

IN THE CIRCUIT COURT OF ⁵⁶¹
BALTIMORE CITY ¹⁹¹⁹

The Ethel Pope Jones

vs.

William F. Broening, Mayor
of Baltimore,

et al.

BILL OF COMPLAINT.

Mr. Clerk: Please file
with two Exhibits.

Julian S Jones
D. C. Frayne
Arthur W. Machen
Solicitors for Plaintiffs
29945
(2) 211

MACHEN & WILLIAMS
ATTORNEYS AND COUNSELLORS AT LAW
1109-1119 CALVERT BUILDING
BALTIMORE

Filed 9th October 1919

Z. Ethel Pope Jones)	
vs.)	IN THE
William F. Broening,)	
Mayor of Baltimore,)	CIRCUIT COURT
The Mayor and City Council of)	
Baltimore, a body corporate, and)	OF
Marion McKee,)	
Robert H. Carr, and)	
R. Frank Smith,)	BALTIMORE CITY.
Supervisors of Elections of)	
the City of Baltimore.)	

To the Honorable the Judge of the Circuit Court of
Baltimore City:

Your oratrix, suing on behalf of herself and all other taxpayers of the City of Baltimore who may come in and contribute to the expenses of this suit, complaining says:

1. That your oratrix ~~Z. Ethel~~ Ethel Pope Jones is a citizen of Baltimore City, and is the owner of the leasehold estate for ninety-nine years renewable forever in the property on the north side of East Read Street between St. Paul and Charles Streets, in the City of Baltimore, and known as No. 14 East Read Street, and annually pays municipal taxes thereon at the full city rate to the City of Baltimore. She is also the owner in fee simple of a lot of ground two hundred by two hundred and thirty feet situate on Fortieth Street two hundred feet from the northwest corner of Canterbury Road and Fortieth Street in that part of the City of Baltimore annexed by the Act of 1888 Ch. 98; and she is also the owner in fee simple of an unimproved triangular lot of ground two hundred feet on Fortieth Street and two hundred and twenty-six feet on Canterbury Road, at the northwest corner thereof, said lot of ground adjoining the lot first above described. Upon portions of the two last mentioned lots your oratrix annually pays

Jones

municipal taxes to the City of Baltimore at the suburban rate, and upon portions at the rural rate under the Act of 1908 Ch. 286 amending the Annexation Act of 1888 Ch. 98 Sec. 19.

2. That the defendant William F. Broening is the Mayor of Baltimore City, and the defendants Marion McKee, Robert H. Carr, and R. Frank Smith constitute and are the Supervisors of Elections of the City of Baltimore.

3. That under or under color of Article XI-A of the Constitution of Maryland as adopted by the people on November 2, 1915, pursuant to Act of 1914 Ch. 416, a Charter Board was elected by the qualified voters of Baltimore City at the General Election on November 6, 1917, to frame a charter for the City of Baltimore in accordance with said Article of the Constitution. A charter was accordingly drawn up by said Charter Board, and presented to the Mayor of Baltimore on May 4, 1918. Said Charter purported to be a repetition word for word of Article 4 of the Code of Public Local Laws of Maryland as then existing, with one or two exceptions wholly immaterial to this suit. Section 1 of Article XI-A of the Constitution of Maryland provided that the Mayor of Baltimore within thirty days after the report of said Charter to him should "publish the same in at least two newspapers of general circulation published in said the City of Baltimore"; and your oratrix is advised and therefore charges that said Charter so presented could not legally be adopted by the majority of the voters at any general or congressional election without the previous observance of said requirement of publication, which said requirement was intended to afford to all the voters a full and complete knowledge of said proposed Charter. Nevertheless the Mayor of Baltimore did not cause said Charter so presented to him to be published in at least two newspapers of general circulation, or in any newspaper of general circulation in the City of Baltimore within thirty days after it was reported to him, or at any time whatsoever. The

