

DOCKET NO. 175

NUMBER	TERM	YEAR
331	November	1961

Burnside Township

School District

VERSUS

Ernest Owens

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NO. ~~Sept~~ 35 Sept 55 TERM, 19 61
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~~W. F. Jones~~

NO. _____ TERM, 19 _____

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

SCHOOL DISTRICT OF THE TOWNSHIP :
OF BURNSIDE, Clearfield County, :
Pennsylvania, a political sub-division :
VS : No. 331 November Term 1961

ERNEST OWENS, R. D., LaJose, :
Pennsylvania. :

SCHOOL DISTRICT OF THE TOWNSHIP OF :
BURNSIDE, Clearfield County, Pennsylv- :
ania, a political sub-division :
VS : No. 332 November Term 1961

FREEMAN WILEY, R.D., Cherry Tree, :
Pennsylvania :

SCHOOL DISTRICT OF THE TOWNSHIP OF :
BURNSIDE, Clearfield County, Pennsylv- :
ania, a political sub-division :
VS : No. 333 November Term 1961

WALTER SOLLEY, R.D., Westover, :
Pennsylvania :

SCHOOL DISTRICT OF THE TOWNSHIP OF :
BURNSIDE, Clearfield County, Pennsylv- :
ania, a political sub-division :
VS : No. 334 November Term 1961

ROBERT RORABAUGH, R.D., Mahaffey, :
Pennsylvania. :

SCHOOL DISTRICT OF THE TOWNSHIP OF :
BURNSIDE, Clearfield County, Pennsylv- :
ania, a political sub-division :
VS : No. 335 November Term 1961

BLAIR BEATTY, R.D. #1, Westover, :
Pennsylvania :

O P I N I O N

The five actions appearing as caption in this proceeding, are
all controlled by the same facts, and all arise under the same

Acts of Assembly, so that a decision in any one of the named actions, will adjudicate all the other four.

These actions arose when the School District of Burnside Township, Clearfield County, Pennsylvania, levied a 1% wage tax, under the authority contained in the Act of June 25, 1947, P.L. 1145, as amended, (53 P.S. 6851 et seq.)

The parties have agreed upon all of the facts, and entered into a stipulation as follows:

"(1). That the School District of the Township of Burnside is a Fourth Class District by virtue of the provisions of the School Code of the Commonwealth of Pennsylvania.

(2). That Ernest Owens, Freeman Wiley, Walter Solley, Robert Rorabaugh and Blair Beatty were residents for the years 1960 and 1961 of the Township of Burnside.

(3). That the Board of School Directors, at their regular meeting held, June 6, 1960 adopted, by roll-call vote, a resolution of intention to adopt a One (1%) per cent tax on wages, salaries, commissions and other earned income of individuals, who were residents of the said Township by virtue of the Act of Assembly.

(4). On June 6, 1960, the Board of School Directors of Burnside Township did levy a tax on real estate in the amount of thirty (30) mills.

(5). Pursuant to the said Resolution adopted by the Board of School Directors of the Township of Burnside, notice of intent to adopt the said Resolution was advertised in the Clearfield Progress, a newspaper of general circulation within the County of Clearfield on July 2, 9, 16 and 23, 1960, and further provided that the Board of School Directors intended to adopt such resolution at a Special Meeting to be held by the Board of School Directors of the Township of Burnside on July 25, 1960 at 7:30 P.M. DST at the Harmony Joint High School Building.

(6). The said notice, as provided in Paragraph four (4), was also published in the Barnesboro Star, a weekly newspaper of general circulation at Barnesboro, Cambria County, Pennsylvania, on July 7, 14 and 21, 1961.

(7). That a Special Meeting was called by the Board of School Directors of the Township of Burnside to be held July 25, 1960 to consider the adoption of the said Resolution.

(8). That the Board of School Directors, at the Special Meeting to be held July 25, 1960 in accordance with the notice given and in accordance with the Resolution of the said Board of School Directors on July 7, 1960, was continued until the next regular meeting held August 1, 1960.

