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An Example of Inductive Reasoning

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STUDENT NOTE

An Example of Inductive Reasoning

The usual method of case determination in the United States is by use of the syllogistic, or deductive, reasoning process. In this process, fact is built on fact, the line of reason progresses from the general to the particular, and a particular result is finally determined which stands, figuratively speaking, as the topstone in a pyramidical legal structure. Occasionally, however, the reverse process is used by the courts. This happens rarely, and in most instances results in a legal structure wherein the foundation stones are shaky and apt to topple. The particular name applied to the latter process is reason by induction, *i.e.*, reasoning from the particular to the general. More correctly, for present purposes, the process might be differentiated from that described above in that the topstone is suspended in air, and legal buttresses are then moved underneath to keep the topstone in place.

The case[1] which will be discussed herein is an example of the latter type of reason. The facts therein are these: The West Virginia legislature passed an act[2] establishing the Kanawha County Public Library; financial support was to be from the board of education of Kanawha county, the county court of that county, and the city of Charleston; the county court refused to pay its share of the required support; and the library[3] brought mandamus to compel it to do so. The Supreme Court of Appeals awarded the writ.[4]

The county court demurred on five grounds when ordered to show cause why the writ should not be awarded. These will be dealt with more particularly in the immediately following sections.[5]

1. The first ground to be considered herein is the allegation that the act is unconstitutional because in conflict with article VIII of the West Virginia constitution.[6] This article relates the duties of the county court, and, after detailing these, adds that ". . . Such courts may exercise such other powers, and perform such other duties, not of a judicial nature, as may be prescribed by law." This ground may be rather summarily disposed of, for present purposes, because the excerpted sentence would require that a finding be made that the law is invalid before the article could be used as a valid ground of demurrer. This would result in a situation wherein conclusion A would be based on conclusion B, which in turn depends on the original conclusion A for support.

2. The second ground as herein considered is, basically, that the act is invalid because it allocates funds taken from the county court to uses for which the county court is not required to provide by law. This ground is similar to ground one, above, and may also be

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[1] Kanawha County Public Library v. County Court, 102 S.E.2d 712 (W. Va. 1958). (Hereafter cited Library v. County Court). Pagination throughout is to the Southeastern Reporter, Second Series. Further note that the phrase "present court" occurring throughout the discussion refers to the court acting in connection with this particular case.

[2] W. Va. Acts 1957, ch. 178.

[3] W. Va. Acts 1957, ch. 178, § 3 provides that the library board shall be a corporation.

[4] This note will contain a discussion of the case, and in connection therewith, a general discussion of local and special laws in the state of West Virginia.

[5] The sequence of discussion has been altered from that contained in Library v. County Court, *supra* at 714, for purposes of continuity.

[6] W. VA. CONST. art. 8, § 24. It should be noted that this article also gives the county courts authority to superintend their own fiscal affairs. A more complete discussion of such fiscal affairs will be presented below.

summarily disposed of, because premature: If the act is valid, then the county *is* required by law to do the act. The ground is a conclusion in itself stating, in effect, that the act is invalid *because* the act is invalid, rather than a legal reason for an ultimate conclusion.

3. The third ground considered is the allegation that the act is invalid in that it requires the county court to levy and collect taxes and than turn these over to a library board created by the board of education[7] and under the supervision of the board of education. There is little authority on the question and the precedent would seem to indicate the contrary view.[8] It is, of course, manifest that the state has power to do acts not prohibited through a delegation of power or its own express restriction,[9] and a careful search of the law and constitutions applicable reveals no legal basis for this contention.[10]

4. The fourth ground is that the act requires a taking of money provided for governmental services and uses it for nongovernment services. This view is not supported by law, the general rule being that a public library is a governmental function.[11]

5. It is this ground which furnishes a valid objection to the act under consideration. This ground, in company with ground one, is on a constitutional basis, and is sound. The West Virginia constitution[12] provides for a restriction on the power of the legislature in relation to local or special laws; the language applicable to the present discussion is:

> "The Legislature shall not pass local or special laws in any of the following enumerated cases; that is to say, for
>
> ". . . .
>
> "Regulating or changing county or district affairs;

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[7] W. Va. Acts 1957, ch. 178, § 2.

