Case Western Reserve Law Review

Volume 4 | Issue 3

1953

Municipal Corporations

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the fact that the corporate lessee had subleased the land for a shorter period than the balance of the term and for a higher rental.

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MUNICIPAL CORPORATIONS

Home Rule

The supreme court in *Sanzere v. Cincinnati*[1] reached a decision which is another hopeful sign to advocates of municipal home rule. The chartered City of Cincinnati undertook a street improvement program, using its own employees and materials, without first having obtained estimates of the cost thereof as required by provisions of Sections 4678-1 and 4678-2 of the Ohio General Code. However, in Section 4678-2 it is stated that this "act [Sections 4678-1 and 4678-2] shall not apply to any city or village having a charter form of government." The supreme court upheld the constitutionality of the provision on the basis that if the last sentence of Section 4678-2 did attempt a legislative classification of municipal corporations, it was such a classification as was already recognized by Section 7 of Article XVIII of the Ohio Constitution, which expressly provides for chartered municipalities. Thus, legislation based on the differentiation of chartered and unchartered cities is within the sanction of the Ohio Constitution.

The court properly distinguished the case of *Elyria v. Vandemark*[2] in which a population classification of municipalities by the legislature was declared unconstitutional on the ground that it differed from the only population basis recognized by the Ohio Constitution.[3] The court also strongly implied that the matter dealt with in the legislation was a purely local matter.

Income Tax

Prior to 1952, it had been determined by Ohio judicial decisions[4] that the equal protection clause of the United States Constitution was not violated by provisions of a municipally imposed income tax which required individuals to pay such a tax on all their income regardless of where the services which produced said income were performed, but which required corporations having an office or place of business within the city to pay a tax *only* on income earned within the city. This was reaffirmed in 1952 by

[1] 157 Ohio St. 515, 106 N.E.2d 286 (1952).

[2] 100 Ohio St. 365, 126 N.E. 314 (1919).

[3] OHIO CONST. Art. XVIII, § 1.

[4] Springfield v. Krichbaum, 88 Ohio App. 329, 100 N.E.2d 281 (1950).

the court of appeals in the case of *Springfield v. Kurtz*.[5] The court further declared that the *power* exists in a municipality to levy a muncipal income tax upon the income of resident individuals earned outside of the municipal boundaries. Thus, whereas it had previously been decided that the discrimination between individuals and corporations did not act as a denial of equal protection so as to invalidate the ordinance, the principal case stated that the municipality's power to tax existed in its own right, and not merely as an incident of its not being in violation of the Fourteenth Amendment.

Zoning

In *State* ex rel. *Weber v. Vajner*,[6] the court of appeals had before it the question of whether an ordinance of a village forbidding the issuance of a building permit for the erection of a building on a lot which did not front on a dedicated public street was valid. Semi-urban municipalities face difficult problems in that construction often takes place on new streets before dedication, and often before any substantial improvements of grading or sewering take place, with the result that access for purposes of police, fire and sanitary protection is extremely difficult. Usually the municipality is faced with paying an improvement cost which ought to be borne by the allotter.

The court held that the ordinance requirement bore no substantial relationship to the public health, safety, morals and general welfare of the village and deprived the owner of the lot of the reasonable use of such lot. Therefore, the ordinance was unreasonable and thus unconstitutional. It should be noted that the record in the trial court was silent as to any facts upon which a finding of relationship to the public health could be based, and that the lot involved was apparently already in existence and of record at the time of the enactment of the ordinance under consideration.

Off-Street Parking

The supreme court in *State* ex rel. *Gordon v. Rhodes*[7] had occasion to pass upon several issues in connection with the financing of municipal parking facilities. It decided that the application of fees collected for use of on-street parking facilities to the partial payment of bonds issued to provide off-street facilities was proper. Further, if the amounts charged for both types of parking were not unreasonable and did not bring in a sum greater than that amount necessary to pay the total cost of providing both types of parking facilities, the charge could not be considered a tax. The court also held that the bonds, which did not constitute a charge upon the

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[5] 104 N.E.2d 64 (Ohio App. 1951).

[6] 92 Ohio App. 233, 108 N.E.2d 569 (1952).

[7] 158 Ohio St. 129, 107 N.E.2d 206 (1952). For a more exhaustive consideration of this case and related prior cases see Note, 4 WEST. RES. L. REV. 142 (1952).