(9). There were no taxpayers nor other persons present at the Special Meeting held July 25, 1960 to oppose the said taxing resolution.

(10). The said tax was imposed for the purpose of paying increased operating expenses of the said School District of the Township of Burnside because of the insufficiency of the real estate and personal taxes and state appropriation to meet budget requirements of the said School District.

(11). The Resolution, copy of which is attached hereto and made a part hereof, levying a One (1%) per cent tax as described in Paragraph three (3), was adopted by roll-call vote of all the Board of School Directors of the Township of Burnside on August 1, 1960, without dissent.

(12). That the budget adopted by the Board of School Directors of the Township of Burnside, provided for the receipts of anticipated revenue from wage taxes, etc., in the sum of Four Thousand (\$4,000.00) Dollars and which item of revenue was necessary to meet the budget requirements of the said School District.

(13). The defendants named herein failed to pay the said tax or to file any returns as provided in the said Resolution imposing the tax.

(14). That the Board of School Directors of the Township of Burnside, at a Special Meeting held October 10, 1960, appointed Don Beck as wage tax collector.

(15). At the regular monthly meeting of the Board of School Directors of the Township of Burnside held September 5, 1961, Don Beck was authorized to proceed

to collect the dlinquent tax imposed by the Resolution adopted on August 1, 1960.

(16). That Don Beck, Tax Collector, instituted proceedings before Austin Curry, a Justice of the Peace in and for the County of Clearfield, against the Defendants: Ernest Owens, Freeman Wiley, Walter Solley, Robert Rorabaugh and Blair Beatty for collection of the said tax.

(17). That Austin Curry, Justice of the Peace, as aforesaid, on December 13, 1961, declared the said taxing Resolution of the School District of the Township of Burnside, invalid and gave Judgment in favor of the Individual Defendants."

It was further stipulated that upon taking of the appeal from the decision of the Justice of the Peace, in each of the five cases, that the agreement of facts set forth above is to be in lieu of any complaint and answer thereto, as would be filed in the normal procedure on appeals from justices of the peace, and the matter submitted on the agreed statement of facts.

At the time of argument, two points were urged by the plaintiff; one, that the 1% levy of wages, effected by final Resolution of the Board of Directors, on August 1, 1960, (Fact 11), although enacted and levied beyond the month fixed for tax levies by school districts, by Section 672 of the School Code of March 10, 1949, P.L. 30, as amended (24 P.S. 6-672), providing that all school districts of the second, third and fourth class, shall make their tax levies in the months of February, March, April, May or June of each year, is not thereby invalid, as the direction of the time in which the levy is to be made is discretionary, and not mandatory.

The other point, that by virtue of Section 603 of the School Code of March 10, 1949, P.L. 30, as amended (24 P.S. 6-603), but one levy of school taxes may be made in each school district in each year.

Strict adherence to the statutory requirement that all school tax levies must be made within the designated months of January through June, in the instant case, is not controlling, since it does appear that two levies for taxes in the year 1960, were enacted by the School District.

The first levy was made by action of the School Board on the 6th day of June 1960, levying thirty mills on all real estate in the Township.

At the same time, a Resolution was enacted, expressing the intent of the School Directors to levy a 1% wage tax, as provided by the Act of June 25, 1957, P.L. 1145, supra. This intention, as expressed in the Resolution, was then duly advertised, as required by the Act, and was considered by the School Board at a meeting on July 25, 1960, at which meeting no action was taken; but on August 1, 1960 the Resolution originated on June 6, 1960, was finally enacted and a levy of 1% on all wages was thereby put into effect. This action constituted a tax levy, and is in addition to the levy on the real estate, of thirty mills, made June 6, 1960.

