

IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 1987

IN THE MATTER OF THE AMENDMENT)
OF RULE 1, RULES FOR FEES AND)
COSTS FOR COUNTY COURTS, AND RULE)
3(b), RULES FOR FEES AND COSTS)
FOR JUSTICE OF THE PEACE COURTS.)

IN THE SUPREME COURT
STATE OF WYOMING
FILED

JUN 11 1987

M. J. Leonard
CLERK

ORDER

The following amendment to Rule 1, Rules For Fees and Costs For County Courts, and Rule 3(b), Rules For Fees and Costs For Justice of the Peace Courts, having been deemed advisable by the court, it is hereby

ORDERED that the following rules be, and they are hereby, amended, effective June 1, 1987, as follows:

1. Rules for Fees and Costs for County Courts

Rule 1. Costs in Criminal Actions.

County courts shall collect for every criminal case costs in the sum of \$20.00 which shall be assessed as part of the sentence, EXCEPT THAT WITH RESPECT TO PERSONS CONVICTED OF A VIOLATION OF W.S. 31-5-301(b)(iii) OR W.S. 31-5-301(b)(iv) COURT COSTS ASSESSED SHALL NOT EXCEED FIVE DOLLARS (\$5.00) FOR SPEEDS NOT EXCEEDING 74 MILES PER HOUR, AND COURT COSTS SHALL NOT BE ASSESSED FOR SPEEDS LESS THAN 61 MILES PER HOUR.

2. Rules for Fees and Costs for Justice of the Peace Courts.

Rule 3. Justice of the peace costs.

* * *

(b) Criminal actions. -- Justices of the peace shall assess as part of the sentence and collect for every criminal case costs in the sum of \$20.00, of which \$10.00 shall be remitted to the county treasurer and \$10.00 shall be ~~deposited daily in a separate bank account and~~ remitted monthly to the Wyoming State Treasurer for deposit in the state general fund. PROVIDED

THAT WITH RESPECT TO PERSONS CONVICTED OF A VIOLATION OF W.S. 31-5-301(b)(iii) OR W.S. 31-5-301(b)(iv) COURT COSTS ASSESSED SHALL NOT EXCEED FIVE DOLLARS (\$5.00) FOR SPEEDS NOT EXCEEDING 74 MILES PER HOUR AND COURT COSTS SHALL NOT BE ASSESSED FOR SPEEDS LESS THAN 61 MILES PER HOUR.

IT IS FURTHER ORDERED that the above amended rules shall be published in the Advance Sheets of the Pacific Reporter and in the Wyoming Reporter and thereafter spread upon the journal of this court.

Dated this 11th day of June, 1987.

By the Court*


C. STUART BROWN
Chief Justice

CARDINE, J., specially concurring.
THOMAS and URBIGKIT, JJ., dissenting.

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CARDINE, Justice, specially concurring.

Without hesitation, I concur in the court's order setting costs at \$5.00 for minor speeding violations because I have no doubt that assessment of a lesser amount of costs for a lesser speeding violation is constitutional and does not violate equal protection.

First, I am not convinced that court costs are something that come within the purview of a constitutional prohibition against special legislation. Special legislation is not ipso facto disabling nor unlawful for "[i]n the absence of constitutional prohibition, express or implied, the enactment of special or local laws is clearly within the power of a state legislature." 73 Am.Jur.2d Statutes § 38 at 290 (1974).

Article 3, § 27 of the Wyoming Constitution prohibiting special legislation provides:

"The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: For granting divorces; laying out, opening, altering or working roads or highways; vacating roads, town plats, streets, alleys or public grounds; locating or changing county seats; regulating county or township affairs; incorporation of cities, towns or villages; or changing or amending the charters of any cities, towns or villages; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates or constables; changing the rules of evidence in any trial or inquiry; providing for changes of venue in civil or criminal cases; declaring any person of age; for limitation of civil actions; giving effect to any informal or invalid deeds; summoning or im-

