C
124 Md. 502, 92 A. 1066

Court of Appeals of Maryland.
**MAYOR** AND **CITY COUNCIL** OF **BALTIMORE** et al.
v.
WILLIAMS et al.
**No. 42.**

Jan. 12, 1915.

Appeal from Circuit Court No. 2 of Baltimore City; James M. Ambler, Judge.

Bill by George Weems Williams and others against the Mayor and City Council of the City of Baltimore and others. From a decree for complainants, defendants appeal. Affirmed.

West Headnotes

**Statutes 361 ⚿109.2**
361k109.2 Most Cited Cases
(Formerly 361k109.1)
Acts 1900, c. 109, held invalid under Const. art. 3, § 29, providing that every law shall embrace but one subject, expressed in its title, in so far as it attempted to repeal and re-enact Acts 1898, c. 123, § 97.

**Constitutional Law 92 ⚿43(1)**
92k43(1) Most Cited Cases
The failure of the board of park commissioners to question Acts 1900, c. 109, in so far as it changed Acts 1898, c. 123, § 97, held not acquiescence precluding them from attacking the statute.

**Municipal Corporations 268 ⚿887**
268k887 Most Cited Cases
Under Ordinance of 1859, Acts 1861-62, c. 29, Acts 1882, c. 229, and Baltimore City Charter, § 6, subsecs. 90, 97, the board of estimates cannot treat unexpended revenue of the board of park commissioners as belonging to the current funds of the city for the next year.

**Statutes 361 ⚿51**
361k51 Most Cited Cases
The inclusion of Acts 1900, c. 109, which attempted to change Acts 1898, c. 123, § 97, in Local Code of 1906, held not to show the validity of the act.

Argued before BOYD, C. J., and BURKE, THOMAS, PATTISON, URNER, STOCKBRIDGE, and CONSTABLE, JJ.

George A. Frick, of Baltimore, and S. S. Field, City Sol., of Baltimore, for appellants. George Weems Williams, of Baltimore, for appellees.

PATTISON, J.
This appeal is from a decree permanently enjoining the appellants from using, or permitting to be used, any part of the fund known as the "park fund" or of the park tax for other than park purposes, and from allowing said park fund or park tax, or any part thereof, to be distributed except by the board of park commissioners of the city of Baltimore, and ordering and decreeing that the appellants replace upon the books of the city, to the credit of said board of park commissioners, the entire amount of money standing to the credit of said board as of December 31, 1913, less any sums that have been paid since said date on the order of said board of park commissioners for park purposes.

By an ordinance of the mayor and city council of Baltimore passed on the 28th day of March, 1859, an association was empowered to lay tracks for a city passenger railway upon certain streets of the city. The ordinance provided that the treasurer of such association, for the rights and privileges thus granted it, should pay to the city register, quarterly, one-fifth of the gross receipts accruing from the passenger travel upon said road, "the same to be applied to the establishment and improvement of the city boundary avenue, *** and to the location of such park or parks as may be determined upon by the mayor and city council

of Baltimore for the benefit of the people of said city."

The mayor and city council, however, were given the power, upon the completion of said improvements, "to reduce the rate of fare on passenger travel to such limit within the range of one-fifth of the gross receipts of said road, as they may deem expedient and advisable, the city at the same time relinquishing her interest in the receipts from said road to the extent of said reduction on said fare."

By a resolution subsequently passed by the mayor and city council on the 4th day of June, 1860, the mayor was given the authority to appoint a commission, consisting of four persons, known thereafter as the park commission, to select and purchase site or sites for the proposed park or parks. This commission was appointed, and thereafter, on the 21st day of July, 1860, an ordinance was passed containing, among others, the following provisions:

> "Sec. 2. And be it enacted and ordained, that the revenue derived and to be derived by the mayor and city council of Baltimore from the city passenger railways be and the same is hereby pledged and set apart for the payment of the interest on the certificates of stock to be issued under this ordinance.
>
> Sec. 3. And be it enacted and ordained, that ***1067** one-fifth of the revenue aforesaid, remaining after the payment of interest aforesaid, shall be invested by the register in stocks of the city of Baltimore, as a sinking fund for the redemption of the stock created by this ordinance.
>
> Sec. 4. And be it enacted and ordained, that the four-fifths of the said revenue shall be paid by the register, on the order of said commission, as the said revenue shall be received, for the improvement and maintenance of the park or parks aforesaid."