Precisely the same situation appears in BACORN VS. SEWICKLEY TOWNSHIP SCHOOL DISTRICT, 103 Pittsburgh Legal Journal 101, in which the School District of Sewickley Township levied a real estate tax in June of 1952, and on the 11th of August 1952, by virtue of the authority contained in the Act of June 25, 1947, P.L. 1145, supra, levied \$4.00 on trailers located within the Township.

Judge O'Brien (now Mr. Justice O'Brien of the Pennsylvania Supreme Court) determined that there were two levies of school taxes in the township; the first levy of June 1952 on real estate, and a second levy occurring in August, upon trailers; and that, therefore, the second levy, of August 1952, violated Section 603 of the School Code of March 10, 1949, supra; Judge O'Brien stating in his opinion as follows, on page 103:

"In addition, the Act of 1949, March 10, P.L. 30, Article VI, Section 603; 24 PS 6-603 provides that:
"There shall be but one levy of school taxes made in each school district in each year, which shall be assessed, levied and collected for all the purposes provided in this act, and shall be uniform throughout the territorial limit of each school district. * * *"
The cases, in which the effect of this act have been considered, hold that the school district may make but one levy excepting where an emergency arises over which the said school district has no control: Dunkard Township School Tax Case, 359 Pa. 605 (1948); Snyder Township School District, 69 District and County Reports 10 (1949)."

And again on page 104:

"It has long been the policy of the courts to uphold tax levies wherever possible because of the common knowledge that political subdivisions must derive revenue to function adequately. However, when a particular levy is in derogation of the vested statutory power, it is illegal and void and it must be so declared. The deep indebtedness in which the defendant school district has found itself does not constitute the emergency contemplated by the cases cited supra,

because it ought to have been foreseen and provided for in the initial levies, made according to the statutory power at the beginning of the fiscal year."

Whether or not the making of the levy within the months specified by the School Code, or later, is a discretionary act, need not be determined in this proceeding, since the provision that but one tax levy may be made in each year by any school district, has been violated, which is, as pointed out in BACORN VS. VS. SEWICKLEY TOWNSHIP, supra, a mandatory provision and not discretionary.

Strict interpretation of taxing statutes is at all times, a cardinal rule of construction in Pennsylvania. In GLENDALE HEIGHTS OWNERSHIP ASSN. VS. GLENOLDEN BOROUGH SCHOOL DISTRICT, 393 Pa.485, it was said on page 495:

"Resolutions which purport to levy or assess taxes are subject to a strict construction and any doubt as to the imposition of a tax should be resolved against the taxing authority."

Therefore, the appeal of the plaintiff must be dismissed.

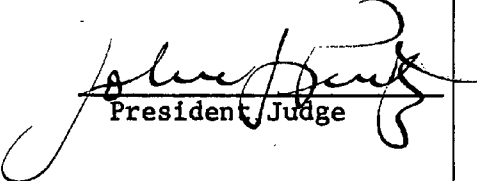
O R D E R

NOW, June 27, 1962, appeal of the School District of the
Township of Burnside is dismissed.

The plaintiff to pay the costs.

Exception noted.

BY THE COURT



President Judge

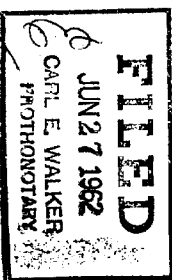
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 331 November Term 1961

SCHOOL DISTRICT OF BURNSIDE
TOWNSHIP

VS

ERNEST OWENS

OPINION and ORDER



JOHN J. PENTZ
PRESIDENT JUDGE
CLEARFIELD, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SCHOOL DISTRICT of the
TOWNSHIP OF BURNSIDE,
CLEARFIELD COUNTY,
PENNSYLVANIA, a political
subdivision

-vs-

ERNEST OWENS
R. D.
LaJose, Pennsylvania

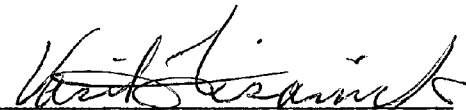
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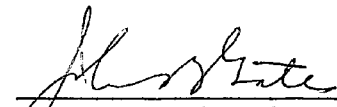
No. 33 / November Term, 1961

