



IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 49 Original

STATE OF ILLINOIS, ex rel.
WILLIAM J. SCOTT, Attorney General of Illinois,

Plaintiff,

vs.

CITY OF MILWAUKEE, WISCONSIN, a municipality
incorporated under the laws of the State of Wisconsin,
and a political subdivision thereof, and
CITY OF KENOSHA, WISCONSIN, a municipality
incorporated under the laws of the State of Wisconsin,
and a political subdivision thereof, and
CITY OF RACINE, WISCONSIN, a municipality
incorporated under the laws of the State of Wisconsin,
and a political subdivision thereof, and
CITY OF SOUTH MILWAUKEE, WISCONSIN, a
municipality incorporated under the laws of the State
of Wisconsin, and a political subdivision thereof, and
THE SEWERAGE COMMISSION OF THE CITY OF
MILWAUKEE, a municipality existing under the laws
of the State of Wisconsin, and a political subdivision
thereof, and
THE METROPOLITAN SEWERAGE COMMISSION OF
THE COUNTY OF MILWAUKEE, a municipality
incorporated under the laws of the State of Wisconsin,
and a political subdivision thereof,

Defendants.

BRIEF OF CITY OF RACINE IN OPPOSITION
TO PLAINTIFF'S MOTION FOR LEAVE TO
FILE THE BILL OF COMPLAINT

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BRIEF OF CITY OF RACINE IN OPPOSITION
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THE COURT IS WITHOUT ORIGINAL JURISDICTION IN A SUIT BY A STATE IF ANY OF ITS OWN CITIZENS ARE NECESSARY AND PROPER PARTY DEFENDANTS

The City of Racine objects to Plaintiff's petition for leave to file a Bill of Complaint with the Court on the grounds that citizens and private and municipal corporations of Plaintiff, State of Illinois, are necessary and proper party defendants. Under these circumstances the Court is without original jurisdiction to receive plaintiffs Bill of Complaint. (Georgia vs. Pennsylvania Ry Co., 324 U.S. 439, 89 L. Ed. 1051, 65 S.Ct. 716 reh. den. 324 U.S. 890, 89 L. Ed. 1437, 65 S.Ct. 1018, Massachusetts vs. Missouri, 308 U.S. 1, 84 L. Ed. 3, 60 S.Ct. 39, Minnesota vs. Northern Securities Co., 184 U.S. 199, 46 L. Ed. 499, 22 S.Ct. 308.)

One of the principal municipalities that is a necessary and proper party defendant is the North-shore Sanitary District of Illinois, whose geographic limits encompass the area which is bounded on the north by the Wisconsin-Illinois State line, on the south by the Cook County line, and which is approximately 3 to 6 miles in width and parallel to the west shore of Lake Michigan (See Ptf's. Exh. A. Map).

IN THE INTEREST OF CONVENIENCE, EFFICIENCY AND JUSTICE THE COURT SHOULD EXERCISE ITS DISCRETION AND DECLINE TO TAKE ORIGINAL JURISDICTION IN THIS MATTER.

Assuming the Court finds that it is within its constitutional power to take original jurisdiction

in this matter, acceptance is discretionary with the Court where it is in the interest of convenience, efficiency, and justice to do so, and another adequate tribunal is available. (Georgia vs. Pa. Ry Co., supra).

It is within the authority of Congress to confer upon inferior tribunals concurrent jurisdiction with this Court of civil actions to which a state may be a party. (Ames vs. Kansas, 4 S. Ct. 437, 111 U.S. 469, 28 L. Ed. 482).

When Congress adopted the Federal Water Pollution Control Act (Title 33 U.S.C. 466 et seq.) it did two things: It provided administrative procedures to deal with problems such as those that are characterized in plaintiff's Bill of Complaint; and secondly it conferred concurrent jurisdiction on inferior tribunals of controversies involving construction or application of interstate compacts, and pollution of waters (Title 33 U.S.C. 466 g-1).

On November 22, 1967, plaintiff invoked the administrative procedures of the Federal Water Pollution Control Act, and in January, 1968, there was called the "Conference in the Matter of Pollution of Lake Michigan and its Tributary Basin (Wisconsin - Illinois - Indiana - Michigan)." At the same time a joint statement of agreement was entered into between the four states and jurisdiction over the subject matter of pollution of Lake Michigan was assumed as well as jurisdiction over all persons and municipalities concerned with the problem. Water quality standards were established and are now being implemented through state legislation and the issuance of abatement orders to municipalities, and which orders must be met within fixed time schedules.

(Cfr. Proceedings. Conference, Pollution of Lake Michigan and its Tributary Basin, Illinois, Indiana, Michigan, and Wisconsin. U.S. Dept. of the Interior, Federal Water Pollution Control Administration).

No violation of the existing interstate compact, or of any existing abatement orders, or breach of any established time schedule is alleged in the proposed Bill of Complaint; nor has any complaint of a similar nature been filed under the procedures authorized under Title 33 U.S.C. 466 et seq. (Cfr. Conference Proceedings, *supra*).

If this Court were to assume original jurisdiction, other parties would have to be added, schedules already commenced under the Conference will be delayed and/or deferred, procrastinating municipalities will be afforded further opportunity to delay necessary remedial measures to clean up Lake Michigan, and the Conference (with its 3-year old program) will be divested of its jurisdiction and the achievement of its goals delayed.

On this basis it is submitted that the Court should deny plaintiff leave to file its proposed Bill of Complaint.

Respectfully submitted,

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