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# Municipal Corporations

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under the terms of the lease the lessee was entitled to full credit for the cost of all repairs against the rental due, which, under the facts, relieved the lessee from the obligation to pay any rental. Judge Skeel dissented because he believed that when the lessee undertook to make the repairs he must make them as quickly as possible and not extend them over a long period of time to the prejudice of the lessor through the abatement of the rent for an unreasonable period. The fact that one provision in a lease was construed three different ways reveals the importance of the need for carefully drafted leases.

ROBERT N. COOK

## MUNICIPAL CORPORATIONS

### *Ordinance Regulating Length of Occupancy In Trailer Camps*

In 1940 the City of Brooklyn enacted an ordinance providing for a comprehensive regulation of trailer camps within its boundaries, the most controversial provision of which was a section forbidding occupancy of a site in any trailer camp by a trailer or its inhabitants for longer than 60 days, and further forbade its or their return to the same or any other camp in the city within 90 days after expiration of the 60-day period of occupancy. In 1942 the constitutionality of the ordinance in general and of this provision in particular was upheld by the Ohio Supreme Court.<sup>1</sup>

In 1951 the General Assembly enacted an act with respect to the regulation of house-trailer parks<sup>2</sup> and authorized the Public Health Council to "make regulations to be of general application throughout the state governing the location, layout, construction, drainage, sanitation, safety and operation of house-trailer parks." In December of 1951 the Public Health Council promulgated such comprehensive regulations.

It was urged by the owners and the occupants of a house-trailer camp in Brooklyn in the case of *Stary v. City of Brooklyn*<sup>3</sup> that (1) intervening changes in conditions, such as a great increase in the use and size of trailers and improvements in their method of construction; (2) the passage of statewide regulatory laws which did not forbid permanent occupancy of trailer parks; and (3) the adoption by the Public Health Council of the comprehensive rules for such camps, all should have the result of nullifying the municipal ordinance.

<sup>1</sup> *Renker v. Village of Brooklyn*, 139 Ohio St. 484, 40 N.E.2d 925 (1942).

<sup>2</sup> OHIO REV. CODE §§ 3733.02-3733.05, 3733.99.

<sup>3</sup> 162 Ohio St. 120, 121 N.E.2d 11 (1954).

The supreme court sustained the continued validity of the ordinance against all three objections. It held that while trailers today are often better and larger than they were 15 years ago, the very increase in size and number increased the problems of municipal regulation; that the state statute on house-trailer camps do not by their terms or in their effect preempt the entire field of legislation, particularly in view of the Home Rule provisions of the Ohio Constitution,<sup>4</sup> and since the ordinance did not forbid anything which state statutes permitted, and because, finally, the court could not say that the 60-day and 90-day provisions of the ordinance were arbitrary or unreasonable or had no direct relationship to the public health, morals, safety or welfare.

### *Zoning — Termination of Prior Non-Conforming Uses*

The thorn in the side of the city planner is the non-conforming use which is already in existence at the time of the enactment of a zoning ordinance. Not only does it prevent the perfect accomplishment of a supposedly desirable uniformity in the use of the area in which it is located, but it is also a potential focal point for intrusion of other non-conforming uses into the area. Advocates of strict zoning provisions have sought legal methods of eliminating prior non-conforming uses. Ordinances have been upheld which denied the right to resume a non-conforming use after a period of non-user, as have those which deny the right to extend or enlarge an existing non-conforming use.<sup>5</sup>

A third possible method proposed has been that of the prohibition or abolition of the non-conforming use after a reasonable or a fixed length of time. The City of Akron adopted a zoning ordinance in 1922 which provided that a prior non-conforming use should be discontinued when, in the opinion of the City Council, it had been permitted to exist or continue "for a reasonable time." Chapman owned real estate which had been continuously used since 1916 in a manner not in conformity with the 1922 zoning ordinance. In 1950 the Akron City Council, in an ordinance directed specifically at this property and Chapman's use thereof, declared that as of January 1, 1951, the non-conforming use would have existed for a reasonable period of time and required such use thereafter to conform.

The supreme court unanimously held that this constituted an unconstitutional deprivation of Chapman's property rights.<sup>6</sup> It intimated that it might sustain a zoning ordinance which contemplated "the gradual elimina-

<sup>4</sup> Art. XVIII, Sec. 3.

<sup>5</sup> State *ex rel.* City Ice & Fuel Co. v. Stegner. 120 Ohio St. 418, 166 N.E. 226 (1929); 58 AM. JUR. 1026, 1029.

<sup>6</sup> City of Akron v. Chapman, 160 Ohio St. 382, 116 N.E.2d 697 (1953). See Note, 6 WEST. RES. L. REV. 182 (1955)

tion of non-conforming uses within a zoned area" if such were accomplished "without depriving a property owner of a vested property right." This writer, while not disagreeing with the result reached in this case, fails to see how prior non-conforming uses can compulsorily be gradually eliminated (absent loss by non-user or destruction by fire or Act of God) without depriving the property owner of a vested property right. Under the court's own definition, the right to use the property in a manner at variance with the ordinance is the vested property right.