TO: WILLIAM T. HAGERTY, PROTHONOTARY

NOW, December 22, 1961, Plaintiff Appeals

By




Attorneys for the School
District of the Township
of Burnside

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF CLEARFIELD :

VASIL FISANICK, Esq. being duly sworn according to law, deposes and states that he is the attorney for School District of the Township of Burnside, the Plaintiff above named and makes this Affidavit on its behalf being authorized to do so; that the appeal in the above case is not taken by the Plaintiff for the purpose of delay but because he believes that an injustice has been done by the Justice of the Peace in rendering judgment for the Defendant.

Vasil Fisanick

Sworn to and subscribed
before me this 22nd day
of December, 1961.

Wm T. Hasty

Transcript

Burnside Twp
Clearfield Co Pa
 VERSUS
Ernest Owens
R.D. Lawrence Pa
 COSTS OF

EACH.	TAX HERE
Summons . . . . .	.50
Attested Copy . . . . .	.50
Entering Return . . . . .	.50
Entering Action . . . . .	.50
Affidavit of Claim . . . . .	.75
Qualifying Const. in ea. . . . .	.25
Oaths . . . . .	.10
Continuance . . . . .	.30
Subpoena . . . . .	.50
Subpoena D. T. . . . .	.50
Trial and Judgment	1.00
Judgm't by Con. or Default . . . . .	.75
Execution and Return . . . . .	.75
Affidavit of Defense . . . . .	.75
Bail for Stay of Execution	1.00
Receiving and Paying over . . . . .	.25 and up
Entering Discontinuance . . . . .	.30
Entering Satisfaction . . . . .	.30
Appeal, including Recogni- zance and Return	2.00
Transcript and Cit.	1.00
Additional Names on Sum- mons, Subpoena Capias . . . . .	.10
Capias in Civil Cases . . . . .	.75
Entering an Amicable Suit or Confession of Judgment . . . . .	.75
Copy of Claim . . . . .	.75
Opening Judgment for Re- hearing in any Case . . . . .	.50
CONSTABLE	
Serving Summons	
Mileage	
Serving Execution	
Mileage	
Levying	
Serving Subpoena	

Summons, issued Dec. 7. 1961, to
Dean Summerville Constable, Returnable
 the 13th day of Dec. 1961.
 between the hours 7 o'clock P.M.,
 and o'clock M.

Served on Defendant by Constable.

*Dean Summerville, and the
 defendant was present at a
 hearing before me on the
 13th day of Dec. 1961. to answer
 the charge of failing to apply
 to the tax law of Burnside
 Twp Clearfield Co.*

*The defendant was represented
 by law by Attorney of law
 Courtes Bell of Clearfield.*

*The defendant's attorney showed
 that a tax is to be levied at a
 certain time of year and the tax
 was levied to late in 1960.*

date levied July 25, 1960.

*I ruled in favor of the defendant
 Ernest Owens.*

*Appeal was take by the
 School Board.*

Clearfield

County, ss.

I certify that the above is a correct Transcript of the proceedings had before me in
 the above suit, and of record on my docket.

Witness my hand and seal this 13th day of Dec. 1961

Austin Lamy



No. Term, 19

vs.

Transcript

From the Docket of

Entered and filed 19

Prothonotary.

Attorney.

2-16-45 John C. Clark Company, Philadelphia.



331 Nov - 1961

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. November Term, 1961

SCHOOL DISTRICT of the
TOWNSHIP OF BURNSIDE,
CLEARFIELD COUNTY,
PENNSYLVANIA, a political
subdivision

-VS-
ERNEST OWENS

A P P E A L

21 - 213

Wm. H. Prothonotary
PROTHONOTARY
3.25 by 004

JOHN B. GATES
ATTORNEY-AT-LAW
CLEARFIELD, PA.

MANHATTAN PRINTING CO., CLEARFIELD, PA.