The aforegoing resolution and ordinance, passed on the said 4th day of June and the 21st day of July, respectively, were subsequently confirmed by the act of the General Assembly of Maryland passed at its January session, 1862. Acts 1861-62, c. 29. This act provided that all acts then done or which might thereafter be done "by the said mayor and city council, or other officer of said city, or by the park commission acting under the provisions of said resolution and ordinance, shall have the same effect as if the said mayor and city council, prior to the passage of the said resolution and ordinance, had been expressly empowered by act of the General Assembly of Maryland, to enact a resolution and ordinance, in the precise terms of said resolution and ordinance, and to provide for carrying the same into effect." This act likewise gave to the park commissioners power to pass "rules and regulations for the government and the preservation of order within the said parks, as they may deem expedient," and to prescribe fines to be imposed for all violations of such rules and regulations, such fines, when imposed and collected, to be "appropriated to the purposes of said parks." The said resolution and ordinance were also expressly confirmed by subsection 16 of section 6 of the present city charter, and to which reference will hereafter be more fully made.

By chapter 71 of the Acts of 1861-62, the above-mentioned association, to which the franchises and privileges aforesaid were granted, was incorporated as the Baltimore City Passenger Railway Company, and in the corporation so formed the act vested all the rights, powers, and privileges that were granted to the aforesaid association by said Ordinance No. 44, approved on March 28, 1859, upon the terms and conditions, and subject to the limitations and restrictions therein contained. In this act we find the provision:

> "That the corporation hereby created be and they are hereby required to pay over to the register of the city of Baltimore, the one-fifth portion of the whole passenger receipts of this

corporation, at or before the stated periods named in the aforesaid recited ordinance of the city of Baltimore."

Franchises and privileges similar to those granted under Ordinance No. 44 aforesaid were, from time to time, granted by the mayor and city council to ether associations and corporations to lay tracks in the bed of other streets in the city, subject, however, to the requirement that they pay unto the city one-fifth of the gross receipts from passenger travel for park purposes.

The payment by said city railway companies of 20 per cent. of the gross receipts from passenger travel continued until the passage of the ordinance of June 9, 1874, which reduced the amount to be paid by them out of such gross receipts to 12 per cent., and the payment of this portion of the gross receipts to the city continued until the passage of Acts 1882, c. 229. That statute reduced the charge for each passenger over the age of 12 years to five cents, and for each passenger between the age of 4 and 12 to three cents, and provided:

"That in lieu and substitution of the twelve per cent. tax now imposed upon and payable by the said several passenger horse railway companies mentioned in the first section of this act, that the said several passenger horse railway companies shall pay to the mayor and city council of Baltimore a tax upon their gross receipts of nine per cent., to be paid at the same time and in the same manner as the tax of twelve per cent. is now paid by said companies."

This act is now found in the City Code of 1906, § 797, in the following language:

"The said several passenger street railway companies shall pay to the mayor and city council of Baltimore, a tax upon their gross receipts of nine per cent., in quarterly installments, on the first day of January, April, July and October, in each year."

Subsection 16 of section 6 of the present city charter, which we have already referred to as confirming the aforesaid resolution of June 4, 1860, and the ordinance approved July 21st, especially provided:

"That all the rights, privileges and authority heretofore granted by ordinance, to the park commissioners, are hereby transferred to the board of park commissioners." Section 90 of the Charter.