paneling grand or petit juries; providing for the management of common schools; regulating the rate of interest on money; the opening or conducting of any election or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; chartering or licensing ferries or bridges or toll roads; chartering banks, insurance companies and loan and trust companies; remitting fines, penalties or forfeitures; creating [,] increasing, or decreasing fees, percentages or allowances of public officers; changing the law of descent; granting to any corporation, association or individual, the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever, or amending existing charter for such purpose; for punishment of crimes; changing the names of persons or places; for the assessment or collection of taxes; affecting estates of deceased persons, minors or others under legal disabilities; extending the time for the collection of taxes; refunding money paid into the state treasury, relinquishing or extinguishing, in whole or part, the indebtedness, liabilities or obligation of any corporation or person to this state or to any municipal corporation therein; exempting property from taxation; restoring to citizenship persons convicted of infamous crimes; authorizing the creation, extension or impairing of liens; creating offices or prescribing the powers or duties of officers in counties, cities, townships or school districts; or authorizing the adoption or legitimation of children. In all other cases where a general law can be made applicable no special law shall be enacted."

In all of the areas in which special legislation is prohibited by Art. 3 § 27 of the Wyoming Constitution, just two were suggested as being applicable to court costs, i.e., "regulating county or township affairs" and "for the assessment or collection of taxes." "Taxes" concern taxes as the term is ordinarily used according to its plain meaning. The constitution prohibits a special law that arbitrarily taxes one citizen differently than all others. Regulating speed on state highways seems not to be within "regulating county or township affairs" unless that term is so broad as to include all activity of local government. Neither of these have anything to do with court costs. Court costs seem pretty specific, understandable and recognizable. Even in 1889, when the constitution was drafted, there were courts and court costs; and

if the framers of the constitution had intended that court costs be identical for every criminal offense and included in the prohibition against special legislation, that provision could easily have been stated in specific language. There is nothing in the constitution that prohibits special legislation dealing with court costs.

Nevertheless, assuming for the sake of argument that setting court costs for minor speeding violations is special legislation of a type specified in Art. 3 § 27 of the Wyoming Constitution, such is constitutional and appropriate. A few rules from Wyoming cases dealing with special legislation are helpful. We said in *Mountain Fuel Supply Company v. Emerson, Wyo.*, 578 P.2d 1351, 1356 (1978):

"The prohibition against special legislation does not mean that a statute must affect everyone in the same way. It only means that the classification contained in the statute must be reasonable, and that the statute must operate alike upon all persons or property in like or the same circumstances and conditions." (Emphasis added);

that

"One who assails a classification must carry the burden of showing that it does not rest on a reasonable basis, but is essentially arbitrary." *Id.* at 1355;

and that

"If any state of facts can be reasonably conceived which sustain the classification, such facts will be assumed." *Id.* at 1355. See also *Small v. State, Wyo.*, 689 P.2d 420 (1984); *Meyer v. Kendig, Wyo.*, 641 P.2d 1235 (1982); *Nickelson v. People, Wyo.*, 607 P.2d 904 (1980).

We further have stated:

"Our rule is that courts have a duty to uphold statutes, and any doubts with respect to this issue will be resolved in favor of constitutionality. Expressing this in another way, we have said that unconstitutionality must be 'clearly and exactly shown beyond a reasonable doubt.'" (Citations omitted.) *Baskin v. State, ex rel. Worker's Compensation Division, Wyo.*, 722 P.2d 151, 156 (1986).

Applying these rules to setting court costs at \$5.00 for speeds under 74 miles per hour on interstate highways and \$20.00 for speeds of 75 miles per hour and greater, there is clearly a reasonable basis for placing speeders in two different classifications. First, I note that the interstate highways were constructed to accommodate vehicles travelling then lawfully at speeds up to 75 miles per hour. Section 31-130, W.S.1957. Legislators elected by the people of the state of Wyoming apparently concluded that travelling at speeds less than what was once lawful, and for which the highways were designed, was not a serious criminal offense. They established a minimal fine for speeding violations of less than 75 miles per hour, Enrolled Act No. 2, 1987 Special Session, 49th Legislature, and provided that these speeding violations would not be considered for purposes of license revocation. On the other hand, for speeds in excess of 74 miles per hour, they established a substantial fine and provided that such offenses would count against a person's driving record for purposes of license revocation. It takes no imagination or clairvoyance to recognize that, as the violation is minor and does not count for license revocation purposes, motorists who are charged with speeding violations of travelling at speeds of 66 to 74 miles per hour on certain interstate highways are probably going to pay the prescribed fine rather than go to court. The cost for administering this portion of the speed limit law will be minimal. On the other hand, motorists charged with travelling in excess of 74 miles per hour, a violation that may result in license revocation and a substantial fine, are much more likely to contest the charge, resulting in a considerably greater cost to the court and justice delivery system. Thus, the classification contained in the statute and rules rests upon a reasonable basis.

