



2017 OK 64
IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

OKLAHOMA AUTOMOBILE DEALERS)
ASSOCIATION, an Oklahoma corporation,)
L AND J ACQUISITIONS, LLC D/B/A)
BATTISON HONDA, and CAITLIN CANNON,)
an individual,)

Petitioners,)

v.)

STATE OF OKLAHOMA, ex rel. OKLAHOMA)
TAX COMMISSION,)

Respondent.)

FILED
SUPREME COURT
STATE OF OKLAHOMA
AUG 31 2017

No. 116,143

FOR OFFICIAL
PUBLICATION

COMBS, C.J., with whom WATT and COLBERT, JJ., join, dissenting:

¶1 The majority opinion relies heavily upon only one decision of this Court upholding the constitutionality of a measure that removed a tax exemption without complying with Okla. Const. art. 5, § 33; *Leveridge v. Oklahoma Tax Comm'n*, 1956 OK 77, 294 P.2d 809. However, that decision is not dispositive to this action. The majority also relies upon the Oklahoma Constitution’s disfavor of special exemptions.¹ I do not believe the limitations on exemptions in our Constitution somehow show intent to immunize any legislation that removes a tax exemption from the enhanced restrictions placed upon the Legislature in 1992 by

¹ Okla. Const. art. 5, § 50 provides “[t]he Legislature shall pass no law exempting property within this State from taxation, except as otherwise provided by the Constitution.”

the people of this State. On March 10, 1992, the people of Oklahoma voted in favor of State Question Number 640, Initiative Petition Number 348, which amended Okla. Const. art. 5, § 33.² These amendments created subsections C and D of § 33 and provide any revenue bill proposed by the House of Representatives shall not be effective until referred to a vote of the people unless it receives the approval of three-fourths of the membership of both houses of the Legislature.³ The effective date of revenue bills passed by the Legislature was also restricted. H.B. 2433 did not conform to these restrictions. It was passed during the last five days of the legislative session, it did not receive the support of three-fourths of the membership of the Oklahoma House of Representatives and the Oklahoma State

² The ballot title for Initiative Petition Number 348 provided:

The measure amends the State Constitution. It adds new provisions to Section 33 of Article 5. These would change the method by which state government makes laws that raise revenue. The measure requires that a bill to **raise revenue** be voted upon by the people at the next general election. A bill would not be effective until it was approved by a majority of the voters. The measure also provides a way that a revenue bill could become law without a vote of the people. A bill would have to be approved by a ¾ vote of each house of the legislature and go to the governor for proper action. A revenue bill approved by a ¾ vote of each house of the legislature would not become effective until ninety days after the approval date. Such a bill would not be subject to the emergency measure provision. (Emphasis added).

³ Okla. Const. art. 5, § 33 (C) & (D):

C. Any revenue bill originating in the House of Representatives shall not become effective until it has been referred to the people of the state at the next general election held throughout the state and shall become effective and be in force when it has been approved by a majority of the votes cast on the measure at such election and not otherwise, except as otherwise provided in subsection D of this section.

D. Any revenue bill originating in the House of Representatives may become law without being submitted to a vote of the people of the state if such bill receives the approval of three-fourths (3/4) of the membership of the House of Representatives and three-fourths (3/4) of the membership of the Senate and is submitted to the Governor for appropriate action. Any such revenue bill shall not be subject to the emergency measure provision authorized in Section 58 of this Article and shall not become effective and be in force until ninety days after it has been approved by the Legislature, and acted on by the Governor.

Senate, and it became effective within 90 days from the date of its approval. Nowhere in the ballot title or in the text of State Question Number 640 is the term “levy a tax” found. The amendments to Okla. Const. art. 5, § 33 provided in State Question Number 640 were made to address the issue of raising revenue. As found in the ballot title, the obvious purpose and intent of the State Question was to restrict the Legislature’s ability to raise revenue from the citizens.

¶2 The majority opinion determines H.B. 2433 need not comply with the provisions of Okla. Const. art. 5, § 33, because it is not a revenue bill. In determining whether a bill is a revenue bill this Court has held:

“‘Revenue laws’ are those laws only whose principal object is the raising of revenue, and not those under which revenue may incidentally arise,” and that “‘Revenue bills’ are those that levy taxes in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue.”