Mayor of Baltimore caused said Charter to be published in the Daily Record of June 4, 1918, and the Municipal Journal of June 7, 1918. Said Daily Record is a daily paper published in Baltimore City, but is not ~~expressly~~ in any sense of the word a newspaper of general circulation. It does not contain or purport to contain general news, and its circulation is confined to a very limited class of the community, namely, lawyers, real estate men, and a very few other business men. With the exception of paid advertisements, consisting chiefly of advertisements of real estate sales and publications of legal notices such as orders nisi and orders of publication, it consists almost exclusively of a few items of notices of court proceedings and of the daily assignments for the several courts in Baltimore City and the Court of Appeals, publications of opinions of the Court of Appeals and written opinions rendered in the local courts of Baltimore City, notices of the deeds, mortgages, etc., recorded in Baltimore City or Baltimore County, and a few items of so-called real estate notices. A copy of the issue of June 4, 1918, containing the publication of the said Charter drafted by the said Charter Board is herewith filed as an exhibit in the case of Lucy J. Williams et al. vs. William F. Broening, Mayor, et al., in this Honorable Court, and is prayed to be taken as part of this Bill. Said Municipal Journal is not a newspaper at all, in any proper sense of the word, and is certainly not a newspaper of general circulation, but is a publication officially printed by the City of Baltimore. It claims to have a regular circulation of 12,000, but your oratrix is informed and believes, and therefore charges, that practically all of its circulation is a free circulation, and that it has only an insignificant number of paid subscribers. The character of said paper is sufficiently shown from a copy of the issue of June 7, 1918,

containing the publication of said City Charter, a copy of which is filed as an exhibit in the case of Lucy J. Williams et al. vs. William F. Broening, Mayor, et al., in this Honorable Court, and is prayed to be taken as part of this Bill. Chapter 477 of the Acts of 1914 provides that any notice or advertisement required by any law or ordinance to be published in a daily newspaper may be published in the Municipal Journal instead of in a daily newspaper. Your oratrix is advised and therefore charges that said Act expressly recognizes that said Municipal Journal is not a newspaper; and, moreover, said Act of Assembly applies only to notices or advertisements required to be published by any State statute or City ordinance, and cannot apply to notices required by the Constitution of the State to be published in a daily newspaper of general circulation. The publication of orders nisi, orders of publication, and similar legal notices, in the Daily Record has become very common in Baltimore City, where such notices are required to be published in a daily newspaper; and your oratrix is advised and believes, and therefore charges, that in the Constitutional Amendment now standing as Article XI-A of the Constitution, the words "newspaper of general circulation" were inserted for the very purpose of preventing publication in such a paper of limited circulation as the Daily Record. Your oratrix is informed that there are five newspapers of general circulation published in Baltimore City, namely, The Sun, The Evening Sun, The American, The Star, and The News. The paid circulation of said papers, according to information received by your oratrix from the offices of said papers or from the columns thereof is about as follows:

Sun(Morning Sun),	average for Sept. 1919	- - -	94,794.
Evening Sun	" " " "	- - -	68,652
Sunday Sun	" " " "	- - -	125,384
American	average for last six months	-	61,800
Star	" " " "	- $\frac{2}{3}$	33,927
News	circulation on October 8, 1919	- -	112,850.

~~The Daily Record does not even claim to have a circulation or more than , so that your Honor can see that it cannot in any proper sense of the word be regarded as a newspaper of general circulation.~~

4. Without any publication of said Charter other than as aforesaid in the Daily Record and Municipal Journal, the said Charter prepared by said Charter Board was submitted to the voters of a part of the City of Baltimore at the Congressional Election held on November 5, 1918, and was adopted by a majority of the votes cast either for or against said ordinance; but your oratrix is informed, and therefore believes, that only a small fraction of the registered voters of Baltimore City voted thereon, and that a still smaller proportion knew what was contained in the said Charter on which they were voting. Said proposed Charter was not submitted at all to the qualified voters in Wards 25, 26, 27 and 28, which had been annexed to the City of Baltimore on June 1, 1918, more than five months prior to the said election of November 5, 1918, and your oratrix is also advised that the failure so to submit the same to the voters of said annexed Wards vitiated the adoption of said Charter.

5. Nevertheless, as though said proposed new Charter had been legally adopted, and as though the City of Baltimore had in that way become subject to Article XI-A of the Constitution, a so-called petition has been circulated for signature among the voters of Baltimore City for amending said Charter by amending Section 6 thereof by adding another sub-section thereto to be known as Sub-section 28 (BB), providing for the exemption of merchandise held for sale from taxation for all ordinary municipal purposes, and for taxing buildings at a progressively lower rate than the regular city rate, until in the year 1926 and thereafter

no building shall be taxed at more than fifty per cent of the regular city rate, a copy of which petition is herewith filed as part of this Bill marked Plaintiff's Exhibit No. 1. Said petition is alleged to have been signed by more than 10,000 qualified voters; but whether in fact it has been so signed your oratrix does not know, and there is no time to investigate the number and authenticity of the signatures purporting to be signed thereto before the next general election. Therefore, the question of the number and authenticity of said signatures is not an issue tendered in this suit, but your oratrix is willing to assume for the purposes of this suit that such signatures have been obtained to the requisite number and in the requisite manner.

