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States--Constitutional Limitations--Loan of Credit

L. E. B.

West Virginia University College of Law

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strict compliance with the statute.¹² The surety must leave no possible doubt in the mind of the creditor that he is standing on his statutory right, and that unless suit is commenced within a reasonable time, he will claim release under the statute.¹³ The notice is so simple that even a layman could easily comply therewith and there is no reason why the statute should not be strictly followed.

This is not a case in which abstract justice is either for or against the decision, but, as is often true in the field of commercial law, the certainty of a rule is its principal virtue. By this holding the rule is made certain and the scope of possible future litigation greatly limited. It is now settled in this state that a notice "to collect" is not sufficient. The safe thing to do when drafting such a notice, as usually is true, is to follow the exact wording of the statute: "I require you forthwith to institute suit."

D. C. H.

STATES — CONSTITUTIONAL LIMITATIONS — LOAN OF CREDIT. —

Mandamus to compel the county court of Webster county to transfer from the general county fund to the general relief fund the balance of the amount included in the budget for general relief. The county court, in compliance with the general welfare law had represented to the state tax commissioner that it would provide a separate item for general relief in its budget, to be not less than fifteen percent of the total amount which the county court might levy for current expenses as authorized by law. This sum was to supplement the funds spent by the state in the county for general relief. The county court contended that the public welfare law¹ violated that section of the state constitution which provides that "The credit of the State shall not be granted to, or in aid of any county, city, township, corporation, or person; nor shall the State ever assume or become responsible for the debts or liabilities of any county, city, township, corporation or person."² *Held*, that this was not a loan of credit within the meaning of the constitution, but was only county participation in a state function.³

¹² *McMillin v. Deardoff*, 18 Ind. App. 428, 429, 48 N. E. 233 (1897); *Maier v. Canavan*, 57 How. Pr. 504, 507 (N. Y. 1879); *Edmonson v. Potts' Adm'r*, 111 Va. 79, 82, 86 S. E. 254 (1910).

¹³ *Denick v. Hubbard*, 27 Hun 347, 351 (N. Y. 1882).

¹ W. VA. CODE (Michie, 1937) c. 9, art. 10, as amended by W. Va. Acts 1941, c. 74.

² W. VA. CONST. art. X, § 6.

³ *Kenny v. County Court of Webster County*, 21 S. E. (2d) 385 (W. Va. 1942).

The court distinguished its decision from *Berry v. Fox*⁴ which held unconstitutional, on the basis of violation of the above section of the constitution, an act whereby the state appropriated funds to pay the interest, sinking fund and amortization charges on the bonded indebtedness of the county, road, and school districts, except municipalities, issued for roads and schools now part of the state road and free school systems.

The section in question was placed in the constitution to prevent the earlier practice in Virginia of lending the state's credit to *private* internal development projects such as railroads, canals, toll roads, and turnpikes. Many of these ventures had turned out disastrously with the result that the state and counties had become burdened with debt, and had received little benefit in return. Realizing that the "new state" must pay its share of the Virginia debt, the constitutional fathers did not deem it wise to extend the credit of the state to speculators and subject property owners to heavy taxation at the very outset.⁵ The debates of the constitutional convention, however, clearly indicate that this section was not intended to prevent the legislature in any way from appropriating any amount of money in the future when necessary for the operation of state functions.⁶ That the spirit of a constitutional provision, more clearly expressing the intention of the framers thereof, rather than the letter of the law should be the guiding influence of the courts in considering the constitutionality of legislative enactments is established by precedent.⁷

States other than West Virginia have had to deal with this question. Those states having a constitutional provision similar to ours have held contrary to *Berry v. Fox*. They did so on the grounds that the expenditure of state funds was of a sovereign and public nature for state purposes (appropriation to counties for highway purposes);⁸ that the county is merely the agency of the state in performance of its functions (statute authorizing payment into the county treasury of the excess fees of an office holder);⁹ that it was a valid exercise of the legislative power in promoting the general welfare and prosperity of the state (act granting part of

⁴ 114 W. Va. 513, 172 S. E. 896 (1934).