Leveridge v. Oklahoma Tax Commission, 1956 OK 77, ¶8, 294 P.2d 809 (quoting *Anderson v. Ritterbusch*, 1908 OK 250, 98 P. 1002).

¶3 Petitioners argue H.B. 2433 is plainly intended to raise revenue. The bill’s title states it is “[a]n Act relating to revenue and taxation.” They claim it is concerned solely with the collection of a sales tax on motor vehicles without a single provision that concerns another topic. Although Petitioners concede the language of the bill was worded to look like a partial repeal of a sales tax exemption they argue it is in essence the functional equivalent of a 1.25% increase

in the excise tax. A majority of the estimated revenue from the new tax will go to the State's General Revenue Fund.⁴

¶4 The majority opinion agrees with Respondent's assertion that the bill is merely a partial removal of a tax exemption and this Court has held that a bill that "merely declare[s] that certain property. . . theretofore exempt from taxation . . . shall thereafter be subject to taxation . . . do[es] not constitute a revenue bill." *Leveridge v. Oklahoma Tax Commission*, 1956 OK 77 at ¶13; *Cornelius v. State*, 1914 OK 222, ¶9, 140 P. 1187. The majority holds H.B. 2433 is no different from the bill at issue in *Leveridge* which removed an exemption from a tax that already existed.

¶5 In *Leveridge v. Oklahoma Tax Commission*, 1956 OK 77, 294 P.2d 809, an Oklahoma used car dealer was denied a motor vehicle tax refund. The dealer, *Leveridge*, appealed the Oklahoma Tax Commission's decision to deny the refund. *Leveridge* challenged the constitutionality of a recently passed House Bill that removed an exemption from excise tax on certain used motor vehicles.⁵ The

⁴ Attached to Petitioners appendix at Tab 8 is a document purportedly prepared by the Oklahoma Tax Commission showing \$103,161,000.00 of the estimated \$123,383,000.00 created by H.B. 2433 will go to the General Revenue Fund of the State.

⁵ H.B. 885 (1955) amended 47 O.S. 1951, § 52d as follows:

An original or a transfer certificate of title shall be issued without the payment of the excise tax levied by this Act for:

(a) Any vehicle owned by a non-resident person who operates principally in some other state but who is in Oklahoma only occasionally;

bill, H.B. 885 (1955), was passed within the last five days of session and Leveridge asserted it was a revenue bill and was passed in violation of Okla. Const. art. 5, § 33. H.B. 855 was concerned with clarifying the status of motor vehicles registered in this State for excise tax purposes. The Tax Commission acknowledged the revenue raised by the bill would be very limited. *Id.* We determined the general rule which this Court has followed is that a revenue bill is one whose principal object is the raising of revenue and not under which revenue may incidentally arise; in addition, revenue bills are those that levy taxes in the strict sense of the word and are not bills for other purposes which may incidentally create revenue. *Leveridge v. Oklahoma Tax Commission*, 1956 OK 77 at ¶¶ 8-9. We held H.B.

(b) Any vehicle brought into this State by a person formerly living in another state, who has owned and registered said vehicle in such other state of his residence at least ~~ninety (90)~~ sixty (60) days prior to the time it is required to be registered in this State;

(c) Any vehicle registered by the State of Oklahoma, or by any of the political subdivisions thereof;

(d) Any vehicle, the legal ownership of which is obtained by the applicant for a certificate of title by inheritance or by the reorganization of a corporation or liquidation of a partnership;

(e) Any vehicle ~~legally which is owned and being offered for sale~~ by a person licensed as a dealer in used cars or parts, under the provisions of the Motor Vehicle License and Registration Act, and offered for sale by such person; :

(1) If such vehicle has been registered in Oklahoma and the vehicle excise tax paid thereon; or,

(2) When such vehicle has been registered in some other state but such vehicle is not the latest manufactured model.