6. The defendant William F. Broening, Mayor of Baltimore, has caused an advertisement of such proposed amendment to Section 6 of the City Charter to be published in the "Baltimore American", a daily newspaper published in the City of Baltimore, on September 29th and October 6th, 1919, and, unless restrained by your Honor, will continue to publish the same on each Monday until the General Election to be held on November 4, 1919. Said advertisement will be paid for out of the municipal funds; and your oratrix is advised and therefore charges that such payment will be an illegal expenditure of public money, inasmuch as the proposed amendment to Section 6 of the City Charter is unwarranted by law.

7. That unless restrained by your Honor, the defendants the Board of Supervisors of Election of Baltimore City will cause said proposed amendment to Section 6 of the City Charter to be printed on the official ballot and submitted to popular vote at the General Election to be held on November 4, 1919. Your oratrix

is advised and therefore charges that there is no warrant of law for placing said proposed amendment to Section 6 of the City Charter on the official ballot or for paying for the printing thereof with public money.

8. That the Mayor and City Council of Baltimore and the Supervisors of Election of Baltimore City have expended and are expending, and are about to expend, the funds of the Mayor and City Council of Baltimore without warrant or authority of law, in that they have advertised and are advertising notices of the submission of the said amendments to the legal and qualified voters of Baltimore City, and are having printed upon the ballots to be voted in the election to be held Tuesday, November 4, 1919, the said proposed amendments for the approval or the disapproval of the voters in that election.

9. That your oratrix is advised and therefore charges that the submission of said proposed amendment to Section 6 of the City Charter to public vote is illegal for the following reasons:

(2) Because said so-called Charter of Baltimore City was not published in two newspapers of general circulation prior to its submission to popular vote in a portion of the City on November 6, 1918, and has never been legally adopted, and is not now law, so that Article XI-A of the Constitution of Maryland is not legally applicable to Baltimore City.

that the Commission has found that the proposed amendment to the Charter of Baltimore City is in violation of the Constitution of Maryland and the Code of Public Local Laws of Maryland.

(b) Because said so-called Charter of Baltimore City which is claimed to have been adopted by popular vote on November 5, 1918, was not submitted to or voted upon by the voters in Wards 25, 26, 27 and 28 of the City of Baltimore, but voted on only by the voters in the remaining Wards of the City.

(c) Because even if said Charter was legally adopted, there was no power conferred by Article XIA of the Constitution of Maryland to amend Section 6 of the City Charter.

(d) Because even if said Charter was legally adopted, Section 2 of Article XIA of the Constitution of Maryland provides that no charter adopted thereunder shall enlarge or extend the powers granted to the City of Baltimore prior to the year 1915 by Section 6 of Article 4 of the Code of Public Local Laws of Maryland, and because ^{Sub} Section 28C of said Article 6 of the Code of Public Local Laws of Maryland as it existed in the year 1915 empowered the City of Baltimore to exempt personal property actually employed or used in the business of manufacturing in said City from municipal taxation, and by implication forbade the exemption of any other personal property or any partial exemption of buildings as attempted in said petition.

(e) Because said proposed amendment to Section 6 of the Charter is in violation of Section 6 of Article XIA of the Constitution of Maryland which expressly provides that said Article shall not be construed to authorize the exercise of any powers in excess of those conferred by the Legislature upon the City, and because the power of exemption from taxation purported to be exercised by said proposed petition has not been granted to the City of Baltimore by the Legislature.

(f) For other reasons to be assigned at the hearing.

To the end therefore:

1. That the defendants the Mayor and City Council of Baltimore and William F. Broening, Mayor, and each of them, their officers, agents, servants and employees maybe restrained and enjoined by writ of injunction, preliminary as well as perpetual, from continuing the publication of said advertisement a copy whereof is filed herewith as Plaintiff's Exhibit No. 2, and specially may be restrained and enjoined from devoting any of the funds or property of the City of Baltimore towards defraying the cost of publishing such advertisement.

2. That the defendants Marion McKee, Robert H. Carr and R. Frank Smith, Supervisors of Elections, their agents, servants and employees, may be restrained and enjoined by writ of injunction, preliminary as well as perpetual, from placing upon the official ballot to be used at the General Election to be held in the City of Baltimore on November 4, 1919, the said proposition to Amend Section 6 of the Charter of the City of Baltimore in the manner and form in this Bill of Complaint set forth, and specially from using any public money or funds or funds under their control for defraying any part of the cost of printing such proposition on said official ballots, and from signing any warrant, order or other authority for such payment.

3. That your oratrix may have such other and further relief as the nature of the case may require and to your Honor may seem meet.