The powers and duties of the board of park commissioners, in addition to those transferred to it under the aforesaid subsection 16 of the charter, are stated in the succeeding sections 91 to 97, inclusive. In the last of these sections (section 97), as passed by the General Assembly of Maryland at its January session, 1898 (Laws 1898, c. 123), it is provided:

"The said board of park commissioners shall have full power to employ and compensate all persons whom, in its judgment, it may deem proper, in maintaining and supporting such parks, squares, springs and monuments, or any other buildings, collection, garden or reservation provided for in this article. The distribution of the park fund for the maintenance of the different parks and squares shall be made by the park commissioners."

By Acts 1900, c. 109, said section 97 of the charter, together with sections 10, 37, 59, 77, and 176 thereof, was repealed and re-enacted with amendments. Section 97 was amended by adding thereto the following:

"Provided nothing contained in this section or elsewhere in this article shall be taken or construed to exempt the said board of park commissioners from a full compliance with all the requirements of section 36 of this article, and the said board of park commissioners shall spend no part of said park fund, unless such expenditure ***1068** is authorized and included in the annual ordinance of estimates, and provided, further, the board of park commissioners who

> go into office on the first day of March, in the year 1900, shall make such report to the board of estimates as soon thereafter as possible, which report shall include all expenditures to be made by said board of park commissioners for the remainder of the current fiscal year, and the board of estimates shall prepare and submit to the city council a supplemental ordinance of estimates, to include the amount which the said board of estimates may deem proper to be spent by said board of park commissioners for the remainder of said current fiscal year."

Section 36 of the charter, to which reference is made in the aforegoing section 97, creates what is known as the board of estimates, consisting of the mayor, city solicitor, comptroller, president of the second branch of city council, and president of the board of public improvements. They are required to meet annually, between the days therein named, and made out "three lists of moneys to be appropriated by the city council for the next ensuing fiscal year." These lists are known as: First, the departmental list of estimates, consisting of the amounts required to be annually appropriated to pay the expenses of conducting the public business; second, the estimates for new improvements, being a list containing all amounts to be appropriated for new improvements to be constructed by any department of the city; third, estimates for annual appropriations, which consist of the amounts required to be annually appropriated to charities, educational, benevolent, or reformatory institutions of the city, etc.

To enable the board to make out the first of these lists, the "president of the two branches of city council and the heads of the departments, heads of subdepartments, municipal officers not embraced in a department, and special commissioners or boards, shall *** send to the said board, in writing, estimates of the amounts needed for the conduct, respectively, of the city council, departments, subdepartments, municipal officers not embraced in a department, commissioners or boards for the next ensuing year. Such estimates shall be verified by the oath or affirmation of persons making them" - specifying in detail the objects thereof. And to enable the said board of estimates to make out the list of estimates for the new improvements, the above-named heads of departments, etc., are likewise required to file with the board "their recommendations as to the amounts which they may consider will be needed in their respective departments for improvements." Upon the completion of these lists an ordinance is drafted and submitted to the city council at a meeting to be called by the mayor, which is to hold daily sessions for its consideration until an ordinance is passed fixing and establishing the appropriations for the succeeding fiscal year, and, when so passed and approved by the mayor, it is known as the Ordinance of Estimates for such year.

The section then provides that in case of any deficiency there shall be a pro rata abatement of all appropriations (except as to those mentioned therein), and "in case of any surplus arising in any fiscal year, by reason of an excess of income received from the estimated revenue over the expenditures for such year, the said surplus shall become a part of the annual revenue of the city, and shall be available for the general expenses of the city for the next ensuing fiscal year."

The record discloses that after the expenditure for park purposes of the appropriation contained in the Ordinance of Estimates for the year ending December 31, 1913, there remained to the credit of the board of park commissioners, on the books of the city comptroller, the sum of $12,716.60. This account the comptroller, acting under the instructions of the board of estimates, transferred from the credit of the park board to the credit of the general treasury of the city, but subsequently a part of this sum, $7,532.87, was retransferred to the credit of the park board. The balance of the

amount, $5,183.73, was retained to the credit of the general revenue of the city.

