Case Western Reserve Law Review

Volume 10 | Issue 3 Article 20

1959

Municipal Corporations

Samuel Sonenfield

MUNICIPAL CORPORATIONS

Collection of Garbage and Rubbish — A Governmental Function

The hazards of modern life in the big city were illustrated during this survey period by *Broughton v. City of Cleveland.*[1] A lady was hit by a wooden box being thrown onto the City of Cleveland's garbage truck by city employees. The Ohio Supreme Court said it was a governmental and not a proprietary function, so there is no liability on the City's part.

The case is in line with the majority of states on this matter, and resolves several conflicting court of appeals decisions. The court distinguished those cases holding that sewer maintenance and repair are proprietary functions, and apparently overruled the old case of *City of Cleveland v. Russo.*[2]

But It May Not Make a Nuisance of Itself While It Goes About It

Thousands of Greater Clevelanders breathed sighs of relief and forgave the courts everything during 1957-1958, when they put an end to 50 years of rubbish-burning on Cleveland's municipal lake front dump. An irate and public-spirited taxpayer, represented by a determined young lawyer, brought an action to restrain and enjoin the constant burning of rubbish thereon. The Cuyahoga County Court of Appeals enjoined such acts as a public nuisance, which no claimed "emergency" on the part of the city could justify, found that sanitary land fill is a proper and safe method of disposal of such material, and stated that "the City of Cleveland is not above the law."[3]

The Supreme Court refused certiorari, and what is even more of interest to lawyers, the trial court subsequently awarded to the plaintiff's lawyer a fee of $25,000.00 Virtue not only triumphed, it was rewarded!

No Tax Exemption of Municipally Owned Off-Street Parking Facilities

The City of Columbus acquired land and constructed a public parking facility thereon, pursuant to its home-rule power,[4] rather than under the

1. 167 Ohio St. 29, 146 N.E.2d 301 (1957).
2. 98 Ohio St. 465, 121 N.E. 901 (1918).
3. Neubauer v. Cleveland, 78 Ohio L. Abs. 2 (Ohio Ct. App. 1957), motion to certify overruled February 19, 1958.
4. OHIO CONST. Art XVIII § 3. See State, *ex rel.* Gordon v. Rhodes, 156 Ohio St. 81, 100 N.E.2d 255 (1951).

provisions of Revised Code Section 717.05. The latter contains a provision stating that:

> Real estate acquired under this section shall not be tax exempt.

The city contended that since it had not acquired the facility under Section 717.05 it was exempt from taxation by virtue of the provisions of Section 5709.08.[5]

Conceding that the property was used exclusively for a public purpose, the Supreme Court[6] pointed out that to grant exemption as to facilities acquired by virtue of home-rule powers and to deny it as to those acquired under Section 717.05:

> . . . would lead to a discrimination and legal absurdity not to be contemplated, particularly in view of the requirement of Section 26 of Article II of the Ohio Constitution that all laws of a general nature shall have a uniform operation throughout the state.

Sections 717.05 and 5709.08 must be construed *in pari materia.*

But A Municipal Transit System Is Exempt

In *City of Cleveland v. Board of Tax Appeals*[7] the Supreme Court was not faced with reconciling two apparently conflicting statutes, but rather with determining to overrule or follow its own decision[8] that real and personal property owned and used by the City of Cleveland in operating its mass transportation system was not exempt from taxation.

The Supreme Court reversed its earlier decision and held exempt the portion of the transit system's property so used, stating that the property met the test of exclusiveness and that neither the making of a charge to the public for rides nor the fact that the system might show a profit forbade exemption. The Court's syllabus overruled *Zangerle v. City of Cleveland.*[9]

Annexation and Detachment Are Not Within Home Rule

A group of residents of the Village of Beechwood in Cuyahoga County filed a petition with the County Board of Elections, for the detachment of a certain portion of the village territory and its formation

5. "Real or personal property belonging to the state or United States used exclusively for a public purpose, and public property used exclusively for a public purpose, shall be exempt from taxation. . . ."