⁵ AMBLER, ATWOOD AND MATHEWS, DEBATES AND PROCEEDINGS OF THE FIRST CONSTITUTIONAL CONVENTION OF WEST VIRGINIA (1942) 189-276.

⁶ *Id.* at pages 252, 263, 270-272.

⁷ *McCulloch v. Maryland*, 4 Wheat. 316, 4 L. Ed. 579 (U. S. 1819).

⁸ *Ada County v. Wright*, 92 P. (2d) 134 (Idaho 1940).

⁹ *Bexar County v. Linden*, 110 Tex. 339, 220 S. W. 761 (1920).

state taxes to a municipality to construct a sea wall);¹⁰ that it was for a public purpose (act of state in assuming debt of county drainage district bonds);¹¹ and that it is merely a transfer of funds to a different governmental agency (act of state in assuming debt of drainage district bonds).¹²

Those states which have held in accord with the *Berry* case have done so either by adhering to the strict letter of the constitutional section,¹³ or by conforming with an additional statutory obligation.¹⁴

Other states place the limitation of the loan of credit upon the county or political unit as well as upon the state.¹⁵ Such sections would seem to distinguish between the loan or pledge of credit of the state and an appropriation or outright gift of state funds. This fact would seem to strengthen the argument that since an appropriation rather than a pledge of credit was given in the *Berry* case, and since the constitutional provision refers only to the loan or pledge of credit and assumption of debts,¹⁶ then consistent with the essential state function of the appropriation, the act should have been upheld.

The decision of *Berry v. Fox* is inconsistent, then, with constitutional interpretation and with the weight of authority as expressed by decisions of courts in other states. That the state may appropriate funds for the relief of the poor and indigent is well accepted as a valid exercise of a state function.¹⁷ Probably, therefore, Judge Hatcher's dissenting opinion in *Berry v. Fox* was based on sound law and the present case shows a trend in the right direction.

L. E. B.

¹⁰ *City of Aransas Pass v. Keeling*, 112 Tex. 339, 247 S. W. 818 (1923).

¹¹ *Lyman v. Chase*, 178 Minn. 244, 226 N. W. 633 (1929). *Accord*: *Baker v. Hickman County*, 164 Tenn. 294, 47 S. W. (2d) 1090 (1932) (state reimbursed counties for sums used in construction of highways); *Bush v. Martineau*, 174 Ark. 214, 295 S. W. 9 (1927) (state payment of debts of road districts).

¹² *Argyle Dredging Co. v. Chambers*, 40 Cal. App. 332, 181 Pac. 84 (1919). *Accord*: *State v. Snyder*, 29 Wyo. 199, 212 Pac. 771 (1923).

¹³ *State v. Walker*, 85 Mo. 41 (1884). *Accord*: *Nougues v. Douglass*, 7 Cal. 65 (1857); *State v. Donald*, 160 Wis. 21, 151 N. W. 331 (1915).

¹⁴ *Jackson County v. McGlasson*, 167 Tenn. 311, 69 S. W. (2d) 887 (1934).

¹⁵ ARIZONA CONST. art. IX, § 6; ARK. CONST. art. XVI, § 1, amend. 13; COLO. CONST. art. XI, § I.

¹⁶ "Assumption of debts" need not be distinguished from "loan of credit". *Faver v. Washington*, 159 Ga. 568, 126 S. E. 464 (1925); *Board of Sup'rs of Louisa County v. Bibb*, 129 Va. 638, 106 S. E. 684 (1921); *Stoppenback v. Multnomah County*, 71 Ore. 493, 142 Pac. 832 (1914).

¹⁷ *Bowman v. Frost*, 158 S. W. (2d) 945 (Ky. 1942); *Moses v. Meier*, 148 Ore. 185, 35 P. (2d) 981 (1934); *Commonwealth v. Liveright*, 308 Pa. 35, 161 Atl. 697 (1932).