[8] *Cf.* Meisel v. Tri-State Airport Authority, 135 W. Va. 528, 64 S.E.2d 32 (1951); Kenny v. County Court, 124 W. Va. 519, 21 S.E.2d 388 (1942).

[9] U.S. CONST. amend. X.

[10] This ground was assumed to mean only that the objection was to the selection of the library board by the board of education, and the search was on this basis only. The contention as to requiring a levy of taxes and turning these taxes over is considered as part of the discussion of ground five *infra.*

[11] See W. VA. CODE ch. 10, art. 1 (Michie 1955); *cf.* Board of Library Directors v. Snigg, 303 Ill. App. 340, 25 N.E.2d 420 (1939); Alvey v. Brigham, 286 Ky. 610, 150 S.W.2d 935 (1940).

[12] W. VA. CONST. art. 6, § 39, cl. 5.

"....

"... and in no case shall a special act be passed, where a general law would be proper and can be made applicable to the case, nor in any other case in which the courts have jurisdiction, and are competent to give the relief asked for."[13]

The last part of the section above quoted would seem, on first inspection, to preclude the validity of the act. A further analysis would bely this, however, on at least two bases. The first of these is that it would not be possible to provide for the desired result by general law, where the desired result is purely local. The second is that there is doubt as to the applicability of the latter part, for while the beginning of the article prohibits the legislature from passing *local or special* acts in the enumerated instances, the last part applying to cases not specifically enumerated mentions only *special* acts in that regard. By definition, a *local* act is one which refers or is applicable to particular *places,*[14] while a *special* act is one applicable to particular *persons* or *private concerns.*[15] Using these definitions, the act in question is local but not special. When these facts are added together with the doctrine *inclusio unius est exclusio alterius,* it becomes apparent that there is grave doubt that local acts were intended to be prohibited by the omnibus clause. In any event, it is probable that the clause would not offer sufficient basis for overcoming the presumption as to constitutionality of acts passed by the state legislature.[16] Before leaving this particular clause, it should be noted that there is a general law[17] authorizing public libraries, and providing for the support thereof. However, the general law would

[13] The omitted clauses, seventeen in number, also relate to specific cases wherein the legislature may not act by local or special law, and are not germane to the issue presently at hand.

[14] BLACK LAW DICTIONARY (4th ed. 1951).

[15] *Ibid.*

[16] The probability is not so great as might appear from the preceding statements alone. *E.g.,* while the statement is made that local and special laws differ by definition, it will be found that they have, in many jurisdictions, been interpreted so as to remove the difference in meaning. The reason for the statements and assumptions made is that, in every instance, the view most favorable to that of the present court will be adopted for present purposes, even to anticipating possible grounds not mentioned by them; because of the somewhat critical nature of this note, it is felt that this is the best method to avoid being taken along a route composed of side issues.

[17] W. VA. CODE, ch. 10, art. 1 (Michie 1955). As to the effect of such general law, where applicable, to the validity of a local law, see Brozka v. County Court, 111 W. Va. 191, 193, 160 S.E. 914, 916 (1931): "... an applicable general law being in existence, ... the special or local law is prohibited." See also Traux-Traer Coal Co. v. Compensation Comm'r, 123 W. Va. 621, 17 S.E.2d 330 (1941).

not be adequate in *requiring* the acts which the local law under consideration is designed to effectuate.[18]

