

S T A T E O F M I C H I G A N

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

SALLY VINTER, et al,

Plaintiffs,

v.

No. 74 8553 AW

THE CITY OF ANN ARBOR, et al,

Defendants.

O P I N I O N

At a session of said Court held in the
City of Ann Arbor, Washtenaw County,
Michigan, on January 10, 1975.

PRESENT: HONORABLE PATRICK J. CONLIN, CIRCUIT JUDGE

This case is before the Court on plaintiffs' motion for Summary Judgment. Defendant City of Ann Arbor, on brief, agrees that the case is ready for decision, but asks that summary judgment be entered against plaintiffs.

The gravamen of the complaint is that defendant City has illegally appropriated \$221,048.24 comprising part of the proceeds from a 2.5 mill annual property tax levy imposed by the electorate explicitly for the purpose of operating a public transportation system for the City. The City admits having withheld this sum from the Ann Arbor Transportation Authority (AATA) but denies any illegality, asserting that this money was kept to satisfy a pre-existing debt for loans made to AATA by the City. Plaintiffs' response characterizes these payments as "grants" or "subsidies" rather than loans. This issue is the only real disagreement between the parties.

There is considerable evidence in the record bearing on the proper characterization of these payments. Analysis of the

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evidence is aided by reference to Deposition Exhibit #1 (a copy of which is appended to defendant City's brief). Line items 1, 2, and 3, totalling \$213,072.24, were payments from the City to the AATA for the purchase of buses (defendant's brief at 2 and Jedele deposition). Line items 4 through 9 are simply transfers from one City fund to another routed through AATA for bookkeeping purposes, and may be disregarded. Line item 10 represents the first of three planned yearly payments to a "creditor" City fund from the City's General Fund (Jedele Deposition at 49; Attachment A to plaintiffs' Exhibit I, appended to the complaint). (The original "creditor" was the Capital Projects Fund, which had provided the actual money needed to purchase the buses, but subsequent transactions - line items 4 through 9 - resulted in the Sewage Fund's assumption of "creditor" status).

At this point in time, net payments to AATA amounted to \$142,048.24 (\$213,072.24 less \$71,024.00 "repaid" by line item 10). The City asserts that this amount was a "loan" for the purchase of buses, but the evidence leads to a contrary conclusion. Payment of the local share of money to purchase new buses pursuant to a Federal Department of Transportation capital equipment grant was explicitly authorized by City Council (plaintiffs' Exhibits B-2, B-3, and B-4). The Council used only the word "appropriate" to describe the payment of money for purchase of buses. Nowhere is there the slightest hint that this money would ever be repaid to the City. Nothing suggested that this "appropriation" was anything other than a grant to AATA to enable it to upgrade its service. Moreover, line item 10 - the first of three planned installments that were to settle the accounts arising from purchase of the buses - was admittedly a budgeted City payment to AATA (Jedele Deposition at 48). If the payment of money for the buses had been intended as a loan to AATA, this item would have been balanced by a contemporaneous item showing a "Loan from" the General Fund (compare line items 4 and 5; 6 and 7; and 8 and 9). The lack of such a balancing item shows

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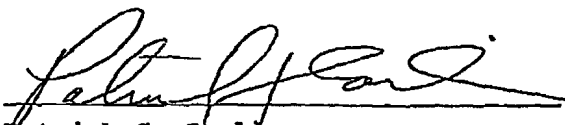
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that the original appropriation for buses was a grant, not a loan.

Hence, the \$142,048.24 still listed as "loans" to AATA as of May 30, 1972 were in reality subsidies that AATA had no obligation to repay. As to this portion of the total \$221,048.24 in dispute, summary judgment for plaintiffs would appear to be appropriate. On the other hand, the character of the remaining payments to AATA is somewhat obscure. Line items 11 and 12 are not discussed at all in the Jedele deposition or elsewhere. Line items 17 and 18 are further inter-fund transfers that may be ignored. The remaining line items are all payments to AATA by the City for the purpose of covering AATA bank overdrafts. There is no explicit City Council authorization for these payments in the record, but neither is there any conclusive showing that they were loans, or unauthorized actions of the City Administrator or City Controller. As^{to} these payments there remains a genuine issue as to a material fact, making full summary judgment inappropriate.

While, as noted above, partial summary judgment for plaintiffs as to \$142,048.24 of the disputed sum would seem to be in order, the lack of any explanation in the record for line item 12 - a \$4,000.00 "repayment to" AATA - leaves open the possibility that only \$138,048.24 of the original grant for purchase of buses remains as part of the disputed sum.

Therefore, partial summary judgment for plaintiffs is granted to the amount of \$138,048.24. As to the balance of the claim, the motion for summary judgment is denied.


Patrick J. Conlin.
Circuit Judge