

# Bolivar Twp. Bd. of Fin. of Benton Co. v. Hawkins

No. 26,327. | Ind. | Jun 28, 1934

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Cited By 28

Outcome

This is an action brought by the appellant to recover the sum of \$28,977.24, together with interest and attorney fees from the appellees as sureties on a depository bond given to secure the public money on deposit in the State Bank of Otterbein, Otterbein, Indiana, belonging to Bolivar civil township and Bolivar school township, Benton county, Indiana, at the time of the failure and closing of said bank, which bond was given in compliance with the provisions of the Public Depository Act of the State of Indiana, being Chapter 222 of the Act of 1907, as amended. And the particular questions involved being whether appellees, uncompensated individual sureties upon the depository bond of the State Bank of Otterbein, given to secure \*175 the deposit of funds belonging to Bolivar civil township are relieved from liability by the terms and provisions of Chapter 78, Acts 1933, page 488, the depository bond having been given subsequent to January 1, 1927, to wit, January 6, 1931. The complaint averred, among other things, that on the 6th day of January, 1931, the board of finance of Bolivar township met in regular session for the purpose of selecting a depository for the funds of said township and said school township; that the State Bank of Otterbein filed its proposal to receive deposits of the public funds of Bolivar township and Bolivar school township in a sum not to exceed \$60,000 at any time; that said bank at said time tendered and delivered to the board of finance, security for such deposits, a personal bond in the sum of \$35,000, the said bank being principal and said defendants sureties thereon; that said board of finance accepted the proposal of said bank and funds were deposited in said bank; that on June 6, 1931, the bank was closed and placed in the control of the State Banking Department, and a receiver was appointed therefor, that on June 6, 1931, the said township had on deposit in said bank the sum of \$30,477.24; that said bank was indebted to said township for the payment of said sum; that a demand had been made upon the receiver and each of defendants for payment, but payment has been refused; that the sum of \$5,500 has been paid on said principal.

The appellees filed an answer to the complaint of appellants admitting many of the allegations of the complaint. Among other things alleged in the answer, it is asserted all of the funds on deposit, except \$5,203.54, was raised by general taxation; that said amount of \$5,203.54 was raised otherwise than by general taxation in said Bolivar township and Bolivar school township; that payments of \$5,500 had been \*176 made on said bond and that said amount exceeded the amount of said deposit representing funds not raised by general taxation; that said bond is a "Personal Bond," and said defendants became obligated thereon, without compensation and pursuant to Chapter 222 of the Acts of 1907 as amended. That by reason of an act of the General Assembly of 1933, the same being Chapter 78, Acts of 1933, page 488, the said defendants and each of them are relieved, released, and discharged from any liability on said bond.

The appellant, plaintiff below, filed a demurrer to the answer of appellees, defendants below. The demurrer was overruled and the plaintiff refused to plead further and judgment was rendered for defendants.

The appellant's assignment of error is as follows: (1) The trial court erred in overruling appellant's demurrer to the appellees' answer and supplemental answer; (2) the trial court erred in rendering judgment against the appellant, that it take nothing by its complaint.

The title of the Act of 1933, which is in question is as follows: "AN ACT entitled `An act concerning liability of sureties on public depository bonds given to secure deposits of public funds, granting relief in certain cases from liability on such bonds, upon judgments obtained thereon, and upon any evidence of indebtedness given in lieu of such liability, to certain sureties and their heirs, legatees, devisees and personal representatives, providing for the application of payments made or which may be made on such bonds, deposits or judgments, providing for the application and disposition of certain payments and the issuance and acceptance of warrants therefor, saving rights of contribution and subrogation in certain cases and declaring an emergency."

Section 1 of said Act is as follows: \*177

"Public Depository Bonds – Freehold Sureties – Release and Discharge

Section 1. *Be it enacted by the General Assembly of the State of Indiana*, That any and all persons and the heirs, legatees, devisees and personal representatives of any and all persons who were accepted as freehold sureties and became obligated, *without compensation*, on any personal bond or bonds given pursuant to chapter 222 of the Acts of 1907, as amended, to secure deposits in a bank, banking institution or trust company, designated, on or after January 1, 1927, as a public depository of public funds belonging to any county, city, town, school corporation or any other municipal or

political subdivision, other than the state, are hereby relieved, released and discharged from any and all liability on or on account of such bond or bonds to the extent that deposits secured by such bond or bonds represent funds *raised by general taxation* in the municipal corporation or political subdivision making such deposits." (Our italics.)

