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## States--Constitutional Debt Limitation--Issuance of Revenue Bonds Secured by Pledge of University Tuition Fees

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dead until the presumption arises under the policy. Is there any conceivable reason for requiring the beneficiary to consider him as dead before that time? In the absence of proof of death, the beneficiary should be at liberty to believe that the insured lives until the presumption of his death arises. When the beneficiary becomes convinced of his death and gives notice to the insurer, it should not be said that such notice was not given as soon as was reasonably possible.

Whether notice of the loss was given as soon as was reasonably possible was a question of fact to be determined by the jury. *Glens Falls Indemnity Co. v. Harris, supra; Yanago v. Aetna Life Ins. Co.*, 164 Va. 258, 178 S.E. 904 (1935). No jury having been demanded by the parties, the court made the necessary findings of fact. The court of appeals cannot reverse findings of fact of the district court unless they are clearly erroneous. *United States v. Ladd*, 193 F.2d 929 (4th Cir. 1952); *Rodgers v. United States Lines*, 189 F.2d 226 (4th Cir. 1951). Under the circumstances it cannot be said that the finding of the district court that notice was given as soon as was reasonably possible was erroneous. It follows that the decision of the court of appeals was correct.

L. L. P.

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STATES—CONSTITUTIONAL DEBT LIMITATION—ISSUANCE OF REVENUE BONDS SECURED BY PLEDGE OF UNIVERSITY TUITION FEES.—Relator, under authority of W. Va. Acts 1956, c. 7, adopted a resolution authorizing the issuance of revenue bonds of the State to finance construction of agricultural and engineering buildings at West Virginia University. The bonds were to be secured by a pledge of a new special fund to be composed of University tuition fees, which were formerly paid into the State treasury as general revenue. The State constitution provides: "No debt shall be contracted by the State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion or defend the State in time of war . . ." W. VA. CONST. art. X, §4. *D*, Secretary of State, refused to attest or place the Great Seal of the State upon one of the bonds, contending that the bond issue would create a debt against the State, in violation of the State constitution. Relator sought a writ of mandamus to compel *D* to do the necessary acts to complete the execution of the bond. *Held*, that the legislation would not create a debt against the State within

the meaning of the constitutional debt limitation, and therefore, that the legislation did not violate the constitutional provision. Writ awarded. *State ex rel. Board of Governors of West Virginia University v. O'Brien*, 94 S.E.2d 446 (W. VA. 1956).

In 1933, the State Board of Control, which was then the governing body of West Virginia University, was authorized to issue revenue bonds of the State to finance construction of dormitories, and to provide for payment of the bonds from the income of the dormitories. W. VA. CODE c. 25, art. 1, §§ 24-34 (Michie 1955). The constitutionality of this legislation was never questioned. However, in *Bates v. State Bridge Comm'n*, 109 W. Va. 186, 153 S.E. 305 (1930), it was held that the issuance of bridge revenue bonds to finance bridge construction, payable solely from the bridge tolls, would not create a debt against the State within the meaning of the constitutional provision. It seems clear, then, that when the bonds are paid by the income of the facility for which the bonds are issued, no debt against the state is created within the meaning of W. VA. CONST. art. X, § 4.

In 1953, legislation was enacted authorizing the Board of Governors of West Virginia University to pledge revenue from existing dormitory facilities to secure payment of revenue bonds issued to finance construction of new dormitories at West Virginia University. W. VA. CODE c. 18, art. 11, § 1b (Michie 1955). The State Board of Education was given like authority to finance dormitory construction at the state colleges. W. VA. CODE c. 18, art. 2, § 13b (Michie 1955): It is important to note that the income of the dormitories was not a part of the general revenue of the State, but went into a separate fund. W. VA. CODE c. 12, art. 2, § 2e (Michie 1955). There have been no West Virginia cases deciding whether a debt is created against the State by a pledge of revenues from an existing facility to secure payment of bonds issued to finance a *new* facility of the same kind at the same institution. The authorities are in conflict on this problem. See, e.g., *Barbour v. State Board of Education*, 92 Mont. 321, 13 P.2d 225 (1932), which holds that in a similar situation no debt would be created against the state; and *Wilder v. Murphy*, 56 N.D. 436, 218 N.W. 156 (1928), which holds that a debt would be created against the state.