May it please your Honor to grant unto your oratrix the writ of subpoena against the defendants William F. Broening, a resident of Baltimore City, Mayor of Baltimore, the Mayor and City Council of Baltimore, a body corporate, and Marion McKee, Robert H. Carr and R. Frank Smith, all residing in the City of Baltimore, Supervisors of Elections of the City of Baltimore,

commanding them and each of them to be and appear in this Honorable Court upon some day certain to be therein named to answer the premises and abide by and perform such decree or order as may be passed herein, and also the writ of injunctio, preliminary as well as perpetual, as aforesaid.

And as &c.

E. Ethel Pope Jones

*Julian S. Jones
Arthur W. Machen L.
Solrs for Complainant*

STATE OF MARYLAND, BALTIMORE CITY, tow-ti:

BE IT REMEMBERED that on this *North* day of October, in the year 1919, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared ~~Z~~ Ethel Pope Jones, plaintiff in the foregoing Bill of Complaint, and made oath in due form of law that the matters and things set forth therein are true as therein stated to the best of her knowledge and belief.

Witness my hand and Notarial Seal.

Howard S. Adams

Notary Public.

IN THE CIRCUIT COURT OF
BALTIMORE CITY

561
1919

Mary Ze Ethel Pope Jones

vs.

William F. Broening, Mayor
of Baltimore,

et al.

Plaintiff's Exhibit No. 1.

29945
(2)

MACHEN & WILLIAMS
ATTORNEYS AND COUNSELLORS AT LAW
1109-1119 CALVERT BUILDING
BALTIMORE

Oct 19 1919

IN THE CIRCUIT COURT OF
BALTIMORE CITY

561
a 1919

Ray~~W.~~ Ethel Pope Jones

vs.

William F. Broening, Mayor
of Baltimore,

et al.

Plaintiff's Exhibit No. 2.

a 9945
(3)

MACHEN & WILLIAMS
ATTORNEYS AND COUNSELLORS AT LAW
1109-1119 CALVERT BUILDING
BALTIMORE

Ex. 9 October 1919

PROPOSED AMENDMENT TO THE CHARTER OF BALTIMORE CITY RELATING TO THE EXEMPTION OF MERCHANDISE AND THE LOWER TAXATION OF BUILDINGS.

WHEREAS, a petition has been filed with me proposing an amendment to Section 6 of the Charter of Baltimore City relating to the exemption of merchandise and the lower taxation of buildings by adding a new sub-section to said Section 6, to follow immediately after Sub-section 28 (B), to be known as Sub-section 28 (BB), which said amendment is as follows:

“(BB) EXEMPTION OF MERCHANDISE AND LOWER TAXATION OF BUILDINGS.

“In order to encourage the growth and development of commercial enterprises in Baltimore City and to lessen the cost of goods therein, beginning with the assessment and levy of city taxes for the year 1921 and thereafter, all merchandise held for sale shall be exempt from taxation for all ordinary municipal purposes.

“To stimulate the erection of buildings and general city development and to encourage home-owning it is hereby provided that for the year 1922 no building shall be taxed by the city for ordinary municipal purposes at more than ninety per cent. of the regular city rate prevailing in the same taxing district; for the year 1923 no building shall be taxed at more than eighty per cent. of the regular city rate in such district; for the year 1924 no building shall be taxed at more than seventy per cent.; for the year 1925 at more than sixty per cent., and for the year 1926 and thereafter no building shall be taxed at more than fifty per cent. of the regular city rate prevailing in said district. Any and all portions of this Charter in conflict or inconsistent with this sub-section are hereby repealed.”

NOW, THEREFORE, I, in pursuance of the direction contained in Section 5 of Article XI-A of the Constitution of Maryland, do hereby publish a full, true and correct copy of the text of said amendment once a week for five successive weeks prior to the election to be held in Baltimore City on November 4th, 1919, at which election the said proposed amendment to the Charter of Baltimore City shall be submitted in form and manner prescribed by law to the legal and qualified voters of Baltimore City for their adoption or rejection.

W.M. F. BROENING,
Mayor of Baltimore.

se29-m5t

IN THE CIRCUIT COURT OF
BALTIMORE CITY.

561

A 7919

Z. ETHEL JONES,

VS.

WILLIAM F. BROENING, Mayor
of Baltimore, et al.

ORDER.

Mr. Clerk:-

Please file.

A 9945
(5)

9th October 1919

Z. ETHEL POPE JONES,

VS.

WILLIAM F. BROENING, Mayor
of Baltimore,

THE MAYOR AND CITY COUNCIL
OF BALTIMORE, a body
corporate, and

MARION MCKEE,
ROBERT H. CARR, and
R. FRANK SMITH,
Supervisors of Elections of
the City of Baltimore.