In this opinion, we shall consider the questions involved in the order presented by appellant in its brief. Its first proposition is: The act is unconstitutional because it violates § 19 of Article 4 of the Constitution of the State of Indiana. Said section is as follows: "Every act shall embrace but one subject and matter properly connected therewith, which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title." § 122, Burns, 1926.

Giving the language as set out above a reasonable construction, can it be said the act violates the same? We do not believe so. We believe that the act embraces but one subject and 1. matters properly connected therewith. It is clear that the subject \*178 of the act is the liability of sureties on public depository bonds and the other provisions of the act are properly connected therewith. The provisions relating to the subject of the act are: The relief in certain cases from liability on such bonds; relief upon judgments obtained on such bonds, and upon evidence of indebtedness given in lieu of such liability; relief to certain sureties, their heirs, legatees, and devisees; providing for application of payments made on such bonds or judgments and a provision for the application and disposition of certain payments and the issuance and acceptance of warrants therefor. All of these provisions relate to and are properly connected with the subject matter.

As is said in the case of *Board v. Scanlan* (1912), [178 Ind. 142](#), 145, 98 N.E. 801, "It is not necessary that all matters connected with, or germane to the subject of an act shall 2. be embraced in the title. It is sufficient that the title shall `embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title.' (Const. Art. 4, § 19), and that it is of such character as fairly to apprise the legislators and the public in general of the subject-matter of the legislation, so as to lead to inquiry into the body of the bill, or indicate some particular branch of legislation as a head under which the particular provisions of the act may reasonably be looked for, and it need not set out all the matters properly connected with, or germane to the subject-matter of the act." A large number of cases are collected and cited, in the foregoing case, on the proposition of law as just stated and we do not consider it necessary to cite them here.

In the case just cited the court also said, p. 147: "The word `subject' in the Constitution (article 4 § 19) indicates the thing about which the legislation is had, and the word `matters' the incident or secondary things \*179 necessary to provide for its complete enforcement," and citing many cases. We believe that the title to the act in question fully meets the requirements of the constitutional provision as heretofore set out.

The second proposition of the appellant is: that the act is unconstitutional in that it violates Section 1 of the 14th Amendment of the Constitution of the United States and 3. Article 1, Section 23 of the Constitution of Indiana. Section 1 of the 14th Amendment of the Constitution of the United States provides: ". . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . ." And Section 23, Article 1 of the Constitution of Indiana provides that: "The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens."

We can not believe that it can be seriously contended that the act violates Section 1 of the 14th Amendment of the United States Constitution. The plaintiff, in the instant case, is a board or agency of the state created by the state to enable it to perform and discharge certain governmental duties, and it has long been held that such corporations or agencies have no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of its creator.

One of the latest pronouncements upon this subject is that by Justice Cardoza in the case of *Williams, etc. v. Mayor, etc.* (1932), [289 U.S. 36](#), 40, he said: "A municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator." Many cases of the United States Supreme Court are cited which sustain this proposition as stated by Justice Cardoza. \*180 In the case of *Inland Steel Co. v. Yedinak* (1909), [172 Ind. 423](#), 433, 87 N.E. 229, where it was contended that certain statutes of the state of Indiana unlawfully abridged the privileges and immunities of the appellant as a citizen of the United States, in violation of the 14th amendment to the Federal Constitution, it was said by the court: "Appellant is a corporation, and not a citizen within the meaning of that term as used in this connection, and cannot invoke the benefit of this provision which was made for the protection of natural persons." Citing *Pembina, etc., Milling Co. v. Penn* (1888), [125 U.S. 181](#), 8 Sup. Ct. 737, [31 L.Ed. 650](#); *Schmidt v. City of Indianapolis* (1907), [168 Ind. 631](#), 80 N.E. 632, 14 L.R.A. (N.S.) 787, 120 Am. St. 385.