### *Home Rule Cities — Sale of Municipally Owned Real Estate*

In *Babin v. City of Ashland*<sup>7</sup> the supreme court had before it two difficult and long unsettled problems. Early statutes<sup>8</sup> of the state have left in doubt the titles to certain public grounds in cities and towns which were laid out or incorporated during the first three or four decades of the state's existence. Apparently conflicting provisions<sup>9</sup> of the 1831 Act placed the title of lands indicated on town plats to be for street or commons purposes either in the county or the town. The court reconciled the conflicting sections by decreeing that in the case of incorporated towns the fee was in the town; in the case of unincorporated settlements it was in the county as an agency of the state.

The court was then faced with the problem of reconciling several conflicting decisions as to the alienability of land dedicated to municipalities, particularly when the dedication was for a particular use or uses. Overruling *Board of Education of Van Wert v. Inhabitants*,<sup>10</sup> and following *McMechan v. Board of Education of Richland Township*<sup>11</sup> and cases therein cited, the court held that under a statute such as was involved in the principal case, the corporation acquired a fee simple title, not just a mere use, and upon cessation of the use to which the land had been put, could give a fee simple title to a purchaser.

The constitutional grant<sup>12</sup> of all powers of local self government was held<sup>13</sup> to permit the city to convey land no longer needed in it for public purposes, and because of the fact that the property being sold did not destroy or affect in this instance any rights of any abutting landowners<sup>14</sup>

<sup>7</sup> 160 Ohio St. 328, 116 N.E.2d 580 (1953)

<sup>8</sup> 22 OHIO LAWS 301 (1823), 29 OHIO LAWS (1831).

<sup>9</sup> 29 OHIO LAWS 350 §§ 6, 8 (1831).

<sup>10</sup> 18 Ohio St. 221 (1868).

<sup>11</sup> 157 Ohio St. 241, 105 N.E.2d 270 (1952).

<sup>12</sup> Art. XVIII, Sec. 3.

<sup>13</sup> Following *Hugger v. City of Ironton*, 148 Ohio St. 670, 76 N.E.2d 397 (1947)

<sup>14</sup> See *N. Y., Chicago & St. L. Rd. Co. v. Bucsi*, 128 Ohio St. 134, 190 N.E. 562 (1934).

did not require any compensation to other property owners, since all were affected in the same degree. The compensation to be received by the municipality was admittedly adequate; no taxes would have to be levied to replace any value of the property not received by the municipality.<sup>15</sup>

### *Vacation of Streets — Accretion of Fee In Vacated Portion to Abutting Parcels of Land*

A problem of the title to real property which is peculiar to municipal corporations arose in *Greenberg v. L. I. Snodgrass Co.*<sup>16</sup> Plaintiff owned improved real estate abutting on its north side upon a public street in Cincinnati. In deeds from a former title holder to successive title holders, and in the deed to plaintiff from his immediate predecessor in title, the land granted had been "to the south side" of this street upon which plaintiff's land abutted on the north side. While one of the plaintiff's predecessors held title, this side street was vacated by the city council. The predecessor holding title at that time later sold, but described the land only to the same south side of the now vacated street. Later that predecessor sold to defendant the vacated street. Plaintiff brought an action for declaratory judgment and prayed that he be declared either to have a fee in the south half of the vacated street or an easement and right of way therein. The common pleas court declared plaintiff to have an easement in the sidewalk strip and defendant, the grantee of the street portion, the fee in said strip and an unencumbered fee in the balance.

The court of appeals reversed the trial court to grant to plaintiff an unencumbered fee in the entire portion of the street. This result was reached by holding, first, that the law is already well established in Ohio<sup>17</sup> to the effect that upon the vacation of a street the fee thereto does not revert to the original dedicator but accretes to the abutting lot owners, subject only to such rights as other such owners may have in the street as a necessary means of access to their property.

It then became necessary to determine whether plaintiff's predecessor in title, who owned the premises at the time of such accretion, retained the accreted portion of the street at the time he sold the improved original subplot, or whether, on the other hand, the accreted portion passed with the principal subplot despite a description of the land which all but *expressly excluded* the accreted street. The court, following numerous authorities in other jurisdictions, and noting that although the construction of such a deed as "strained" held that "it would require an express declaration, or

<sup>15</sup> *Brown v. Manning*, 6 Ohio 298 (1834) overruled.

<sup>16</sup> 161 Ohio St. 351, 119 N.E.2d 292 (1954).

<sup>17</sup> *Kinnear Mfg. Co. v. Beatty*, 65 Ohio St. 264, 62 N.E. 341 (1901).