IN THE

CIRCUIT COURT

OF

BALTIMORE CITY.

.....1.....

UPON consideration of the Bill of Complaint in this case and the exhibits accompanying the same, it is this ^{9th} day of October, 1919, by the Circuit Court of Baltimore City, ADJUDGED AND ORDERED that the Injunction prayed for in the said Bill be, and it is hereby REFUSED.

James P. Gorten

In the Circuit Court of Balt-
timore City.

561
a 1919

Ethel Pope Jones,

vs.

Hon. Wm. F. Broening, et al.

A G R E E M E N T.

a 9945
24)

Filed October 1919

Z. Ethel Pope Jones,	:	
	:	In the Circuit Court
vs.	:	
	:	of
Hon. William F. Broening, et al.	:	
	:	Baltimore City.

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IT IS AGREED that this Court or the Court of Appeals in case of an appeal, may for the purpose of determining the character of the Daily Record and the Municipal Journal, examine and consult any copies of said papers or the files thereof in any public library, to the same effect as if incorporated in the Record.

IT IS ALSO AGREED that the copies of the Daily Record of June 4th, 1918 and the Municipal Journal of June 7th, 1918, filed as exhibits in this case, need not in the event of any appeal be copied or printed as part of the record, but that either party shall have right to refer to the originals with the same effect as if they had been so copied or printed.

Julian S. Jones
Arthur W. Macken
 Solicitor for Plaintiff
Robert M. Macken
 City Solicitor

3. Ethel Pope Jones

561

in A 1919

Wm. F. Broening
Mayor

et al.

Order for Appeal

A 9945
(6)

J. H. 9th District 1919

3. Ethel Pope Jones
vs.
William F. Broening,
Mayor

In the
Circuit Court of
Baltimore City

Mr Clerk:

The Plaintiff prays an appeal to the
Court of Appeals from the order refusing
an injunction according to the prayer of the
bill, passed on the 9th day of October 1919.

Julian S. Jones
Arthur V. Macdonald
Solicitor for Plaintiff.

Deacon
Marion M. Kee
Pres
R. Frank Smith 10-30
and
Mayor & City
Council etc.
10-25

IN THE CIRCUIT COURT OF
BALTIMORE CITY. ⁶⁰⁶¹
1919

Z. ETHEL POPE JONES.

VS.

WILLIAM F. BROENING,
Mayor, et al.

10/29/19

DECREE.

MR. CLERK:-

Please file.

Julian S. Jones
Solicitor for Plain-
tiff.

29745
(8)

JULIAN S. JONES,

ATTORNEY AT LAW

608-610 EQUITABLE BUILDING

BALTIMORE, MD.

J. S. Jones 1919

Copy of the within Decree served on Marion M. Kee,
Robert H. Carr and R. Frank Smith, Supervisors of Elections
by service on R. Frank Smith one of the Supervisors on the
29th day of October, 1919. at 10.30 o'clock A. M. Also Copy
of the within Decree served on Mayor and City Council
of Baltimore, a corporation, by service on Roland R. Marchant
City Solicitor, on the 29th day of October, 1919, at 10.25 o'clock
A. M. in presence of Morris Finkelstein.

Thomas F. M. Multy
Sheriff.

Fees \$1.00.

Z. Ethel Pope Jones. *
vs. *
William F. Broening, *
Mayor, et al. *

In the
Circuit Court
Of Baltimore City.

A duly certified copy of the Per Curiam opinion of the Court of Appeals of Maryland in the above entitled case passed October 23rd, 1919, and the mandate thereon, having been filed in this Cause, in pursuance thereof, IT IS HEREBY ORDERED AND DECREED this 26th day of October, 1919, that the Mayor and City Council of Baltimore and William F. Broening, and each of them, their officers, agents, servants and employees be and they are hereby restrained and enjoined from continuing the publication of the advertisement of the Amendment known as Sub-section 28 (BB), Section 6 of the Charter of Baltimore City, and

IT IS FURTHER ORDERED AND DECREED that the defendants, Marion McKee, Robert H. Carr and R. Frank Smith, Supervisors of Election, their agents, servants and employees, be and they are hereby restrained and enjoined from placing upon the official ballot to be used at the General Election to be held in the City of Baltimore on November 4th, 1919, the said proposed amendment to Section 6 of the Charter of the City of Baltimore to be known as Sub-section 28 (BB) of Section 6 of the said Charter, and

IT IS FURTHER ORDERED AND DECREED that the costs in this case be paid by the Defendants.

James P. Gorter