Neither do we assent to the proposition that the act in question grants to a class of citizens privileges and immunities which upon the same terms do not equally belong to all 4. citizens and it does not therefore violate Section 23 of Article 1 of the Constitution of Indiana.

In the case of *Hammer v. State* (1909), [173 Ind. 199](#), 206, 89 N.E. 850, 24 L.R.A. (N.S.) 795, 140 Am. St. 248, 21 Ann. Cas. 1034, it was said: "Article 1, § 23, of the Constitution of this State is the antithesis of the 14th amendment to the federal Constitution, for while the latter operates to prevent abridgment by the states of constitutional rights of citizens of the United States, the former prevents the State from granting privileges or immunities — that is, exemptions from otherwise common burdens — or advantages to any citizens or class of citizens which, upon the same terms — that is under like circumstances and conditions — shall not equally belong to all citizens. One section prevents the curtailment of the constitutional rights of citizens, and the other prohibits the enlargement of the rights of some in discrimination against others; but so long as \*181 all are treated alike, under like circumstances, neither section is violated."

It is insisted by appellant that the act in question is class legislation for the reason that it does not release sureties on depository bonds executed in conformity with Chapter 222 of the Acts of 1907, as amended, executed prior to January 1, 1927; that it does not release sureties who receive compensation for becoming security on such depository bonds executed in conformity with Chapter 222 of the Acts of 1907 as amended; that it does not release any judgment obtained against a surety based upon a public depository bond executed prior to January 1, 1927; that it does not release a surety from liability upon a promissory note or other evidence of indebtedness given in lieu of his liability on public depository bonds executed prior to January 1, 1927; that it does not provide for the reimbursement of money paid by any surety by reason of being a surety on a public depository bond issued in conformity with said Chapter 222 of the Acts of 1907, as amended paid on any bond executed prior to January 1, 1927, and paid before March 1, 1932, and that the classification of persons affected by the act is unreasonable, unjust, and arbitrary.

Can the act in question be said to be of an unreasonable, unjust and arbitrary classification? If so, the act must be declared unconstitutional; on the other hand if the classification is a reasonable one it must be declared constitutional.

It cannot be questioned that the legislature has the power to make a reasonable classification of persons and things for the purpose of legislation. In determining the legality of 5, 6. classification for legislative regulation, the subject to be regulated, the character, extent, and purpose of the regulation,

the classes of persons legally and naturally affected by \*182 the regulation, and the particular classification and regulation adopted by the statute, should be considered.

It can not be questioned that the state may classify persons and objects for the purpose of legislation, if the classification is based on proper and justifiable distinctions, considering the purpose of the law. *Chicago, M. St. P.R.R. v. Westley* (1910), [178 Fed. 619](#), 47 L.R.A. (N.S.) 97; *Selvage v. Talbott* (1911), [175 Ind. 648](#), 93 N.E. 855; *Carr v. State* (1911), [175 Ind. 241](#), 93 N.E. 1071. And the legislation, which in carrying out a public purpose is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not considered class legislation and is not repugnant to the constitutional inhibition. *C.C.C. St. L.R.Co. v. Backus* (1892), [133 Ind. 513](#), 33 N.E. 421.

As to the right of the legislature to make classifications, this Court, in the case of *Bedford Quarries Co. v. Bough* (1907), [168 Ind. 671](#), 674, 80 N.E. 529, 14 L.R.A. (N.S.) 418, said: "The legislature may make a classification for legislative purposes, but it must have some reasonable basis upon which to stand. It is evident that differences which would serve for a classification for some purposes would furnish no reason for a classification for legislative purposes. Such legislation must not only operate equally upon all within the class, but the classification must furnish a reason for and justify the making of the class; that is, the reason for the classification must inhere in the subject-matter, and rest upon some reason which is natural and substantial, and not artificial. Not only must the classification treat all brought under its influence alike, under the same conditions, but it must embrace all within the class to which it is naturally related." Many cases are collected and cited to support the foregoing statement and without \*183 question it is a fair statement of the law on this subject.