It was to restrain the appellants from expending the amount so retained by them to be expended for general purposes of the city government, and to require them to replace the said amount to the credit of the board of park commissioners, that the injunction in this case was sought and obtained.

It is contended by the appellees, plaintiffs below: (1) That Acts 1900, c. 109, falls within the prohibition of that clause of section 29 of article 3 of the state Constitution which provides that "every law enacted by the General Assembly shall embrace but one subject and that shall be described in the title," and that said act, in respect to section 97, is therefore void, and that we, in reaching our conclusion upon the question presented by this appeal, are to consider the law as it stood prior to the passage of such act, which, as they contend, does not authorize the diversion of the fund in question as here attempted by the appellants, but that it vests in them alone the authority to expend and distribute such fund for park purposes only, as mentioned and defined in the various statutes and ordinances having relation to the same; (2) that if it should be held that the aforesaid act of 1900 is constitutional, it nevertheless does not authorize the expenditure of any part of said fund for other than park purposes, although the amount of such fund to be expended for such purposes may, by said statute, be under the power and control of the board of estimates.

We will first consider the question as to the validity of the statute.

[1] The title of the act is:

> "An act to repeal and re-enact with amendments sections 10, 37, 59, 77 and 176 of the act of 1898, chapter one hundred and twenty three, entitled 'City of Baltimore,' subtitle 'Charter.'"

***1069** The enacting clause is as follows:

> "Section 1. Be it enacted by the General Assembly of Maryland, that sections 10, 37, 59, 77 and 176 of the act of 1898, chapter one hundred and twenty-three, entitled 'City of Baltimore,' subtitle 'Charter,' be and the same are hereby repealed and re-enacted with amendments so as to read as follows."

Nowhere is any reference or mention made, either in the title or in the enacting clause, to section 97, but in the body of the act it appears between sections 77 and 176, amending section 97 as passed by the act of 1898, by adding thereto the language hereinbefore stated.

Of the sections repealed and re-enacted, section 10 deals with the use of highways, section 37 with the granting of franchises to the mayor and city council, section 59 with the duties of the collector of water rents and licenses, section 77 provides for the appointment of a vaccine physician, and section 176 deals with the opening of streets. Section 97 was the only section that attempted in any way to deal with the management, control, or distribution of the park fund, or that had any relation to, or connection with, the board of park commissioners.

It has been invariably held that the title need not give an abstract of the act, but it shall sufficiently describe the subject-matter of the legislation, and it must not be misleading by apparently limiting the enactment to a much narrower scope than the body of the act is made to compass. Luman v. Hitchens Bros. Co., 90 Md. 14-23, 44 Atl. 1051, 46 L. R. A. 393.

In the case of Annapolis v. State, 30 Md. 112, the subject-matter of legislation was the charter of a municipal corporation, the city of Annapolis, embracing its powers, rights, and duties. The title of the act was "An act to amend and alter the charter of the city of Annapolis." This court there held the title sufficient. That case, however, differs from the case before us, in that the title

was broader and more comprehensive and fully covered the subject-matter of the legislation. In the present case attention is specially directed to certain sections of the charter of the city of Baltimore that are repealed and re-enacted, and it is to these sections that attention is limited. The act, however, does not stop there, but repeals and re-enacts a section which is not mentioned in the title and to which neither the attention of the members of the Legislature nor the public was directed.