Finally, it is generally held that:

"Constitutional uniformity is secured where the law operates alike on all who come within the scope of its provisions, or upon every person, subject, or object within the relation or circumstances provided for, or upon all persons or things within a legitimate class to which, alone, the statute is addressed * * *." (Footnotes omitted.) 73 Am.Jur.2d Statutes § 43 at 294 (1974).

If persons in the affected class are treated differently, the legislation may be violative of the constitution. Thus, if court costs were set at \$5.00 for women and \$20.00 for men or \$5.00 for persons with blue eyes and \$20.00 for persons with green eyes, it would be unconstitutional. But here all persons who violate the speeding laws by travelling at a speed of 66 to 74 miles per hour on a rural interstate highway are assessed the same amount of court costs, and there is no constitutional violation.

Wyoming is not unique nor alone in adopting this type of legislation with respect to statutes governing speed on its highways. Most of the surrounding states and sparsely populated western states have adopted legislation which, in one form or another, accomplishes the same result as the Wyoming statutes and rules relating to speeding.

Finding the statute and rules to be entirely constitutional, I concur in the adoption of the amendments of court rules 1 and 3(b) providing for costs in the county courts and justice of the peace courts of the state of Wyoming.

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FOR COUNTY COURTS, AND RULE 3(b),)
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JUSTICE OF THE PEACE COURTS.)

URBIGKIT, Justice, dissenting.

I respectfully dissent from the administrative order of this court dated June 11, 1987 which approved the assessment of discriminatory court costs in order to comply with legislative desires to benefit the group of lawbreakers who drive on the state highways at excess speeds. Initial understanding of the questions involved brings us to think not only about the adjudicatory function (case deciding), but also the administrative function (judicial system superintending responsibilities) of this court under the Wyoming Constitution.¹

A brief but complete history of this event is helpful.

In mutual self-interest between the legislature, sponsored by the Joint Appropriations Committee, and cooperative interest with the judiciary, in raising the funds to upgrade the efficiency of the county courts to obtain computer capability, the budget law, Ch. 12, S.L. of Wyoming 1987, signed by the Governor on February 2, 1987, was enacted. That law provided for the two-year funding for the operation of the courts, and included as part of its text a footnote:

"APPROPRIATION
"FOR

GENERAL * * *
FUND
\$

"Section 101. SUPREME COURT

"PROGRAM

¹ Singularly curious as may be the response to a dissent by special concurring opinion, this dissent is filed without modification or surrebuttal to avoid an even greater anomaly.

"Administration [Fn.] ¹. * * * 2,945,469 * * *

* * * * *

"County Court Computer
System [Fn.] ¹.

78,000 * * *

* * * * *

"[Fn.] ¹. The general fund appropriation may be expended only after highway safety grant funds are exhausted and only after the supreme court has increased the court costs for misdemeanor cases."

The use of the footnote to apply not only to the computer funds but also to all appropriations for all the court system, including county courts, district courts, and the supreme court operation, meant that if the footnote was valid, none of the courts of the state could legally operate unless the supreme court increased court costs.

In a cooperative response to a desired efficiency effort, and to comply with the budget restriction, this court adopted amendments, to be effective June 1, 1987, to the rule for costs and fees for the county courts, and the rule for costs and fees for the justice of the peace courts, to establish a minimum amount of \$20.00 for each and any misdemeanor conviction in those courts.

Leaving aside all other questions and doubts which could be observed or inferred in this process, I would never have voted for the amendment as the adopted increased court-cost schedule, except that the resulting revenue as a tax to be collected through the criminal justice system was "equal and uniform," as required by Art. 1, § 28 of the Wyoming Constitution, and was user fair in that those using the system would equally pay some part of the operational cost.

Twenty-two days after the effective date of this legislative-ly requested increase in court costs as adopted to be constitutionally uniform, the legislature enacted and the Governor signed the present speed bill.²

² The budget bill footnote was neither amended nor apparently considered when the speed-limit bill was enacted, although then apparently intended to reverse the cost increase earlier mandated in the February law. This must have been intended to be a rank repeal by implication.

