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Municipal Corporation Law by Chester James Antieau

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Book Review

MUNICIPAL CORPORATION LAW, by CHESTER JAMES ANTIEAU. New York, Matthew Bender & Company, 1955, 1560 pages (2 vols.), \$42.50.

The law is indeed a seamless web, and while in the teaching of it and in writing books or articles concerning its various aspects we are wont, for the sake of convenience, to compartmentalize it, all lawyers are quick to realize that it is hardly possible to treat one aspect apart from all the others which impinge upon it. It is difficult, and usually unsafe, for a lawyer to attempt to view a problem of breach of contract apart from the necessities of pleading the making and breach thereof, or the problem of the evidence which he will have to adduce to prove his case.

In the law of municipal corporations there are perhaps more cross-currents than in any other field. Practically no problem in the field can be separated from other substantive and procedural branches of the law. While problems arising in municipal administration are often similar to those arising in other public and private corporate enterprises, they always have about them a uniqueness, due to several factors. Primarily there is the factor of the assumed history of municipal corporations as creatures of the state legislatures, with all the attendant concepts of limited delegation of sovereign powers, strict construction and rigid protection of the expenditure of public moneys. Then, too, there is the factor that it is at the level of municipal administration where all of us are most often, irritatingly or otherwise, touched by the hand of the government. While it would be theoretically possible for the county or state to provide us with zoning and building regulations, it is almost always left to the municipal government to do so, since it is logically assumed that that is where the knowledge of individual and local needs is most likely to be found.

Similarly, the state or county could license the use of sound trucks, the sanitary equipment or hours of barber shops, the handling of food, the distribution of political or religious pamphlets and the host of other things which we need or feel compelled to do in our daily lives. In practice, the urge and necessity usually arise and are met at the local level. Yet all of these things and the many more services, rules, protections and safeguards which our local governments provide affect not only our daily lives but some of our most cherished rights and freedoms.

It is obvious, therefore, that an author who attempts to encompass in one book or set of books the law of municipal corporations has set him-

self a formidable task. Property, contract and constitutional rights, administrative procedures, torts, sovereignty and almost every concept known to the legal mind are involved, and, while they are no less sacred and no less jealously guarded at the local level, they have their own peculiar pattern there.

Excellent encyclopedic works on the subject exist, and are invaluable. This reviewer has, however, long felt the necessity for a comprehensive work which was not so encyclopedic. It is his opinion that Professor Antieau's work meets and fills just that need. His table of contents indicates the scope of the problems considered by him: Organization, Legislative Control, Home Rule, Enactment of Legislation, Police Power Regulations, Property Interests, Municipal Streets, Contractual and Quasi-Contractual Responsibilities, Tort Liability, Taxation and Assessments and Municipal Utilities—these are some of his chapter headings. His approach appears concise and logical, and the work contains what seems to be a particularly good index, which is always a *sine qua non* to this reviewer.

Particularly felicitous is the extensive chapter on Home Rule. To the mind of this reviewer the two most difficult and important problems facing municipal corporations today (after that of finances, which is a problem of greater than merely local application) are Home Rule and physical development and zoning.

Home Rule, to the extent that it exists at all for municipal corporations, has been hard won. In some states it has acquired a constitutional sanction, although even in such states the courts have not always treated it fairly, kindly, logically or intelligently. In other states it has been recognized by and given legislative sanction. Of course, what the legislature gives, a subsequent session can always take away. In still other states, the traditional American concept that municipal corporations are but local agencies of the state governments still prevails.

Mr. Antieau carefully points out the first two distinctions noted above and indicates that the restrictive interpretations of grants of home rule powers by appellate courts are often erroneous, both in their application of precedents from non-home-rule states and in their failure to realize that the grant of home rule by the people in constitutional conventions was for the express purpose of putting an end to hat-in-hand dependency upon state legislatures. It is perhaps too much to expect that quotations from authoritative textbooks will succeed in convincing courts where practicing lawyers have failed in the past. But to the extent that an authority of Mr. Antieau's stature points out in a logical fashion the past mistakes in interpretation and construction, we may hope for some improvement. It is certain

that the solutions to many of our pressing local problems cannot hope to be fully achieved until local communities which know and have to live with their own particular problems are allowed to work them out free of a dead hand of remote centralized authority.

In the opinion of this reviewer Mr. Antieau's work is a valuable addition to the legal literature on government at the level where we are all most directly affected in our daily lives.

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