Provided, the provisions of paragraph (e) of this Section shall not be construed as allowing an exemption to any person not licensed as a used car dealer in this State;

(f) Any vehicle by which ownership was obtained by foreclosure of ~~his~~ a lien in the manner provided by law or under subrogated rights arising by reason of loss under an insurance contract;

(g) Any vehicle which is taxed on an ad valorem basis.

The amendment to subsection (e) would create additional revenue where a new vehicle which is the latest manufactured model that has been regularly registered in some other state and there used, and following such use is sold to an Oklahoma used car dealer who registers the vehicle in Oklahoma. *Leveridge v. Oklahoma Tax Commission*, 1956 OK 77 at ¶17.

885 “does not within its four corners levy a tax and for said reason is not per se a revenue bill.” *Leveridge v. Oklahoma Tax Commission*, 1956 OK 77 at ¶12. H.B. 885 merely declared certain property theretofore exempt from taxation to thereafter be subject to taxation, thus closing the loophole which avoided the payment of the appropriate tax. *Leveridge v. Oklahoma Tax Commission*, 1956 OK 77 at ¶13. Such amendments, we held, did not create a revenue bill and therefore the passing of H.B. 885 did not need to comply with the provisions of Okla. Const. art. 5, § 33. *Id.*

¶6 The majority opinion holds even if the principal object of H.B. 2433 was to raise revenue it does not violate Okla. Const. art. 5, § 33 if it does not levy a tax in the strict sense of the word because *Leveridge* provides the removal of a tax exemption does not constitute a levy of a tax. This case is, in reality, one of first impression because, unlike *Leveridge*, we are dealing with a bill whose principal object is to raise revenue. The core issue in this matter is whether the partial removal of a sales tax exemption constitutes the levy of a tax in the strict sense of the word when the principal object of the removal is to raise revenue rather than having the effect of creating revenue incidentally. The facts of *Leveridge* distinguish it from this cause. The principal object of the bill in *Leveridge* was to close a loophole that allowed used car dealers to avoid certain taxation through

clever maneuvering. Its principal object was not to raise revenue. Any revenue created by S.B. 855 was merely incidental.

¶7 In *Fent v. Fallin*, we found from reading the ballot title and the text of the measure together, State Question Number 640 had two primary purposes. 2014 OK 105, ¶14, 345 P.3d 1113. First, it had the effect of limiting the generation of State revenue to existing revenue measures. *Fent v. Fallin*, 2014 OK 105 at ¶14. Second, it required future bills “intended to raise revenue” to be approved by either a vote of the people or a three-fourths majority in both houses of the Legislature. *Id.* We determined, one of its overriding purposes was clearly to “secure tax relief.” *Fent v. Fallin*, 2014 OK 105 at ¶15. In *Calvey v. Daxon*, 2000 OK 17, 997 P.2d 164, we said the 1992 amendments did not change the clearly settled meaning of the terms “revenue bill” or “bill for raising revenue.” *Fent v. Fallin*, 2014 OK 105 at ¶16. However, we noted *Calvey* concerned the transfer of money by the Legislature from fee-generating funds to a special cash fund and did not specifically address the 1992 ballot title or the aim of State Question Number 640. *Fent v. Fallin*, 2014 OK 105 at ¶16. We held that nothing in the 1992 ballot title or text of the measure restricted the Legislature from amending existing revenue measures as long as such amendments “do not ‘raise’ or increase the tax burden.” *Fent v. Fallin*, 2014 OK 105 at ¶17.

¶8 A constitutional provision must be construed considering its purpose and given a practical interpretation so that the purpose of the framers and the people who adopted it may be carried out. *Fent v. Fallin*, 2014 OK 105 at ¶17. Constitutional provisions are not made for parsing by lawyers, but are meant for the instruction of the people and the representatives of government, so that they may read and understand their rights and duties. *Fent v. Fallin*, 2014 OK 105 at ¶12. The principal object of H.B. 2433 is clearly to raise revenue. There is no other purpose in H.B. 2433 for which revenue is incidentally created. To ignore this principal object and claim the purpose is merely to remove a tax exemption makes a mockery of the purpose upon which the framers and the people adopted State Question Number 640. The majority opinion would open the door to allow the Legislature in one year to pass a law that provides a new tax with specific exemptions by three-fourths of the Legislature and the next year pass a law by only a simple majority to remove the exemption subjecting the previous year's tax to those formerly exempt. All kinds of new taxes could be imposed under this scheme without the protections provided in Okla. Const. art. 5, § 33. Interpreting our precedent to allow such a loophole is incongruous to the intent of the voters of this State when they approved State Question Number 640.