It can also be said that the question of classification is primarily for the legislature, and it can never become a judicial question except for the purpose of determining, in any 7. given situation, whether the legislative action is clearly unreasonable, and before a court can interfere with the legislative judgment, it must be able to say that there is no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched. 6 R.C.L. 385, and cases collected and cited.

In the case of *Lindsley v. National Carbonic Gas Co.* (1911), [220 U.S. 61](#), 78, in discussing the question of classification the court lays down four propositions as applicable thereto, as shown by repeated decisions of that court. He said: "1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but

admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

In the case of *Grainger et al. v. Douglas Park Jockey Club* (1906), 148 Fed. Rep. 513, 525, 8 Ann.

Cases 997, \*184 the court, in speaking of classifications, said: "There must be a real and substantial relation between the classification and that for which the statute or ordinance making it was enacted — the object which it was intended to accomplish, to wit, the public welfare."

In determining whether or not a basis of classification is reasonable it must be looked at from the standpoint of the legislature enacting it, the question of classification 8. being primarily for the legislature. Legislative discretion in this matter is not subject to review by the courts, except to the extent of determining whether the classification adopted is arbitrary, unreasonable, and unjust. And, as in all other cases involving the validity of statutes, all reasonable doubts are to be resolved in favor of upholding the validity of legislation establishing a classification. 12 C.J. 1129-1130. Many cases are collected and cited from Indiana and other states in support of the foregoing statement of the law relative to classification.

One of the most recent cases of this court upon the subject of classification is that of the *School City of Elwood v. State ex rel.* (1932), [203 Ind. 626](#), 635, [180 N.E. 471](#), 81 A.L.R. 1027. The court said: "The classification to be constitutional must be reasonable and natural, not capricious or arbitrary; it must embrace all who naturally belong to the class, and there must be some inherent and substantial difference germane to the subject and purpose of the legislation between those included within the class and those excluded."

The case of *Fountain Park Co. v. Hensler* (1926), [199 Ind. 95](#), 101, [155 N.E. 465](#), is cited wherein this court said: "The question of classification is primarily for the legislature and does not become a judicial question unless it clearly appears that the legislative classification is not based on substantial distinctions with \*185 reference to the subject-matter, or is manifestly unjust or unreasonable."

It is also contended by appellant that it is class legislation because it does not relieve sureties who are compensated. We can not believe this contention is taken seriously. The courts 9. have uniformly made distinctions and classifications between paid sureties and those not paid. We deem it useless to discuss this question, but content ourselves by citing the case of *Royal Indemnity Company of New York v. Northern Granite Stone Company* (1919), 100 Ohio St. 373, 126 N.E. 405, 12 A.L.R. 378. The latter report contains a complete annotation of the liability of the paid surety and the gratuitous surety company. Guided by the law as heretofore set out relative to classification, can it be said that the act in question violates either Amendment 14 of the Constitution of the United States or Section 23, of Article 1 of the Constitution of Indiana?

The original Depository Act was passed in 1907. Prior to this time there was no depository law in the state. The legislature then passed the act providing for a system of public depositories for the deposit of public funds, and at that time made a classification of the funds. Not all funds were included. Municipal sinking funds and some others were not included. All funds, however, raised by general taxation were included. The Act also made a classification as to sureties. It provided that in case of state funds there should be not less than seven freeholders of the state sign the bond, but for all other funds there should not be less than five freeholders of the state required. The bond given should be for a sum not less than 25 per cent greater than the maximum amount of the funds to be held on deposit at any one time, and, if a surety company bond, a sum not less than the amount of funds to be held at \*186 any one time. And it also provided in lieu of a personal or surety company bond, road bonds, bonds of the United States, or bonds of the state of Indiana might be accepted. An Act of 1925, p. 373, changed the number of sureties required, and provided that state funds should be protected by a surety company bond, and by the Act of 1932 (Special Session), p. 141, the provisions for giving security for public funds were repealed and a state sinking fund to be known as the "state sinking fund for public deposits" was passed. We do not think it can be questioned that the legislature had the power to make the foregoing classification to protect public funds. This was a legislative function over which the courts have no control.