The discussion to this point has been favorable to the view of the West Virginia court relative to local law and its validity in the present instance. There is one basis which has not yet been considered; this is the specific prohibition of legislative acts regulating or changing county or district affairs. If it were not for this particular clause, there is little doubt but that the position of the court would be sustained in this discussion; however, the clause is present and is the reason for the statement at the beginning of this discussion as to inductive, as opposed to deductive, processes of reasoning. As will be shown in the parts to follow, our court has, in this rare instance, taken a stand on a legal subject and then buttressed the stand with reason, rather than adding reason on reason to arrive at the stand, or decision, as the end result.[19]

The fact that a law is local or special does not, of itself, make the law invalid. While the federal constitution contains the sum total of the power exercisable thereunder,[20] by the federal government, the state constitution is better likened to a curb on the power of the state, since the state has power to do any act not delegated to the federal government or to units of the state. Except for these delegated powers, the only limit on the state's actions is contained in the constitution of that particular state.[21] Since there is no express prohibition of the power to pass local laws in toto in the constitution of West Virginia, it is apparent that in addition to a determination that a law is local in character, there must also be a determination that the law is in conflict with a specific provision in the constitution limiting the power of the legislature to enact local laws in regard to specifically mentioned subject matter. As before mentioned, the specific provision which is under consideration for the remainder of this discussion is that of exercising the legislative power to enact local laws which regulate or change county affairs.[22]

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[18] The local law differs from the general law in the following respects: In the general law, see note 17 *supra*, three authorities are *authorized individually* to establish public libraries. In the local law, see note 7 *supra*, these same three authorities are *required collectively* to do so.

[19] It should be noted that this action on the part of the court is extremely rare.

[20] See note 9 *supra*.

[21] W. VA. CONST. art. 3, § 2; *Ex parte* Stratton, 1 W. Va. 304 (1866).

[22] See note 12 *supra*.

There have been few tests of the validity of local or special laws, and these are contained in the opinion concerning the case in question. These will be examined in the order in which they appear in the text of the court's opinion.

The court states[23] in connection with the case under primary consideration that, "The controlling issue in this proceeding is whether the act under consideration regulates or changes the affairs of Kanawha County." This must be kept in mind throughout the ensuing discussion, and the cases embodied in the principal report must be examined in light of this statement and, indeed, their applicability to the principal consideration, or "controlling issue".

Groves v. County Court[24] tested the validity of an act of 1895 relating to the changing of county seats which was, in effect, a local law since only one county was affected by the law. There is, in the same article and section as the prohibition with which this discussion is concerned, a prohibition against enactment of local or special law changing county seats.[25] The present court states, "This act was a clear violation of the express provision prohibiting a special act 'locating or changing county seats'." The present court then begins the next following paragraph with the sentence, "The controlling issue in this proceeding is whether the act under consideration regulates or changes the affairs of Kanawha County."[26] It will be assumed, for present purposes, that this is correct.[27]

Two cases relied upon by the present court involve the establishment of county high schools by local law, this establishment being challenged in the first such instance, *Herold v. McQueen*,[28] on the basis of unconstitutionality under the same provision as is being considered herein. The court in that case held that such establishment was valid, in the following language: "It does not work a change in, or act as a regulation of, the general county and district affairs which already existed, but it is a creation of something in addition thereto. . . ."[29]

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[23] Library v. County Court, *supra* at 717.
[24] 42 W. Va. 587, 26 S.E. 460 (1896).
[25] W. VA. CONST. art. 6, § 39, cl. 4.
[26] See note 23 *supra*.
[27] As has been heretofore mentioned, the assumption is made for present purposes only. See note 16 *supra*.
[28] 71 W. Va. 43, 75 S.E. 313 (1912).
[29] *Id.* at 47, 75 S.E. at 315.

This language was approved in the second such case, *Casto v. Upshur County High School Board*,[30] which also involved the same basic factual situation.