The case of Levin v. Hewes, 118 Md. 632, 86 Atl. 233, which, it seems, is largely relied upon by the appellants in support of the validity of this act, also differs from the present case. In that case the body of the act was not at variance with its title, but there were discrepancies between the enacting clause and the title The title provided for the repeal of section 629 of article 4 of the Code of Public Local Laws of Baltimore, etc., title "City of Baltimore," subtitle "Justices of the Peace and Constables," the repeal and re-enactment with amendments of section 206, subtitle "Constables," and six other designated sections of article 4, subtitle "Justices of the Peace and Constables," and to add three additional sections designated as 625a, 625b, and 625c. By the enacting clause section 629 was not only repealed, but re-enacted with amendments, and no reference at all is made to the six sections named in the title that were to be repealed and re-enacted with amendments, or to the three additional sections that were to be enacted. Upon an examination of the act no amended section 629 appears therein, but all the other sections mentioned in the title, either to be repealed and re-enacted with amendments or to be enacted as additional sections, are found in the body of the act as provided for by the title, and in this connection the court there said:

> "In this case the title of the act apprised both the members of the Legislature and the public that a number of sections relating to justices of the peace and constables in the city of Baltimore were proposed to be repealed, and that some of them at least were to be re-enacted with amendments, and three additional sections were to be added. That was sufficient to put any one who was interested in the subject-matter upon inquiry."

In the case before us, however, no reference is made to section 97. There was nothing in the title to direct attention to any legislation other than that affecting the particular sections to which the title referred, and, as we have already said, it was to these sections alone that the attention of the legislators and the public was directed.

Other cases are cited to us by the appellants in support of the validity of this act, but we think it unnecessary to allude to, and comment upon, them, as they are readily distinguishable from the present case.

The case most like the one now before us, and one that is controlling in this case, is Kafka v. Wilkinson, 99 Md. 238, 57 Atl. 617. In that case the act was assailed because, as it was claimed, it contravened the provision of the Constitution that is now before us. The title of the act in that case was:

> "An act to repeal secs. 122 and 128 of art. 23 of the Code of Public General Laws, title 'Corporations,' subtitle 'Insurance,' and to re-enact the same with amendments; and to add an additional section to said article, to be known as section 122A; and to repeal sec. 143EI of said article."

In the body of the act section 143EI was repealed, sections 122 and 128 were repealed and re-enacted, and the additional section to be known as 122A enacted, all of which was provided for in the title; but, in addition to this, there appears in the body of the act a section known as 122B, which was not referred to or mentioned either in the title or in the enacting clause of the act. This court in that case said:

> "The title of the statute involved in the case at bar is misleading and serves to divert attention***1070** from what is to follow in the enactment. It is indicated in the title that the purpose of the law is to repeal and re-enact two sections of article 23 with amendments thereto; to add one additional section to said article which is numbered and specified; and to repeal absolutely one other section that is designated and specified. In the body of the act all this is done as indicated; but, in addition, there is legislation of a most important character embodied in an entirely independent section designated by number, as it is to appear in the Code, of which the title of the act not only gives no notice whatever, but from which it serves to divert attention by professing to indicate all of the legislation that is to be attempted. If this shall be sanctioned, an easy means will be afforded to escape and avoid the effect of the constitutional provision in question. If one section can be enacted to become a part of an article of the Code in this way, then any number of sections could be added in the same way; and it would only be necessary in effecting changes in the provisions of the Code to indicate by the title of the act by which such changes are to be made that a particular section of the Code is to be repealed and re-enacted; and, that being done, in the body of the act to follow it with any number of sections enacting new legislation of which no suggestion would be afforded by the title. Thus there would be an opportunity for foisting upon any act of Assembly matter of legislation of which neither the Legislature nor the public would have any notice; and we would be exposed to the very evil which the Constitution, by the provision here in question, sought to prevent."

What the learned judge in that case said is equally applicable to this case. In that case there was an enactment of a section not mentioned or referred to either in the title or enacting clause. In this case there is a repeal and re-enactment, with amendments, of a section not mentioned and referred to in either the title or enacting clause. If it was a contravention of the provision of the Constitution to enact an additional section under the circumstances there mentioned, it is certainly a contravention of such provision of the Constitution to repeal and re-enact, with amendments, a section under like circumstances. See, also, Stiefel et al. v. Md. Inst. for the Instruction of the Blind, 61 Md. 144.