Because all public funds of the municipalities of the state were not required to be deposited under the Depository Act of 1907, does not make the act invalid. The legislature certainly had the right to enact the act of 1907; prior to 1907, the state had never enacted such a law, and, if it had the right to enact such a law, and this is not questioned, then it had the right to say what funds should be within the law, and the manner of governing the same. It was purely a matter a legislative discretion.

The appellant strenuously contends that the act is class legislation for the reason that it limits its application to January 1, 1927, that is to say no relief is given those 10, 11. obligated on depository bonds prior to January 1, 1927.

We think the legislature has the power to limit the application of legislation as to respect to time, and has often done so. For instance the legislature has provided for the limitation of actions and the time in which they can be brought, and provided that some must be brought within six years, some within five years, some within ten years. For instance, on accounts and contracts not \*187 in writing the action must be brought within six years. It has never been contended, so far as we know, that because one who has an account or contract and can not bring an action upon the same the next day after the six years has expired, that it is class legislation and void. In the very necessity of things the legislature must have the right to limit the application of legislation as to time. And this question is primarily one for the legislature, and unless it can be said that such legislation is arbitrary, unjust, and unreasonable, this court cannot say it is invalid.

One of the cardinal rules, as heretofore stated, relative to classification is — that if a state of facts can reasonably be conceived that would sustain the classification — the 12, 13. existence of that state of facts at the time the law was enacted must be assumed. With this rule as to construction in mind what may we say the legislature might have had in view when the act was passed? In our judgment there is no question as to what the legislature had in mind and the purpose of the legislation. The United States Congress and the legislatures of every state in the Union have been confronted with relief and emergency measures growing out of the economic conditions of the country. We must take judicial notice of the fact that for the past few years our country, and for that matter the whole world, has been shaken to its very foundation by a devastating financial crisis. Emergencies of many kinds have had to be met in order to save the government itself and the people from a complete breakdown and ruin.

The General Assembly at the Special Session of 1932, passed an act, known as the "State Sinking Fund for Public Deposits." This act did away with personal and corporate surety bonds and provided a sinking fund to be provided for by a diversion of interest payments on public funds. What reasons prompted this legislation? \*188 Evidently, it was prompted by the fact that the legislature took knowledge of the conditions then prevailing that it had become almost impossible for those entrusted with public funds to secure either individual or surety company bonds so that they might comply with the Public Depository Law. Banks were failing and had been since 1927; private individuals by the thousands were becoming bankrupt and it became necessary to enact the law of

1932, in order to secure public funds. It is a well known fact that the bank failures of this state began in 1927, and continued in increasing numbers until 1933.

Under the Public Depository Act of 1907, the designation of depositories is biennial and the first meeting was on the 1st Monday in January, 1909, and biennially thereafter. And the 1st Monday of January, 1927, was the biennial meeting for the designation of depositories and the depositories were required to give bonds. Those who signed the bonds were liable for two years and until a new bond was given or the public funds secured by the bond were repaid.

As a matter of common knowledge, we know that surety companies were refusing to go upon bonds required by the Public Depository Act; that these individuals who were already on bonds 14. were, in a sense, in order to protect themselves, required to renew the bonds they were obligated upon, and other individuals became obligated from a sense of duty in order to prevent their local government from breaking down.

The legislature of 1933, when the act in question was passed, evidently had the foregoing facts in view when the application of the act was limited to on or after January 1, 1927. Can this court say that such classification is unreasonable, arbitrary, and unjust? Can we say that such a classification is not based upon proper \*189 and justifiable distinctions, considering the purpose of the law? We can not say that it does not have some reasonable basis to rest upon. It may not be made with mathematical nicety and it may result in some inequality, but as said in the case of *Lindsley v. National Carbonic Gas Co., supra*, this will not and does not make the act invalid.

The appellant contends that the act violates Section 10, of Article 1 of the Constitution of the United States, and 15. Section 24, of Article 1 of the Constitution of Indiana.

Both of these sections provide that no law shall be passed impairing the obligation of contracts.

Does the act impair the obligation of a contract?