The procedure in the principal case goes even further than those heretofore discussed, for here, the funds pledged were formerly in the State treasury as general revenue and were available for general state purposes. It would seem then, that the decision in

the principal case, upholding a pledge of funds formerly a part of the general revenue, would eliminate any doubt as to the constitutionality of the procedure authorized by W. VA. CODE c. 18, art. 11, § 1b (Michie 1955), *supra*, and W. VA. CODE c. 18, art. 2, § 13b (Michie 1955), *supra*.

A 1942 constitutional amendment established the State Road Fund, composed of all revenues from gasoline, motor fuel, and motor vehicles, including taxation revenue; and it provided that these funds would be used solely for construction, reconstruction, and improvement of public highways, and for the payment of bonds issued for such purposes. W. VA. CONST. art. VI, § 52. In *State ex rel. State Road Comm'n v. O'Brien*, 82 S.E.2d 903 (W. Va. 1954), it was held that a pledge of such funds as additional security for payment of bridge revenue bonds would not create a debt against the State within the meaning of the constitutional debt limitation. There, the legislature had no control over the appropriation of the funds which were pledged, as the constitutional amendment had specified the purposes for which the funds would be used. The court said, "Neither the general revenues, nor any other revenues of this State are committed to the payment of such principal and interest, and *therefore*, the bonds are not, and can not be, a general obligation of this State. It follows, therefore, that no debt is created . . ." *Id.* at 909. (Emphasis supplied). In *Warden v. Grafton*, 115 W. Va. 438, 176 S.E. 706 (1934), the issue was whether a pledge of the city's general revenues, other than property taxes, to secure payment of revenue bonds issued to finance construction of a city hospital, would occasion a debt against the city within the meaning of W. VA. CONST. art. X, §8, which limits municipal indebtedness. In holding that it would, the court said, "Pledging of the general revenues of the city or any part thereof on the city's promise to pay clearly constitutes a debt." *Id.* at 441.

The court in the principal case, in permitting a pledge of funds formerly in the general revenue, did not extend the *Warden* case, nor did it extend the implication in the *State Road Commission* case that a pledge of general revenues of the State would violate the constitutional debt limitation. It said that the constitutional provision "was intended to prohibit the creation of debts, by the State, *required* to be re-paid by a public tax." *Id.* at 451. (Emphasis supplied.) As a practical matter the funds diverted from the general revenue will probably have to be replenished by an exaction of taxes, if the State is to maintain its present operations and services. If this is

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so, it would seem that it should make no difference whether the tax is to be levied directly or indirectly.

The rule in West Virginia now seems to be that no debt is created against the State within the meaning of the constitutional debt limitation, unless the State obligates itself to levy taxes to meet the obligation; with the exception that a fund established by a constitutional amendment may be pledged for the purposes specified therein, regardless of whether the fund is made up of taxes. The constitutional debt limitation is thus greatly narrowed from its probable original intention. The West Virginia interpretation may perhaps be regarded as a realistic interpretation of an unrealistic constitutional provision. However, another method of handling the debt limitation problems is suggested in *Boe v. Foss*, 77 N.W.2d 1, 7 (S.D. 1956): "If as some sincerely believe these organic debt limitations are unrealistic and are hampering progress, the appeal must be to the sovereign people. To amend the constitution is not a function of the courts."

R. M.

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TRUSTS—LEASE OF TRUST PROPERTY BEYOND TERM APPROVED.—Petition by *P*, as trustee under the will of decedent and as guardian of the estate for an incompetent who held an interest in the particular property involved, to extend the lease on the premises for a term of fifty years beyond its expiration date. The existing ninety-nine year lease under the trust was given for an annual cash rental of \$8,000 net with no provision for the readjustment of the rental figure. Upon the death of the two beneficiaries of the trust, now aged 69 and 64, respectively, the corpus and all accumulated and unexpended income will be distributed to specified remaindermen. The rental under the new ninety-nine year lease would immediately be increased to \$16,000 per year, subject to adjustment in accordance with the fluctuations in the Wholesale Price Index. A lease for a shorter term would not bring a satisfactory rental income. A guardian ad litem, appointed to represent minor contingent remaindermen, objected to the proposed lease, emphasizing that the trust would terminate upon the death of two persons who had life expectancies of less than fifteen years. The district court authorized the extended lease agreement, and an appeal was taken by the guardian ad litem. *Held*, that the extension of the lease beyond the period of the trust is justified where because of changed conditions