Indiana Law Journal

Volume 22 | Issue 4 Article 7

Summer 1947

Conservancy Districts

Conservancy Districts

Cover Page Footnote

Conservancy Districts

CONSERVANCY DISTRICTS

Chapter 239 of the acts of 1947 provides for the organization of conservancy districts within the state.[1] Although the provision is original legislation in Indiana, similar laws have been in force in sister states for some time.[2]

---

1. 52 Stat. 860 (1938), 11 U.S.C. §75 (c) (1943).
2. "A certified copy of the petition with the schedules omitted, of the decree of adjudication or of the order approving the trustee's bond may be recorded at any time in the office where conveyances of real property are recorded in every county where the bankrupt owns or has an interest in real property. Such certified copy may be recorded by the bankrupt, trustee, receiver, custodian, referee or any creditor . . . unless a certified copy of the petition, decree, or order has been recorded in such office, in any county wherein the bankrupt owns or has an interest in real property in any state whose laws authorize such recording, the commencement of a proceeding under this act shall not be constructive notice to affect the title of any bona fide purchaser . . . ." 52 Stat. 852 (1938) 11 U.S.C. §44 (g) (Supp. 1946).
3. Observe supra n. 2, the express Congressional recognition of state authorization of recordation.
4. See Vombrack v. Wavra, 331 Ill. 508, 163 N.E. 340 (1928) where the bona fide vendee was protected in such a situation. In construing 52 Stat. 852 (1938), 11 U.S.C. §44(g) (Supp. 1946), Collier says, "Its purpose is apparent. Where real estate of the bankrupt or in which the bankrupt has an interest is located outside the county where the bankruptcy proceeding is pending, it is possible for a fraudulent bankrupt to sell the real estate, or his interest therein to an innocent purchaser who has no knowledge or reasonable means of knowledge of the pendency of bankruptcy proceeding." 2 Collier, "Bankruptcy" (14th ed., 1940) §21.30.
5. Kansas Laws 1945, c. 244; Ohio Laws 1943, p. 705; Va. Code (Michie, 1942) §5216(c) and (d).

1. The law provides a comprehensive scheme for the reclamation, irrigation, or drainage of lands and the prevention of floods. The nine specific purposes for which a conservancy district may be organized are set out in §3.
2. Colo. Stat. Ann. (Michie, et al., 1935) c. 138 §126; Minn. Stat. (Henderson, 1941) §111.01 et seq.; Ohio Gen. Code Ann. (Page,

Conservancy districts are to be established by petitioning the circuit court of the circuit within which the land of the proposed district is located.[3] If the proposed district contains land situated in several judicial circuits, the judges of these circuits are to sit as a trial court[4] to determine whether or not the conservancy district prayed for in the petition shall be established. This court has power to adopt rules of practice and procedure consistent with the provisions of the act and the general laws of the state. The decisions of the court in its trial of the issues in the petition are to be subject to appeal as in other civil causes. Upon the establishment of the district, the court has the further power to appoint a board of three directors to manage the district.

Similar acts of other states have fomented much litigation and have been the targets of many unique if not ingenious assaults.[5] The three principal grounds of attack on similar statutes have been: (1) that the power to appoint a board of directors is an improper delegation to the judiciary of the executive appointive power and a violation of the separation of powers dotcrine; (2) that a judge is an officer of a specific court and his judicial capacity is coextensive with the jurisdiction of the court of which he is an officer; (3) that the determination of the advisability or desirability of a conservancy district is primarily a legislative question and

---

1937) §6828.1 et seq. The Indiana law is nearly identical to the Ohio law and appears to have been modeled after it.

3. The petition which initiates the proceedings for the establishment of a conservancy district must be signed by 500 freeholders or a majority of the freeholders of the proposed district and filed with the clerk of the circuit court of any circuit in which the proposed district lies. It must set out the name of and necessity for the proposed district, and contain a description of the land and a prayer for organization. §4. As to the number of signatures required on the petition, compare: Colo. Stat. Ann. (Michie, et al., 1935) c. 138 §128 (200 owners or a majority of the owners within the proposed district); Minn. Stat. (Henderson, 1941) §111.04 (25 per cent of the freeholders but in no event more than 50 signatures may be required); Ohio Gen. Code Ann. (Page, 1937) §6828-3 (500 freeholders or a majority of the freeholders or the owners of more than half the property, in either acreage or value, within the proposed district).

4. The law by its very terms indicates that the legislature is not contemplating an administrative body, but a new and distinct court in those cases where the land within the proposed district lies in more than one judicial circuit. §6.

5. So much so that one court has been led to comment: "Rarely has a law been found which has been assailed with such frequency or from so many angles". Silvey v. Comr. of Montgomery Co., Ohio, 273 F. 202, 206 (S.D. Ohio 1921).

thrusting such a determination upon a court is an improper delegation of legislative power and a further violation of the separation of powers doctrine.