The appellant, in the instant case, is a political subdivision of the state, and a creature of the legislature and acts as the agent of the state. It acts pursuant to statutory authority. The real contracting party is the state and it has been held in many cases that the state may withdraw the power to so contract, that it may release the liability created and without the consent of the agent. And by the great weight of authority this does not amount to the impairment of contracts as provided for in the Federal and State Constitutions.

In the case of *Central Union Telephone Company et al. v. Indianapolis Telephone Company* (1919), [189 Ind. 210](#), 230, 126 N.E. 628, the Public Utilities Act was under discussion. By section 95 1/2 of the Public Utilities Act, the power to give or to withhold consent to the sale of a franchise was withdrawn

by the legislature from all the municipalities of the state, and that power was delegated to the Public Service Commission. Upon this question the court said: "The power of the city to make the contract, and to enforce any right thereunder was a power derived from the people. Such power, however, does not come directly from the people to the \*190 city; but it comes indirectly by delegation from the general assembly, to which body the people have, by their Constitution, entrusted their entire power in such matters. When the state withdraws any such delegated power, it acts in behalf of the people of the state. The people residing within the corporate limits of a municipality have no ground to complain of the exercise of such a power by the legislature in behalf of the people of the entire state. They are not thereby deprived of any supposed constitutional right of local self-government. "The municipality itself, which as a mere creature of the legislature, is in no position to complain of the action of that body in reassuming powers previously delegated. The obligation of no existing contract is impaired by such an act and no vested rights are thereby disturbed." The case of *Lucas v. The Board of Commissioners of Tippecanoe County* (1873), [44 Ind. 524](#), 529, was cited with approval. This case went to the Supreme Court of the United States, and was affirmed. The Acts of 1869 (Spec. Sess., ch. 44) authorized aid in the construction of railroads by counties and townships taking stock in, and making donations to railroad companies. In 1872, the legislature passed an act providing that railroads which had received aid from counties or townships by taxation should issue stock to the parties who had paid the taxes to the amount by them respectively paid; and the act provided the issue of stock to a taxpayer should operate to cancel *pro tanto* the stock held by any county or township under the provisions of the statute of 1869.

In passing upon the questions involved the court said, p. 529: "Counties and townships, however, are not private corporations, and the rules of law applicable to them are not, in all respects, the same as those which are applicable to private corporations. They exist under \*191 general laws enacted by the legislature, by which the territory of the State is divided into political divisions, as the convenience of the government may suggest and require; . . . Their functions are of a public nature, designed for local self-government, and there is, therefore, no room, as there may be in case of private corporations to imply any contract between them and the State in their organization as corporate bodies, except such as may arise from ordinary considerations of good faith. . . . Being a mere agency of government, it is evident that the municipality cannot itself have that complete and absolute control and power of disposition of its property which is possessed by individuals over their own. For it can hold and own property only for corporate purposes, and these purposes are liable at

any time to be so modified by legislation as to render the property no longer available. Moreover, the chartered rights may be altogether taken away, . . ."

The Supreme Court of the United States, in affirming the above case, said p. 114 (93 U.S.): "But between the State and municipal corporations, such as cities, counties, and towns, the relation is different from between the State and the individual. Municipal corporations are mere instrumentalities of the State, for the convenient administration of government; and their powers may be qualified, enlarged or withdrawn at the pleasure of the legislature."

One of the leading cases in this country upon questions involved in the instant case is that of *McSurley v. McGrew* (1908), [140 Iowa 163](#), 168, 118 N.W. 415, 132 Am. St. R. 248. This case involved sureties on the bond of a county treasurer. The bank in which deposits had been made failed, and the supervisors of the county made a settlement with the county treasurer and released him from all liability. On February 28, \*192 1907, the legislature passed a curative act, purporting to legalize the acts of the boards of supervisors in settling and releasing the treasurer. In this case the court, relative to the curative act, said: "If nothing but private rights were involved, it is manifest that the act could not be sustained. But the matters involved here are public, and the county of Van Buren is the real party in interest. A county, while a body corporate under our law, is a subdivision of the State, created for administrative and other public purposes, owes its creation to the State, and is subject at all times to legislative control and change. No citizen has any vested rights in or to its revenues. These may be changed, diverted to other uses, or taken away, and no one may complain on the theory that his interests have been affected or any contract rights destroyed. The Legislature might have permitted the deposit of county funds in banks and absolved the county officers from any liability on account of such deposits. Neither the county nor any of the inhabitants thereof had any vested interests in the funds coming into the county treasurer's hands. . . . It is said that, in the matter of the application of revenues, the legislative conscience will not be interfered with by the courts, and that they may be diverted to the benefit of private individuals if the Legislature is so advised. . . . The Legislature undoubtedly had power in the first instance, to absolve its county treasurer from liability when he deposited money in solvent banks; and, as no contract rights are involved, save as the statute created such right, there seems to be no constitutional objection to passing a retroactive law which would operate upon past transactions. . . . the Legislature had the power, by proper enactment, to relieve defendant of his liability under the bond, a liability which was created primarily by the Legislature, and which, in so far as the State and the various subdivisions \*193 thereof are concerned, may be changed at pleasure." (A large number of cases from courts of

