

STATE OF MICHIGAN  
COURT OF APPEALS

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FORD BUILDING, INC., THOMAS PAGLIA,  
and FRANCIS McCARROLL,

UNPUBLISHED  
September 28, 1999

Plaintiff-Appellants,

v

No. 208959  
Wayne Circuit Court  
LC No. 97-729572 CZ

COUNTY OF WAYNE,

Defendant-Appellee.

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Before: Gribbs, P.J., and Smolenski and Gage, JJ.

PER CURIAM.

Plaintiffs appeal from the circuit court order granting summary disposition to defendant. We affirm.

First, plaintiffs argue that summary disposition was improper as to plaintiffs' claim that defendant violated the Headlee Amendment, Const 1963, art 9, § 31. Plaintiffs contend that, by not using one-tenth of the monies collected under the Jail Millage Tax to acquire, build and operate a juvenile offender work/training institution as authorized by the voters, defendant has violated Section 31. There is no merit to this issue.

Constitutional issues and construction are questions of law and are therefore reviewed de novo. *Kuhn v Secretary of State*, 228 Mich App 319, 324; 579 NW2d 101 (1998). In interpreting the constitution, the interpretation should be "the sense most obvious to the common understanding," the one which "reasonable minds, the great mass of people themselves, would give it." *Soap & Detergent Ass'n v Natural Resources Comm*, 415 Mich 728, 745; 330 NW2d 346 (1982). The circumstances surrounding the adoption of the constitutional provision and the purpose sought to be accomplished may be considered. *Id.*

Section 31 prohibits units of local government from levying any new tax or increasing any existing tax above authorized rates without the approval of the unit's electorate. *Durant v State of Michigan*, 456 Mich 175, 182-183; 566 NW2d 272 (1997). The rates of taxation, rather than their purpose, are the clear subject of the Headlee Amendment. There is no dispute that the Jail Millage Tax

at issue here was approved by a majority of the Wayne County voters who voted on Resolution No. 88-313. Accordingly, we find that the trial court did not err in granting summary disposition on plaintiff's claim under the Headlee Amendment.

Plaintiffs also contend that the trial court erred in dismissing their claims under the Uniform Budgeting and Accounting Act (UBAA), MCL 141.421 *et seq.*, MSA 5.3228(21) *et seq.*, on the grounds that plaintiffs lacked standing. We disagree. As a panel of this Court noted in *Wayne County Prosecutor v City of Detroit*, 204 Mich App 94, 96; 514 NW2d 774 (1994), the UBAA gives the state treasurer broad powers to ensure defendant's compliance with the act's requirements. Although the prosecuting attorney is authorized by the UBAA to bring a civil action when an audit by the state treasurer reveals that state funds have been misspent, even the prosecutor cannot bring an action until an audit has shown misuse. *Id.* at 96. Here, where private citizens are requesting reimbursement "based on a suspicion that public money may have been misspent," *id.* at 97, summary disposition was properly granted. See also *Rayford v Detroit*, 132 Mich App 248, 257; 347 NW2d 210 (1984); *Detroit Fire Fighters Ass'n v Detroit*, 449 Mich 629, 633; 537 NW2d 436 (1995).

Plaintiffs also argue that the trial court erred by granting summary disposition as to their common law claim for misappropriation of tax receipts. Plaintiffs rely on *Romulus City Treasurer v Wayne County Drain Comm'r*, 413 Mich 728; 322 NW2d 152 (1982), as authority for this issue. Plaintiffs incorrectly conclude that *Romulus City Treasurer* establishes that plaintiffs can maintain a legal action for return of taxes. The taxpayer plaintiffs in *Romulus City Treasurer* were not seeking a refund of taxes already paid to the defendant. Rather, they were seeking only their portion of the funds that plaintiff treasurers had placed in escrow. The Supreme Court determined that the circuit court could hear the claim of the taxpayer plaintiffs because their claim was equitable in nature. *Id.* at 747. Here plaintiffs are seeking a tax refund, and the holding in *Romulus City Treasurer* does not support their claim.

Finally, plaintiffs argue that the trial court erred in finding that plaintiffs' lawsuit was barred by laches and the doctrine of *Bigger v City of Pontiac*, 390 Mich 1; 210 NW2d 1 (1973). There is no merit to plaintiffs' claim that the *Bigger* doctrine should be limited to situations where plaintiffs seek to enjoin the sale or delivery of bonds. The *Bigger* doctrine was "designed to deal with challenges which could prevent or frustrate public improvements in general." *Walled Lake Consolidated School District v Charter Township of Commerce*, 174 Mich App 434, 436-437; 437 NW2d 16 (1989). Nor did the trial court err in determining that plaintiffs' claim was barred by laches. Defendant asserted throughout these proceedings that it has relied on the millage funds since 1988 to pay for improvements at the existing facility, provide some of the funding for the new facility, and establish community programs that provide preventative and rehabilitative services to juveniles. The trial court did not err in determining that it would be inequitable to enforce plaintiffs' claim against defendant because defendant's position had changed materially during the nine years since the passage of the Jail Millage Tax and the filing of plaintiffs'

complaint. *Lothian v Detroit*, 414 Mich 160, 168; 324 NW2d 9 (1982). See also *Bylinski v Allen Park*, 169 F3d 1001 (CA 6, 1999).

Affirmed.

/s/ Roman S. Gibbs

/s/ Michael R. Smolenski

/s/ Hilda R. Gage