[2] It is urged, however, by the appellants that this act should not now be decided invalid, even though it be held to violate the aforegoing provisions of the Constitution, because of its recognition and treatment as a valid statute: (1) By the appellees and their predecessors in office, who have, since the passage of the act to the present time, complied with the provisions of the statute in submitting the estimate required under the statute to the board of estimates; and (2) by the mayor and city council in the passage of the ordinance provided for in the act and other ordinances subsequently passed.

It is admitted, as shown by the record, that the board of park commissioners have each year since the passage of the act submitted to the board of estimates the estimate mentioned in section 36 of the charter, and that the moneys expended by them were limited to those named in the Ordinance of Estimates, but never during the period between the passage of the act of 1900 and the ending of the year 1913 was any effort made on the part of the city to consider and treat the unused and unexpended money known as the park fund, appearing upon the books of the city to the credit of the board of park commissioners, as a fund that could be diverted under said section 36 to the payment of the general expenses of the city government. It was because of the effort of the city to divert such fund to the payment of such general expenses that the board of park

commissioners determined to resist the enforcement of the provisions of the statute as construed by the city, and from the record it would seem that the defect in the title was then discovered, and is now availed of to prevent what they regard a wrongful diversion of this fund.

We have been referred to no authorities, nor have we been able to find any, that support this contention of the appellants, and, in the absence of such authorities, we cannot adopt the contention of the appellants that the statute, otherwise invalid, must now be regarded as valid because so recognized and treated.

[3] It is also contended by the appellants that this invalid statute has become valid because found in the Public Local Code of 1906, which Code has no legislative sanction, except such as is claimed for it by the appellants, which consists merely of reference to it by certain statutes that have been passed since its codification. Such reference, we think, could not have the force and effect of giving legislative sanction to its provisions.

[4] Entertaining the views we have expressed, we feel constrained to pronounce section 97 of chapter 109 of the Acts of 1900 void. The act otherwise will stand, and will have the same effect as if this section had not been incorporated in it. We must therefore determine the question here presented upon the law as it stood prior to the passage of such act.

We are not disposed to further prolong this opinion by a discussion of the effect of the various ordinances and statutes which have been passed in relation to the park fund or park tax, in reaching our conclusion upon this branch of the case. We have already lengthened this opinion by setting out very fully many of the ordinances and acts which relate to the fund here involved, known as the park fund, which, in our opinion, fully establish the contention of the appellees that such a fund now exists, and that it is, under the existing law of this state, to be applied, as it has always been, to park purposes only, and to be expended and distributed for such purposes by the board of park commissioners, and the law must have been so construed by the city officials who procured the passage of said Acts 1900, c. 109; otherwise the passage of such act would seem to have been unnecessary.

We cannot agree with the appellants that ***1071** the effect of Acts 1882, c. 229, was to change the status of this fund as to the purposes for which it should be expended or by whom it should be expended and distributed. The first section of the statute fixed and established the amount to be charged by the railway companies for the conveyance of passengers over its lines, and the second section provides "that in lieu and substitution of the twelve per cent. tax now imposed" upon the railway companies, they "shall pay to the mayor and city council of Baltimore a tax upon their gross receipts of nine per cent., to be paid at the same time and in the same manner as the tax of twelve per cent. is now paid by said companies."

Under this statute the amount to be paid by the railway companies was reduced from 12 to 9 per cent. of their gross receipts, and, as before, it was made payable to the city of Baltimore. This statute does not touch the manner of its expenditure; that is to say, for what purposes or by whom it shall be expended. It remained, as before, to be expended for park purposes and by the board of park commissioners.

Entertaining the views we do of this case, it is unnecessary for us, of course, to pass upon the other contention of the appellees. We will therefore affirm the decree of the court below.

Decree affirmed, with costs to the appellees.

Md. 1915.
City of Baltimore v. Williams

124 Md. 502, 92 A. 1066

END OF DOCUMENT