the various states and the Supreme Court of the United States are collected and cited to the foregoing propositions.) Among the cases cited is *Mount v. State* (1883), [90 Ind. 29](#), 40 Am. St. R. 192. The opinion in this case was written by Judge Byron K. Elliott. A trustee of a township had deposited money of the township in a bank which failed, and the trustee reimbursed the township. The legislature passed an act to reimburse the trustee. The court said: "It may be true that the policy of refunding money to an officer who has lost it by the failure of a bank is a vicious one and to be condemned, but it affords no ground for overturning a legislative enactment. Courts can not overthrow legislative acts upon the ground that they are vicious in their policy or evil in their tendencies. . . . Statutes must stand unless found repugnant to some express provision of the Constitution. . . . Reimbursing a public officer for the loss of public funds, occurring while he is engaged in discharging the public official duties, can not be deemed an appropriation to private purposes. It was decided in *Board, etc., v. McLandsborough*, 36 Ohio St. 227, that the Legislature may exonerate from responsibility a public officer who has lost public money, and that there is no constitutional provision infringed in the adoption of such an act. The court declared that such a power was purely a legislative one, and added that, 'Indeed, it is difficult to fix any limit to the power of the General Assembly in this respect, where the funds so lost were raised by taxation, which, as we have said, is clearly a legislative power.' . . . Township officers are agents of the sovereign power, and the money in their hands is, for public purposes at least, in the control of the sovereign. It is a mistake to suppose that money derived from the taxation \*194 of the citizens of a township or county is beyond legislative control."

There are cases holding to the contrary doctrine as stated above, but the great weight of authority seems to sustain the law as laid down by Judge Elliott, in the case of *Mount v. State, supra*.

We have two other Indiana cases which seem to be contrary to the cases of *Mount v. State, supra*, and *Board v. Lucas* (1876), [93 U.S. 108](#), [23 L.Ed. 822](#). These cases are respectively *McClelland, Trustee v. State ex rel. Speer* (1894), [138 Ind. 321](#), 37 N.E. 1089; and *Johnson v. Board, etc.* (1894), [140 Ind. 152](#), 39 N.E. 311.

The facts in the *McClelland* case, *supra*, are different from those in the instant case. In the *McClelland* case the funds, except a small item, were state school funds which came into the hands of the trustee for common school purposes and were not raised by general taxation and the court held that the legislature could not pass an act relieving the trustee from loss in such a case, and impose upon the citizens and taxpayers of the township the burden of making good the loss. The court in this case expressly said that it differs from the *Mount* case, *supra*, and the case of *Board*,

