commonwealth Court , speaking in dicta**,** stated quite clearly that had the Board of Assessment Appeals revalued

petitioners property on its own initiative, that would've been a violation of the Pennsylvania constitution. However, the moving party for revaluing the Vees' property was the Palmerton Area School District. Since the decision to revalue the property came from one branch of government as opposed to another the Court found the Constitutional standard to be different.

The school district looks over properties and attempts to determine if some property has increased in value since the last assessment. If so, the school district launches an appeal of the assessment. Of course, if they notice that another piece of property has been reduced in value they ignore the situation.

With what can only be described as bizarre reasoning, the court found that this increase in valuation would amount to a constitutional violation had the Board done it. However, since a school board initiated the appeal this constitutional provision doesn't apply. It is difficult to understand any reasoning that suggests that the Pennsylvania Constitution should not apply to school boards. Further, there is nothing in any Constitution that states that equal protection only requires the government to treat people similarly unless it is a school board that is treating some people differently.

The Commonwealth Court agreed that the county can only reassess property based upon a countywide reassessment or one of the triggering mechanisms provided for in the statute. They agreed that this practice would be "spot reassessment" in violation of Pennsylvania's Uniformity Clause and Equal Protection Clause of the United States Constitution. None of these constitutional provisions, according to the Commonwealth Court , apply when a school district files an appeal thus allowing school districts to cherry pick property transfers that they believe would result in increased tax revenues.

The Equal Protection Clause requires that similarly situated people be treated similarly. This is certainly not happening under the recent Commonwealth Court decision. Certainly the school district isn't going to appeal property transfers with a belief the bill may go down. They are not going to appeal decisions where the property may have increased in value slightly. Therefore, people are not being treated equally and similarly situated people are paying different rates of taxation simply on the whim of a school board.

In *Millcreek Township School District v. County of Erie*, 714 A.2d 1095 (Commw. 1998), the school district had challenged county-wide assessment of the County of Erie. The county-wide assessment had been completed between 1965 and 1968. The county continued to base tax assessments upon the data acquired during those years. The school board argued that this violated the protection clause of the United States Constitution. The board argued that properties in one area had increased in value while properties in other areas had a decrease in value and that this antiquated assessment violated the Equal Protection Clause in that it did not treat similarly situated people similarly. As an example of this the board cited Bayfront property which in 1965 was considered to be blighted property of little value. Today, because of lakefront revitalization efforts that land is now at a premium.

Our Commonwealth Court agreed with the school district that this was a violation of both the Pennsylvania and the United States Constitution.

> "In addition to holding that the present tax assessments scheme in Erie County violates Article VII, Section 1 of the Pennsylvania constitution, we also hold it violates the Equal Protection Clause of the United States Constitution in that the tax assessments of similarly situated persons are so inequitable, disparate, and, in some cases indiscriminate, that there exists a constitutional violation in this regard as well" *Millcreek* 714 A.2d 1095, 2015 (1997)

Therefore, Counties may not act indiscriminately in assigning property tax rates, but it is perfectly within the law for school boards to act indiscriminately. This is a position that is not cognizable in either constitutional application or logic.

CONCLUSION

On the surface, school boards should applaud this ruling since it gives them an opportunity to "spot assess" and increase school tax revenues. This strategy, however, would likely result in a significant chilling effect to the real estate markets. This chilling effect will likely be felt in two ways. First, because the "spot assessment" would likely be applied to only the properties of the more affluent, sales of those properties would be discouraged. In the long run this discouragement would likely result in reduced tax revenues as potential property owners might choose to locate in areas where they might anticipate less discrimination. In other words they might choose areas where there would be numerous similar properties thus impacting the diversity of the

community. Second, and more devastating, business might choose not to locate in the area since they would be the more likely target of such a policy. As a consequence, the school board might actually receive fewer taxes.

C. Frank Shepard is an assistant professor of business law at Clarion University of Pennsylvania. He received his J.D. from University of Akron School of Law. His research interests are in the application of law to the function of the society.

Jerry D. Belloit is a professor of finance and real estate at Clarion University of Pennsylvania. He received his Ph.D. in Real Estate and Urban Analysis from the University of Florida. His other research interests are real property law, financial institutions, and urban analysis.