In effect, the legislature, or at least some well-quoted members, demanded, and the Governor in concurrence requested, that this court then repeal what it had done at the specific request of the legislature. To accede in decision would not have been particularly bothersome to this writer if the Supreme Court had directly accepted the challenge flaunted by the governmental authority, also editorially requested by some of the media, and reduced all costs to a uniform \$5.00, affording equality as facially constitutional although obviously with substantial loss of revenue to the state.

Unfortunately, this was not to be in the amended rule, from which decision I dissent.

In the variegated misdemeanor court-costs arrangement, in addition to what I consider as a facially unconstitutional discrimination in favor of speeders against other persons, there remain some broad questions best to be considered in future time within the adjudicatory responsibility of this court when actual cases arise or class actions are filed and appealed. Academically, those adjudicatory issues at least by appearance include:

(1) Validity of any legislation passed during the session after the majority vote amendment by the Senate which denies the rights of a minority. My education in political science, considerable experience in the legislature, as well as knowledge about Art. 1, § 7 of the Wyoming Constitution, afford an impression that a litigable issue of whatever validity can be advanced.

"Absolute, arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority." Article 1, § 7, Wyoming Constitution.

(2) Separation of powers as defined in Art. 2, Wyoming Constitution.

(3) Use of the criminal justice system to produce revenue.

(4) Method of enactment and repeal of revenue measures under constitutional criteria.

Again, however, these issues, in my conception, were not climactic or controlling for preemptive response by the Supreme Court when the issue was presented. In due time, litigants separately or by class action can argue and attorneys can brief for presentation to the judiciary within the adjudicatory responsibilities of the judicial code, Art. 5 of the Wyoming Constitution.

Conversely, however, in response to the administrative obligation of this court, an unequal and discriminatory rule adopted

under pressure from spokesperson legislators and the Governor, cannot so simplistically now be disregarded.

It is my notion that the Supreme Court cannot ignore the Constitution in performing its administrative obligation under Art. 5, § 2, in "supervising control" as compared to an attitude, sometimes otherwise manifested by legislative or executive comment, that "if constitutionally wrong, then let the courts decide." This is the Supreme Court, from which no further reference for justice is possible unless our neglect makes it necessary to invoke the Fourteenth Amendment to the United States Constitution.

The subsidized criminality arrangement put into the speeder's law now has a stamp of approval from this court. It is rational to leave legislative wisdom for the legislature and case consideration, except that our action by this amended rule has given advance approval both in constitutional law and governmental conduct through a defined but yet uncontested and unbriefed discriminatory arrangement.

It is to be remembered that a person driving too slowly on a controlled access highway, or one who may fail to use approved child restraint equipment, or in the many ways possible might miss a mandated fishing or hunting requirement, or even perchance have one too many fish in possession, as well as all the other multitude of misdemeanor offenses, will face a \$20.00 court cost, while the person driving a dangerous instrumentality at excessive speed is socially reproachable by only a \$5.00 cost contribution to the expense of the judicial system.

If equality, fairness, or due process are relevant, as well as other constitutional constraints and criteria to be applied within the specific facts here evidenced, then consideration is required by all three co-equal branches of government by thoughtful reading and educational analysis of Art. 1, § 6, Due process of law; Art. 1, § 5, Imprisonment for debt; Art. 1, § 8, Courts open to all, suits against state; Art. 1, § 14, Bail, cruel and unusual punishment (no excessive fines imposed); Art. 1, § 34, Uniform operation of general law; Art. 2, Distribution of powers; Art. 3, § 20, Laws to be passed by bill, alteration or amendment of bills; Art. 3, § 24, Bill to contain only one subject which shall be expressed in title; Art. 3, § 27, Special and local laws prohibited; Art. 3, § 43, Offers to bribe; Art. 3, § 45, Legislature shall define corrupt solicitation; Art. 5, § 1, How judicial power vested; Art. 5, § 2, Supreme Court generally, appellate jurisdiction; Art. 5, § 3, Same, original jurisdiction; Art. 15, § 13, Tax must be authorized by law, law to state object; and finally, but not incidentally, Art. 7, § 5, Fines and penalties to belong to public school fund:

"All fines and penalties under general laws of the state shall belong to the public school

fund of the respective counties and be paid over to the custodians of such funds for the current support of the public schools therein."

It may be that others can find a justified public-welfare reason for this sponsored criminality in speeding offenses.

Finding neither political necessity nor constitutional justification, I dissent from this improvident administrative action of the Wyoming Supreme Court.