The present court offers the above quotation from the *Herold* case, and it would seem that the language might control the present situation, until additional factors not considered in the instant situation are presented. The first of these facts is that there is a *mandatory* duty imposed on the legislature to provide schools by general law.[31] It would seem obvious that if the general laws were not sufficient to provide the "thorough and efficient" system required, a special or local law would be appropriate, since the duty imposed on the legislature is the primary purpose of the constitutional provision. Indeed, the provision calling for general law was considered in the *Herold* case and determined not to make invalid a local law, where necessary to effectuate the constitutional requirement. The court, in this connection, stated: "But it will be noted that [the legislature] is not prohibited from augmenting, and making more efficient, the general system of free schools . . . in any locality where it may think it wise to do so."[32]

The provision above also includes a prohibition which might be embodied in the clause with which this note is concerned, for it will be noted that the prohibition against legislative passage of local or special law applies to the regulation or change of *county* affairs. Since the legislature of the state is required to establish a system of schools, such system is not a county affair, but a state or legislative one, and does not come within the scope of the constitutional prohibition. It should be apparent that the only factors which can come within the scope of the provision are those in which the legislature has relinquished its power to the county, by constitutional prohibition or statutory grant. Further, since the provision for legislative establishment of schools is couched in mandatory language, the legislature must remain primarily responsible and, while it may in such instances use the county as a territorial subdivision,[33] the affair re-

[30] 94 W. Va. 513, 119 S.E. 470 (1923).

[31] Even more strongly, the general law is in pursuance of a constitutional mandate. W. VA. CONST. art. 12, § 1.

[32] Herold v. McQueen, *supra* at 49, 75 S.E. at 315-316.

[33] State Road Comm'n v. County Court, 112 W. Va. 98, 163 S.E. 815 (1932). It should be noted that the present court uses this case as authority for the proposition that the county is, in all things, a mere subdivision of the state. This is not so. It is, unless prohibited to interfere in the affairs of the county by constitutional or other authority, but may not do so when prohibited, as appears in this discussion.

mains that of the state and not of the county, insofar as ultimate responsibility lies.[34]

There is probably a question in the mind of the reader at this point: Does not the foregoing reasoning support the view of the present court in the matter under consideration? It does not. No attack on the soundness of the ultimate result of the *Herold* or *Casto* cases is intended. They represent the probable correct view as applied to acts which the legislature is *required* to perform. *However, there is no provision calling for a mandatory establishment of public libraries in either the constitution or general laws of the State of West Virginia.* The general laws of the state *authorize* the establishment thereof, but do not require it. There are only three instances[35] where a levy has been required for the support of a public library, through legislative enactment. Of these, the present case is the only one which has been tested concerning its constitutionality. It is evident that the mere passage, without test, of two prior local laws concerning such levy is of absolutely no value in determining the constitutionality of the particular act here in question.

In commenting on the statute[36] authorizing the establishment of public libraries by governing authorities[37] therein defined, the present court states "such authority therein is permissive only."[38] This statement is not questioned herein. It is contended, however, that this authorization indicates a complete delegation of authority to the governing authorities therein mentioned, and no others, in connection with the establishment of public libraries, at least insofar as

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[34] The same situation is present in regard to the court's discussion, Library v. County Court, *supra* at 722, relating to the payment of certain public officers. The court argues that the provision in W. VA. CONST. art. 4, § 8, providing for the legislative prescription of compensation by general law, and the setting of certain of these salaries by local law in W. VA. CODE ch. 7, art. 7, §§ 1-3, 5 (Michie Supp. 1958), gives support to the contention of the court in its final holding. These, too, are in furtherance of a *mandatory* act imposed on the legislature by the state's constitution, and are valid by the same token as are the local laws relating to schools.

[35] In addition to that currently under discussion: W. Va. Acts 1953, ch. 200 (Board of Education of Tyler County); W. Va. Acts 1st Ex. Sess. 1933, ch. 118 (Board of Education of Ohio County).

[36] See note 11 *supra.*

[37] These are the same governing authorities who are collectively required to support the public library in the present controversy.