6. City of Columbus v. County of Franklin, 167 Ohio St. 256, 147 N.E.2d 625 (1958). See discussion in TAXATION section, *infra.*

7. 167 Ohio St. 263, 147 N.E.2d 663 (1958). See TAXATION section, *infra.*

8. Zangerle v. City of Cleveland, 145 Ohio St. 347, 61 N.E.2d 720 (1943).

9. *Ibid.*

into a new and separate township. The petition conformed to the provisions of the state statutes[10] relating to detachment, but not to certain special provisions of Beechwood's charter relating thereto.

The question came before the Supreme Court on appeal by the village from an order of the trial court refusing to grant an injunction against the holding of the election.[11] The court held that the power of local self government granted to municipal corporations by Article XVIII of the Ohio Constitution relates solely to the government and administration of the internal affairs of the municipality. When a proceeding is such that it affects not only the municipality itself but the surrounding territory beyond its boundaries, such proceeding is no longer one which falls within the sphere of local self-government, but one which must be guided by the general law of the state. Similarly, to detach territory and diminish the boundaries of a municipal corporation affects adjacent areas, in that it either increases the size of an existing township or creates a new one. Therefore detachment is a matter of state-wide legislative concern, exclusively within the control of the General Assembly.

Other Annexation Matters

The case of *State ex rel, Maxson v. Bd. of County Comm'rs of Franklin County*[12] there came before the Supreme Court the problem of conflicting petitions for the annexation to separate municipal corporations of adjoining township territory.

First came a petition for the annexation to the City of Grandview Heights of 426 acres of adjoining Franklin Township. Two weeks later there was another petition for the annexation to Columbus of 910 acres of Franklin Township. Both were signed by a majority of freeholders residing in the territory sought to be annexed. Presumably each bore many of the same signatures, proving what every lawyer already knows — most people will sign anything.

The Board of Commissioners held a hearing on the first petition and voted by a majority to grant the petition for annexation to Grandview Heights. An application was then made for a rehearing, which was granted, and on rehearing the first petition was dismissed and on the continued rehearing of the Columbus petition for annexation the board granted it.

The Supreme Court held that the Board of County Commissioners had statutory jurisdiction, in the face of a petition for a writ of prohibi-

10. OHIO REV. CODE §§ 709.38, 709.39.

11. Village of Beechwood v. Board of Elections, 167 Ohio St. 369, 148 N.E.2d 921 (1958).

12. 167 Ohio St. 458, 149 N.E.2d 918 (1958).

tion, to reconsider its action, deny the first petition and grant the second The court did not have before it the correctness or reasonableness of the board's decision. Apparently, the court did not feel that the granting of the Grandview Heights petition was a dismissal and termination of the Columbus petition for it approved the action of the board in reviving and granting the latter petition.

The case seems to decide that the point at which the commissioners could no longer act would be either the institution of court proceedings attacking its decision to approve annexation or the expiration of time allowed for the institution of such proceedings.[13]

Tax Levies By Charter Amendment

For consideration in *Sinclair v. City of Lakewood*[14] were the questions: (1) whether the provisions of Section 741.09, Revised Code, are the exclusive method of financing deficits in a municipal firemen's relief and pension fund,[15] (2) whether the issue of the amendment of a municipal charter must be submitted to the electorate at a regular November election and (3) whether a charter amendment authorizing a tax levy in excess of constitutional (or charter) limitations may be submitted at other than a November election and passed by a bare majority, it being admitted that the question of a levy if submitted at other times requires more than a majority for passage.

The Court of Appeals for Cuyahoga County ruled (1) that deficits in such pension funds may be made up by operating levies for such purpose; (2) that a charter amendment need not be voted on at regular November election and; (3) that a charter amendment authorizing tax levies may be submitted at other than a general November election and passed by a bare majority, the provisions of Revised Code Section 5705.18 not being applicable.[16]

Municipal Inspection of Buildings

A question of far-reaching import, both to municipalities and to the law of search and seizure, was decided by the Supreme Court in *State ex rel., Eaton v. Price*.[17] An ordinance of the City of Dayton established

13. OHIO REV. CODE § 709.04.

14. 151 N.E.2d 367 (Ohio Ct. App. 1958).

15. See OHIO REV. CODE § 741.40 for the equivalent section for police relief and pension funds.

16. Under this section a charter may be framed to permit the submission to the voters of an operating levy, and the passage thereof by a bare majority at a November election.

