

AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 11: The Contemporary Era – Taxing and Spending Power

Town of Beloit v. County of Rock, 2003 WI 8 (WI 2003)

The town of Beloit in Rock County, Wisconsin, owned a 20.4-acre parcel of land along the Rock River. The land was used by the public for recreation. Although an adjoining parcel was sold to the state department of natural resources to be used as a wildlife preserve, the town determined to develop this parcel as residential housing. Rock County approved the development plan, with a number of conditions. The town ultimately spent over \$600,000 of public money in preparing the land for development. Unhappy with the conditions on the development imposed by the county government, the town petitioned the state court to overturn them on the grounds that the county lacked sufficient statutory authority to oversee the town's actions. During that suit, a local environmental group filed a motion to intervene in the case and asked the court to declare that the town was exceeding its authority and acting without a valid public purpose (a motion that the county joined). The trial court ruled in favor of the environmental group, but the court of appeals reversed. The interveners appealed to the state supreme court, which affirmed the court of appeals in a 5–2 decision. The supreme court concluded that even though the town hoped to make a profit on the housing development and planned to sell the houses to private individuals for their personal use, the use of the town's resources served a public purpose, notably by expanding the tax base and enhancing the economy. The dissent contended that any such public benefits were too speculative to validate the use of public funds to provide a private benefit.

What is the source of the public purpose constraint on government spending? What standard does the court specify for evaluating whether a government has violated that constraint? Is the standard meaningful? What evidence does the court require that the government action is serving public purposes? What actions would not qualify as a public purpose? Could a town operate a for-profit retail business using public funds and personnel?

CROOKS, JUSTICE.

....

This case involves a question of whether the Town of Beloit violated the public purpose doctrine. Although there is no specific clause in the Wisconsin Constitution establishing the public purpose doctrine, this court has recognized that the doctrine is firmly accepted as a basic constitutional tenet of the Wisconsin Constitution and the United States Constitution, mandating that public appropriations may not be used for other than public purposes.¹ . . . Courts are to give great weight and afford very wide discretion to legislative declarations of public purpose, but are not bound by such legislative expressions. . . . It is the duty of this court to determine whether a public purpose can be conceived, which might reasonably be deemed to justify the basis of the duty. . . .

¹ The origin of the public purpose doctrine has been variously attributed by this court to the due process and equal protection clauses of the state and federal constitutions, . . . article IV, section 4, of the U.S. Constitution, which guarantees to every state a republican form of government, . . . and article VIII, section 2, of the Wisconsin Constitution which provides that no money shall be paid out of the treasury except in pursuance of an appropriation by law. Other authors have attributed the doctrine to judicial articulation of the belief that governmental power should be used for the benefit of the entire community. . . . [footnote in original]

Consequently, a conclusion that no public purpose exists can be determined only if it is "clear and palpable" that there can be no benefit to the public. . . .

....
The preamble of our state constitution provides that one of the main purposes in establishing our state government is to promote the general welfare. The police powers of the state are inherent and are only limited by the constitution.

....
... [I]t is a well-settled rule that the legislative body determines what constitutes a public purpose, and that "Courts will not interfere unless at first blush the act appears to be so obviously designed in all its principal parts to benefit private persons and so indirectly or remotely to affect the public interest that it constitutes the taking of property of the taxpayers for private use." . . .

....
In determining whether a public purpose exists, courts have considered whether the subject matter or commodity of the expenditure is one of "public necessity, convenience or welfare," as well as the difficulty private individuals have in providing the benefit for themselves. . . . Courts also look to see if the benefit to the public is direct or remote. . . . Additionally, provided that the primary purpose of the expenditure is designed for a public purpose, any direct or incidental private benefit does not destroy the public purpose and render the expenditure unconstitutional. . . .

Because of the accepted view that local governments are often in the best position to determine the needs of the public in that locality, Wisconsin municipalities have traditionally been given wide discretion to determine whether a public expenditure is warranted due to public necessity, convenience, or welfare. As such, the public purpose doctrine has been broadly interpreted.

....
... [T]he court of appeals held that the construction of a parking lot to promote rehabilitation of the downtown area was held to be a public purpose. . . .

Most significantly, this court was recently presented with the question of whether the expenditure of public funds for the construction of the new Milwaukee Brewers' Miller Park satisfied the public purpose doctrine. The purported goals of creating jobs and enhancing the tax base were held to be valid reasons, along with other reasons, by this court. . . .

Accordingly, the goal of increasing the tax base, as well as creation of new jobs, has been recognized by this court, and other Wisconsin courts to be a legitimate and valid public purpose justifying the expenditure of public funds. . . .

In addition to Wisconsin case law acknowledging the town's expenditures here as involving traditionally and expressly recognized public purposes, it is clear from the record that the public welfare has been, and continues to be, the basis of the town's decision-making process. . . .

....
... As long as the primary purpose of the expenditure is for a public purpose, the fact that private individuals directly or indirectly benefit does not render the expenditure unconstitutional. . . . While certain private individuals may indirectly benefit from the town's development, there are identifiable public purposes behind the activity. The town is not attempting to promote the expansion of a particular industry . . . nor is the town constructing the subdivision solely for the benefit of private owners. . . .

[A]ny profit realized from the sale of the subdivision would in fact benefit the Town of Beloit in that the profit would go into the Town Treasury and ultimately benefit all of the citizens of the town by way of decreased taxes and reduced debt.

....
The decision of the court of appeals is *affirmed*.

CHIEF JUSTICE ABRAHAMSON, joined by JUSTICE BRADLEY, dissenting.

....

An expenditure is for a public purpose if it provides a direct advantage or benefit to the public at large. It is not for a public purpose if the advantage to the public is indirect, remote, or uncertain.

The constitutional public purpose test is satisfied when the purposes expressed by the legislative body or "conceived" by the court rationally justify the expenditure. In determining whether a public purpose exists the judiciary accords the legislative branch deference and thus plays a limited role. Nevertheless, the court does not merely rubber-stamp government expenditures. The state and federal constitutions demand that courts perform their independent function to assess the realistic operation of the law to protect the public. . . .

. . . . An expenditure of funds that is legitimately designed to create jobs, promote orderly growth, increase the tax base, and preserve an environmentally sensitive area is made for a public purpose.

I dissent in this case, however, to express my conviction that some of the goals on which the majority opinion rests its conclusion are merely assertions unsupported by the facts of this case while others are admittedly hoped-for but distant outcomes, not justifications. The public purpose doctrine becomes a charade if a town may justify expenditures by merely offering enough of the proper buzzwords. . . . Moreover, judicial review cannot begin and end simply with the recitation of those buzzwords, without any analysis.

I dissent because I conclude on the basis of this record that it is clear beyond a reasonable doubt that the taxpayers of the Town of Beloit will be paying taxes to support the sale of lots for the future construction of private housing from which any benefit to the taxpayers is indirect, remote, and uncertain.

. . . .

The majority opinion's combination of goals justifying the expenditures in this case thus boils down to this: the expenditure serves an acceptable public purpose because the town's tax base might be enhanced. I disagree with this position. An enhanced tax base from the sale of land and the construction of homes is an indirect, remote, and uncertain benefit of the expenditure in the present case and is not a sufficient public purpose to justify the town's running a for-profit real estate development business and engaging in the non-traditional enterprise of building residential home sites.

. . . .



OXFORD
UNIVERSITY PRESS