[38] Library v. County Court, *supra* at 717.

support of them is concerned.[39] It follows that the legislature could require public libraries in every county, if it so desired, or could revoke the authority vested in the "governing authorities" to do so of their own volition. There is no constitutional or other provision which would preclude this, if done by general law. It is contended herein, nevertheless, that such a provision is invalid when done by local law.

There is one case within the opinion of the present conflict which has yet to be discussed, and this would appear to be one of signal importance, although not so treated by this court. This is the recent case, *State ex rel. Green v. Board of Education.*[40] The facts were these: Green, an employee of the Board of Education of Braxton County, was injured while in the performance of his employment. The board was immune from suit. The legislature passed a special act[41] requiring the payment of a sum of money on the finding that a moral obligation existed. Green sought mandamus on the refusal of the board to pay this sum. The supreme court found that a moral obligation did exist, and made the following rulings: First, that the act was invalid insofar as it *directed* the board of education to make such payment, as in contravention of the same constitutional provision now in question, in that it regulated the fiscal affairs of the county in requiring them to perform an act by special law which they were not required to perform by general law;[42] and secondly, that the act was constitutional insofar as it *authorized* the board to pay the sum. The significance of this case will be realized when the following statement is made: In order for the court to have found the act unconstitutional in part, it must necessarily have taken as a basic premise that an order to make a payment of money is an act "regulating or changing county or district affairs", so as to bring

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[39] There is an indication that the legislature itself may have felt it was overstepping the bounds allowed it in view of its inclusion of a severability clause, as section 9 of the local act, and the following, included as section 8 thereof:

Section 8. *Effect of Future Amendments of General Law.*—Amendments to article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty one, as amended, and other general laws shall control this act only to the extent that they do conflict with the special features thereof, or unless the intent to amend this act is clear and unmistakeable.

It should be noted in this connection that a severability clause is rare to the extreme in a local act.

[40] 133 W. Va. 750, 58 S.E.2d 279 (1950).

[41] W. Va. Acts 1949, ch. 138.

[42] It was found that the work was being performed in a governmental capacity, and that therefore the board was immune from suit.

it within the scope of the constitutional prohibition now in question. This contention is supported by the statement of the court, itself, in explaining its holding: "[T]o the extent that the statute *directs* the Board of Education . . . to reimburse relator, the legislature, in our opinion, is regulating the fiscal affairs of the board. If such regulation should be held valid in this case, it would be a stepping stone toward legislative direction of the fiscal affairs of boards of education and other governmental agencies of the state."[43] (Emphasis added.)

The local act requiring the county court of Kanawha county to pay over money to the Kanawha County Public Library is an act which makes mandatory an act not otherwise required under any law of the state. The same type act was expressly held unconstitutional in the *Green* case as violative of the provisions of the same prohibition which, it is asserted, make the present local act invalid. The court further held, in the *Green* case, that this act was a regulation of the fiscal affairs of the county. It follows, then, that the act presently under consideration must also be an act regulatory of the affairs of the county.

This determination is that which the present court has stated to be "the controlling issue of this proceeding." The court expressly states "that this legislation is local in its nature cannot be challenged."[44]

The act which has been under consideration was one passed by the fifty-third legislature for a laudable purpose. There is no doubt that a public library is one of the most worthwhile purposes to which an authorized body can lend its support. The legislature of the state of West Virginia has sanctioned the counties and municipalities, acting through certain designated bodies,[45] to establish and provide for the support of such public libraries. There is no good reason why the legislature could not originally have kept the authority to establish such libraries in its own hands, or, once having granted this authority, to recall it.[46] This body saw fit to do otherwise, however,

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[43] State *ex. rel.* Green v. Board of Education, *supra* at 755.
[44] Library v. County Court, *supra* at 716.
[45] W. VA. CODE ch. 10, art. 1 (Michie 1955).
[46] If this had been done, the legislature could, of course, have provided that all public libraries in the state were to be handled by legislative local law, inasmuch as the affair would then have been one of concern to the state as a political body, rather than the individual counties.