17. 168 Ohio St. 123, 151 N.E.2d 523 (1958). See 10 WEST. RES. L. REV. 304 (1959).

certain minimum building standards for safeguarding the health and safety of the occupants thereof, and required that:

> The owner or occupant of every dwelling, dwelling unit, rooming house and rooming unit . . . shall give the Housing Inspector free access to such dwelling, dwelling unit, rooming house or rooming unit and its premises at any reasonable hour for the purpose of such inspection, examination and survey.

Violation of any provision of the ordinance was a misdemeanor. One Taylor refused to admit a housing inspector to Taylor's premises without a search warrant. He was charged with violation of the ordinance because of his refusal to admit the inspector and timely raised the question of constitutionality. The trial court held the particular provision of the ordinance unconstitutional, which was reversed by the Court of Appeals for Montgomery County.[18]

The Supreme Court unanimously upheld the ordinance as applied to the facts of the case before it. It relied upon Section 3 of Article XVIII of the Ohio Constitution and Section 715.26 and 715.29 of the Revised Code, and the latter two being legislative authorizations for municipal councils to enact and enforce building regulations, but recognized that the real question was whether the ordinance was attempting to permit an unconstitutional and unreasonable search and seizure.

There are conflicting authorities on the subject. The case of *District of Columbia v. Little*[19] held the search unlawful, the case of *Richards v. City of Columbia*[20] reached the opposite conclusion. Both were reached by divided courts.

The Ohio Supreme Court pointed out that the District of Columbia regulation had been "loose and vague" and contrasted it with the care with which the Dayton ordinance was drawn, and pointed out that when the case reached the United States Supreme Court[21] that body had preferred to sustain the decision of the appellate court on other than constitutional grounds, and that Burton and Reed, J.J., dissenting had indicated that there was no violation of the Fourth Amendment.

Likewise, the South Carolina case was not the firmest precedent, for on its facts there had been no entrance of any premises by the enforcement officer over the objection of the inhabitant. A Maryland case actually had to make its own determination. It upheld the law, pointing

---

18. 152 N.E.2d 726 (Ohio Ct. App. 1957).
19. 178 F.2d 13 (D.C. Cir. 1949).
20. 227 S.C. 538, 88 S.E.2d 683 (1955).
21. 339 U.S. 1 (1950).

is squarely in point and upheld the search.[22] So the Ohio Supreme Court out that the Fourth Amendment to the Federal Constitution does not apply to the states and that the nature of the case made the search reasonable rather than unreasonable. Therefore, there was no violation of Section 14, Article I of the Ohio Constitution.

Home Rule — Civil Service

The Supreme Court, in *State ex rel., Canada v. Phillips,*[23] sustained a provision in the Columbus City Charter to the effect that in filling positions in the competitive classified service the civil service commission shall certify to the appointing authority the names of the three candidates standing highest on the eligible list for appointment and that the appointing authority shall appoint one of the three. The city was not required to follow the provisions of Section 143.34 of the Revised Code.

In view of *State ex rel. Lynch vs. City of Cleveland,*[24] the *Phillips* case was not a great leap forward. Significant, however, is the number of restrictive cases expressly overruled by the Supreme Court, which also "questioned" and "distinguished" syllabi of others. Significant also is the *dictum* that the right to deviate from state statutes may exist not only by a charter provision but also by legislative provisions enacted by its council.

Mayor May Vote To Break A Tie

The Court of Appeals for Summit County determined in *Babyak et al. v. Alten,*[25] that under the provisions of Section 733.24, Revised Code, the mayor, as president of the legislative authority, has the power to vote on an ordinance or resolution in case of a tie on either an ordinance or a resolution. An earlier Supreme Court case[26] had held that the president of council in a city operating under the statutory plan could vote on the election of council clerk in the case of a tie. The recent case, of course, goes much further in permitting the presiding officer to vote on legislative matters.

SAMUEL SONENFIELD

---

22. Givner v. State, 210 Md. 484, 124 A.2d 764 (1956).
23. 168 Ohio St. 191, 151 N.E.2d 722 (1958).
24. 164 Ohio St. 437, 132 N.E.2d 118 (1956).
25. 154 N.E.2d 14 (Ohio Ct. App. 1958).
26. State *ex rel.* Roberts v. Snyder, 149 Ohio St. 333, 78 N.E.2d 716 (1948).