

Whiting v. Sheboygan & Fond du Lac Railroad Co.

25 Wis. 167 (1870)

Whiting established the important principle that the government may not impose a tax on its citizens for a private purpose; therefore, Fond du Lac County could not levy a tax on county residents to raise funds for the completion of a railroad. In an opinion by Chief Justice Luther S. Dixon, joined by Justice Orsamus Cole, the Supreme Court of Wisconsin reversed a circuit court decision in favor of the defendant railroads. Justice Byron Paine filed a dissent.

This case concerned the validity of an 1867 state law that allowed Fond du Lac County to provide financial assistance for the completion of a railroad that linked the cities of Fond du Lac, Ripon and Sheboygan. The railroad was to be owned by the named defendant and another, both private companies. While the county would not be given ownership interest in the railroad lines or the companies, it would be able, for a ten-year period, to require the railroads to carry wheat between these locations. This was important for the local agricultural economy.

Specifically, the law allowed the county board to provide the companies with \$150,000 (a considerable sum at the time) if voters approved the expenditure on a referendum. The board could then levy a tax on county residents to raise the funds.

A vote was held and voters approved the scheme. Then, the plaintiff (a county taxpayer) challenged implementation of the plan. This person would apparently have gained nothing from the wheat-hauling arrangement but would have to pay his share of the tax.

The two-member majority on the state Supreme Court held that this was *not* a legitimate exercise of the government's taxing power.

While acknowledging that railroads are public entities in a limited sense because they have the power of eminent domain (that is, authority to condemn private land in order to construct tracks), the Court held that railroads otherwise are private corporations "in the fullest sense of the term." The fact that they served a public purpose – as did, for example, steamboats and stagecoach lines – did not change their status. The majority suggested that this taxation scheme was "legal robbery, less respectable than highway robbery."

In his dissent, Justice Paine labeled the 'legal robbery' comment "idle exaggeration." Paine would have ruled that since the railroad lines would serve a public purpose, their "technical character" as a private corporation should be ignored. He was significantly influenced by his perception of railroads as the "great public highways of the world along which its gigantic currents of trade and travel continually pour...the most marvelous invention of modern times."

Paine downplayed the railroads' profit motive, calling their profit from operation of the lines "comparatively petty and unimportant."