and delegated this authority to the governing bodies, as mentioned above. There was no express right reserved in the legislature to establish particular libraries to be supported by territorial subdivisions of the state, and there is no requirement or other factor present in the laws of the state which would impliedly reserve such a right. Nevertheless, the legislature did attempt to exercise such authority as though it had not conveyed the same away. In so doing, a legal barrier was reached in the constitutional provision expressly prohibiting the legislature from regulating the affairs of the various counties by local law. The supreme court of this state determined that such an act was not in contravention of the constitutional denial of authority to the legislature, and expressly found, by its own statement of the controlling issue of the controversy, that such an act as this, directing the payment of money, was not a regulation or control of county affairs. In so doing, it considered and reported in the instant decision a case issuing forth from the same judicial body but eight years ago. An analysis and comparison of this, the *Green* case, and the controversy presently under discussion reveals that the two are not "on all fours", but that, nevertheless, the same basic factors were, of necessity, considered in each in light of a parallel factual situation. Despite this, the ultimate findings were opposite.

In sustaining its position on the present case, the court has, as shown above, cited authority which would seem to fully support its view. A study of the material cited therein reveals the support to be less than steadfast. Indeed, the great preponderance of this material is devoted to a report of prior situations and discourse on subjects and facts which differ in their basic considerations from the instant controversy, and these differences have been set out in the above discussion. When these basic differences are put in mind, and the court's findings re-examined in light of them, most of the effect of the support is removed. In every applicable case, there has been shown an over-riding requirement or consideration which takes that case out of contention as authority for the court's view.

On the other hand, the *Green* case, which is only remotely in point on first inspection, devolves on a closer examination to be the case closest in fact and legal consideration to that under discussion. No attempt is made by the court to distinguish or overrule the *Green* case, yet a finding is made which can, by its very nature, only

have been made *despite* the holding of the *Green* case.[47] In the course of the preceding discussion, as explained therein, the view most favorable to that of the court has been taken as correct insofar as the effect thereon is related to the specific constitutional provision with which the discussion has been most concerned. Even so, the decision appears, finally, not to be adequately supported.

It is not contended that the result obtained in the final decision is one of evil. Contrarily, there appears no moral or social reason why the persons who benefit from a library which serves a vast metropolitan area should not support it. There are probably good and proper reasons why the method of support selected is the best method, and the most equitable, to provide the needed support. It is not the immediate effect of the decision allowing such a local law to stand valid which is of concern. But there is doubt as to the propriety of the long-range effect of the decision as precedent in future instances where the legislature may decide to interfere in the affairs of individual counties.[48]

The following statement appears at the end of the court's decision in the present controversy and apparently reflects the attitude of the court on the subject: ". . . The use of approximately 750,000 books annually by the citizens of Kanawha County indicates that there are many who agree with Milton that: 'A good book is the precious life blood of master spirit, embalmed and treasured up on purpose to a life beyond life.'"

This view is good and subject to no criticism.

It would seem, nevertheless, that the spirit of thought conveyed by the above quotation must be carefully weighed in the balance with that springing forth from the oft-used phrase "orderly process of law" when the two are to be balanced by the judiciary.

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[47] This is strong language. However, an attempt has been made to reconcile the two cases on every conceivable ground prior to the determination to discuss the two opposing cases, and no way to do so was discovered on other than spurious grounds.

[48] In this regard, the court state in Library v. County Court, *supra* at 720, quoting from 16 C.J.S. *Constitutional Law* § 97: ". . . a court will not anticipate prospective conditions which may never arise, in order to declare a law unconstitutional. . . ."

This is true, but should be limited to effect on the particular subject, rather than also applying to future acts which might involve the rule of law as stare decisis. The more correct view has been shown above in consideration of the *Green* case.

[49] Library v. County Court, *supra* at 724.