Of these arguments, the first has proven least effective in other states[6] and the Indiana decisions indicate that this provision alone will not invalidate the act.[7] In connection with the second argument it should be noted that the validity of the provision for a separate court composed of the judges of the several circuits, hinges primarily on the constitution of the particular state. While the Supreme Court of Kansas has held[8] that a judge chosen for one judicial district cannot be empowered to transplant his judicial authority to another judicial district and exercise his authority there, this would seem a weak argument in view of the Indiana Constitution. The legislative intent to establish a separate and distinct court is plain[9] and the establishment of such courts seems a valid exercise of the constitutional power of the legislature to establish "other courts".[10]

In respect to the last argument, the cases are not in accord on what constitutes a delegation of legislative power to the judiciary.[11] The courts of other states on undistinguish-

6. In People v. Lee, 72 Colo. 598, 213 P. 583 (1923) the Supreme Court of Colorado after holding that the organization of a conservancy district was a proper judicial function further held that the court's power to appoint the directors of the district did not violate the statute since it was incidental to the performance of a judicial function. In a similar attack upon the Ohio conservancy act the Ohio court held that the power to appoint the directors of the district was no more a delegation of the appointive power than was the power to appoint receivers or appraisers in given cases. Miami Co. v. Dayton, 92 Ohio St. 215, 110 N.E. 726 (1915). The Minnesota courts have likewise sustained the judicial appointment of the directors of a conservancy district. State v. Flaherty, 140 Minn. 19, 167 N.W. 122 (1918).

7. State ex rel School City of South Bend v. Thompson, 211 Ind. 267, 6 N.E. (2d) 710 (1937) (judicial appointment of a county board of tax review held valid); Wilkison v. Board of Children's Guardians, 158 Ind. 1, 62 N.E. 481 (1901) (appointment of members of a guardians board by court held not violative of the constitution as a delegation of executive power); City of Terre Haute v. Evansville and Terre Haute R.R. Co., 149 Ind. 174, 46 N.E. 77 (1897) (appointment of city commissioners by court held not an improper delegation of legislative or executive power).

8. In Re Verdigris Conservancy Dist., 131 Kan. 214, 289 P. 966 (1930).

9. See n. 4 supra.

10. Ind. Const. Art. 7, §1.

11. A discussion of the separation of powers problem in respect to the delegation of legislative power to the judiciary may be found in Note (1930) 69 A.L.R. 266. It should be noted that Burnett v. Greene, 97 Fla. 1007, 122 So. 570 (1929), one of the two prin-

able conservancy statutes have clearly obtained contrary results. The Colorado,[12] Minnesota,[13] and Ohio[14] conservancy acts have successfully withstood the charge that they delegate legislative power to the courts in the organization of conservancy districts. However, the Supreme Court of Kansas has held that the Kansas law, for which the Ohio law served as a model, was unconstitutional because it granted legislative power to the judiciary.[15] These decisions appear to be rationalized only upon the attitude of the particular judiciary toward the separation of powers doctrine and the extent to which it believes that the doctrine has gone by the board, or does not demand rigid adherance in instances where the judiciary is not encumbered by the added burden and the public needs will be served. The Indiana Courts have taken a liberal view toward separation of powers in other situations and have not required a strict enforcement of the doctrine.[16] In view of these precedents it would appear that the court's power to organize conservancy districts would not constitute a violation of the separation of powers doctrine in Indiana.

CONTRACTS, SALES AND ASSIGNMENTS

Assignment of Wages. Assignment of wages by employees for the following additional purposes were validated:[1] (1) installment purchase of stock of the employer-company or its subsidiaries pursuant to a written purchase agreement, provided that the employee may cancel the agreement at any

---

cipal cases there annotated was reversed on rehearing. The court on rehearing held that the judicial establishment of drainage districts was not an unconstitutional delegation of legislative power. Burnett v. Greene, 105 Fla. 35, 144 So. 265 (1932). The delegation of powers problem is also discussed in Note (1929) 64 A.L.R. 1335.

12. People v. Lee, 72 Colo. 598, 213 P. 583 (1923).
13. State v. Flaherty, 140 Minn. 19, 167 N.W. 122 (1918).
14. Silvey v. Comr. of Montgomery Co., Ohio, 273 F. 202 (S.D. Ohio 1921).
15. In Re Verdigris Conservancy Dist., 131 Kan. 214, 289 P. 966 (1930).
16. Town of St. John v. Gerlach, 197 Ind. 289, 150 N.E. 771 (1925) (disannexation of territory from cities and towns by the judiciary held not an unconstitutional delegation of legislative power to the judiciary); Paul v. Town of Walkerton, 150 Ind. 565, 50 N.E. 725 (1898) (held that the circuit court, on appeal, had power to hear and determine an annexation case de novo, and to render final judgment, annexing or refusing to annex such territory, without regard to the result before the board of commissioners); Note (1930) 69 A.L.R. 266, 269.

1. Chapter 330, amending Ind. Acts, 1945 c. 183, §2, Ind. Stat. Ann. (Burns, Supp. 1945) §40-214.