

STATE OF MICHIGAN
COURT OF APPEALS

GORDON W. MESSER and STATEWIDE DRIVING
SCHOOL, d/b/a SAFEWAY DRIVING SCHOOL,

UNPUBLISHED
June 14, 1996

Plaintiffs–Appellants,

v

No. 173714
LC No. 91-130231

CITY OF TAYLOR,

Defendant–Appellee.

Before: White, P.J., and Smolenski, and R.R. Lamb,* JJ.

PER CURIAM.

Plaintiffs appeal by right from a judgment of no cause of action entered by the trial court after a bench trial on stipulated facts. We affirm.

Plaintiffs sued defendant for damages after defendant denied plaintiffs' request to rent space and offer driver education classes on the same basis as a competitor driving school, the Wyandotte Taylor Driving School ("Wyandotte Taylor"). Wyandotte Taylor held the classes at a community center which defendant owned. Defendant advertised the classes and shared in the tuition proceeds.

Plaintiffs first argue that defendant's agreement with Wyandotte Taylor was unconstitutional because it was an extension of credit in violation of Article 7, § 26 and Article 9, § 18 of the Michigan Constitution of 1963. Article 9, § 18 provides that in general, no unit of government may extend credit to a private person or entity. Article 7, § 26 is an exception to the general rule. *Advisory Opinion on 1986 PA 281, 430 Mich 93, 119; 422 NW2d 186 (1988)*. The threshold question in determining whether governmental action violates these provisions is whether the action is a loan of credit. *Id.* No loan of credit occurs if government receives value in return for what it gives away. *Id.* at 126. While a unit of government may not give anything away without consideration, if it "acquires or transfers something of value in return for value [the government] does not offend Const 1963, art 9, § 18." *Id.* at 126-127. Because defendant received something of value in exchange for allowing Wyandotte Taylor

to use the community center, a percentage of the tuition, the agreement did not constitute an extension of defendant's credit which violated the constitution.

Plaintiffs also argue that defendant improperly competed with private business though the challenged agreement. Defendant is permitted to engage in activities which involve a public purpose. *Advisory Opinion*, 430 Mich at 130. Offering driver's education classes to its citizens is plainly a public purpose in which defendant is authorized to engage. Furthermore, defendant is authorized by statute to enter into contracts for the public safety. MCL 177.3(j); MSA 6.346(j).

Next, plaintiffs argue that the agreement between defendant and Wyandotte Taylor violates the Michigan Antitrust Reform Act. The act provides, however, that it does not prohibit or invalidate any authorized action by a governmental unit. MCL 445.774(3); MSA 28.70(4)(3). As previously discussed, defendant was authorized to contract for driver education.

Finally, plaintiffs argue that the trial court erred in determining that damages were not the appropriate remedy for the claims plaintiffs asserted. Because we conclude that the trial court properly ruled in favor of defendant, we do not address this claim.

Affirmed.

/s/ Helene N. White
/s/ Michael R. Smolenski
/s/ Richard R. Lamb