*etc.*, v. *McLandsborough*, *supra*, and it further said, p. 338: "While we do not approve the doctrine expressed, (meaning the above cases) that the Legislature may, under any circumstances, relieve a trustee from the obligations of his contract, yet, in neither of the cases cited, does the court recognize a right in the General Assembly to legislate a debt upon the people to be liquidated by taxation, unless the funds lost were 'raised by taxation'; and they must have been raised by local taxation on the political division to be charged with the burden." The Mount case was not overruled. In the Johnson case, *supra*, it appears that the appellant, Johnson, as treasurer of Randolph county had \*195 money of the county on deposit in a certain bank in said county which failed and that there was a loss of \$2,000. The legislature of 1891 passed an act releasing Johnson and his sureties for the loss sustained. It is not shown from the facts as stated in the opinion what funds made up the \$2,000, and whether or not it had been raised by general taxation. The opinion in the case, considering the question involved, is very short and only one case cited, the case of *McClelland, Trustee v. State, ex rel.*, *supra*, and in our judgment it is not in point. For in that case the money lost belonged to the school fund which was not raised by general taxation. The court held that the Act of 1891 violated the Constitution in that it impaired the obligation of a contract. Neither the Lucas nor the Mount cases, *supra*, were mentioned. The Johnson case, *supra*, is certainly against the weight of authority and has never been followed to our knowledge, but has been criticised by other courts, and insofar as it is in conflict with this opinion it is overruled.

The case of *Miller v. Henry* (1912), [62 Or. 4, 7, 124 P. 197](#), 41 L.R.A. 97, is a well considered case upon questions here involved. A county treasurer of the state of Oregon lost county money in a bank which failed. The legislature passed an act relieving him from the loss. The court said: "It is contended that the bond of the treasurer is a contract with the county, and that this act releases him from the obligation of the bond, and therefore impairs the obligation of the contract. We cannot assent to this view of the law. A county is a subdivision of the State, created by the legislature for administrative purposes, and except as limited by the Constitution is subject at all times to legislative control. No citizen has any vested right in its revenues. These may be changed or diverted from one public use to another by legislative authority, and no citizen can complain that his contract rights are thereby impaired. The \*196 legislature might in the first instance have directed that county funds be deposited in banks, and in such event, that the treasurer should not be liable for their loss or diminution. What the legislature can do in the first instance it can afterwards ratify. Its action does not involve a question of power, but of public policy, of which it must be the sole judge."

In our judgment the act in question does not violate any constitutional provisions of the Federal or State Constitutions relative to the impairment of contracts or vested rights.

In addition to the authorities cited above on this question, we wish to cite, *State v. Baltimore Ohio R. Co.* (1842), 12 Gill Johnson (Md.) 399, 38 Am. Dec. 317; *Bauer v. NorthArk.* (1925), [168 Ark. 220](#), [270 S.W. 533](#), 38 A.L.R. 1507.

It is further contended by appellant that the act in question violates §§ 22 and 23 of Article 4 of the State Constitution. We can not assent to this contention. It is clearly not a local law, it is uniform throughout the state. *Strange v. Board of Commissioners of the County of Grant* (1910), [173 Ind. 640](#), 91 N.E. 242. It is not a special law regulating township business. "The term 'business,' when applied to a public corporation, signifies the conduct of the usual affairs of the corporation, and the conduct of such officers as commonly engage the attention of township and county officers." *Mount, Trustee v. State, supra*. And moreover it is an act regulating the state's business and not the business of the township. The appellant is merely an agency of the state.

Neither does the act violate § 1 of the 14th Amendment of the Constitution of the United States, nor § 21 of Article 1 of the Constitution of Indiana. There is no taking of the property of a person without due process of law; the appellant had no vested rights in and to the funds in question. \*197 In passing upon the questions involved, we have not been unmindful of the rules governing the constitutionality of statutes. It is useless to cite authorities to the proposition that the power of the General Assembly to enact laws is subject to no restrictions save those imposed by the State and Federal Constitutions; that its laws are presumed to be valid, and they are to be upheld by the courts, not only when clearly authorized, but in all cases of doubt, and until it is made clearly to appear that they contravene some constitutional provision. And, furthermore, a statute which will admit of two interpretations, one valid and one invalid, will receive the interpretation sustaining its validity, and it is no part of the duty of the court to be astute in order to invalidate a statute, but on the other hand it will strive to so interpret it as to sustain its validity and give effect of the intention of the legislature.

It may be that the act in question is unwise, as a matter of public policy, but as to this we have nothing to do. This was a matter to be determined alone by the members of the legislature. It was enacted by the people through their chosen representatives. It is for us to interpret and we are of the opinion that the act is constitutional, and that the judgment should be affirmed.

Judgment affirmed.

Treanor, J., dissents.

Myers and Fansler, J.J., not participating.