¶9 H.B. 2433 also levies a tax in the strict sense of the word, and is not a bill for another purpose which incidentally creates revenue. The effect of H.B.

2433 is to increase the excise tax on motor vehicles by 1.25%. It accomplishes this by disguising the 1.25% excise tax increase as a partial removal of a sales tax exemption. The amended language in Section 3 of the Act provides “the sales tax associated with the purchase of a motor vehicle shall be paid by the consumer in the same manner and time as the motor vehicle excise tax for said motor vehicle is due.” This new 1.25% sales tax is therefore treated in the same manner as the excise tax. The Act provides a sales tax levy for a specific amount and the manner in which it is to be paid by the consumer. The clear intent and purpose of H.B. 2433 was to increase the amount of tax paid by an Oklahoma consumer to 4.5%. Had the Legislature in a straight forward manner attempted to increase the excise tax by 1.25% the requirements of art. 5, § 33 would clearly have been applicable. **Calling it a sales tax but collecting it as an excise tax makes little difference to the consumer. It is a tax.** The tax exemption being removed, albeit partially, was first granted in 1935 and has been relied upon by the Oklahoma consumer for over 80 years. If you have purchased a vehicle since July 1, 2017, and have paid an additional 1.25% in sales tax, you would certainly feel that the provisions of H.B. 2433 “levy a tax”.

¶10 The message sent by the people of Oklahoma through approval of State Question 640 in 1992 is clear: their purpose was to make it more difficult to raise revenue from the citizens of Oklahoma. H.B. 2433 defies the purpose behind

State Question 640 by generating tremendous revenue for the state under the guise of removing a portion of a sales tax exemption on motor vehicles without complying with the provisions of Okla. Const. art. 5, § 33. The aim of the people in adopting State Question 640 must not be thwarted by such parsing of words and definitions. The Legislature must not be allowed to circumvent the requirements of Okla. Const. art. 5, § 33 when the clear principal object and purpose is to raise new revenue. A court's constitutional analysis must be based upon what a piece of legislation actually accomplishes rather than what a Legislature states it is accomplishing. *Torres v. Seaboard Foods, LLC*, 2016 OK 20, ¶21, 373 P.3d 1057. The effect of H.B. 2433 is to raise the excise tax on motor vehicles by 1.25% by removing a portion of a sales tax exemption. It is collected in the manner as existing excise tax not at the point of sale as in a sales tax. Revenue created under H.B. 2433 is not incidental. There is no other identifiable purpose behind H.B. 2433 except to raise revenue. H.B. 2433 is a revenue bill.

¶11 H.B. 2433, 2017 Okla. Sess. Laws c. 356, is a revenue bill because its principal purpose is to raise revenue, it levies a tax in the strict sense of the word and is not a bill for another purpose which incidentally creates revenue. It was passed during the last five days of the legislative session, it did not receive the support of three-fourths of the membership of the Oklahoma House of Representatives and the Oklahoma State Senate, and it became effective within 90

days from the date of its approval. The passage of H.B. 2433 by the Legislature clearly did not conform to the mandates of Okla. Const. art. 5, § 33, as amended by the people in State Question Number 640.

¶12 The effect of the majority opinion is that the many special exemptions from taxation currently existing in our tax code, \$10 billion worth according to the Oklahoma Tax Commission, will be subject to elimination by a simple majority of the legislature and the approval of the Governor. No one presently enjoying a tax exemption will be immune from this procedural vote. The purpose and intent of State Question 640 is now eviscerated, and the citizens of Oklahoma who enjoy a benefit of a tax exemption will be subject to the legislative act of a simple majority as a method of raising revenue.

¶13 Therefore, I dissent to the majority's holding that H.B. 2433 is constitutional.