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BOOK REVIEWS


Few branches of law present greater problems to the teacher or editor of a casebook than does the subject of Municipal Corporations. The functions of cities have multiplied so rapidly as to produce a formidable array of topics calling for treatment. The enlargement of the functions of counties and the increasing resort to special-purpose districts bring forward additional local governmental units which are but slightly less important than cities from the standpoint both of public administration and of law. Finally so much depends upon constitutional and statutory provisions which form a different pattern in each jurisdiction that it is difficult to provide material for study which is typical of the states as a whole. The peculiarly acute problem for the editor and teacher in this field, especially in view of its limited allotment of class time in the ordinary law school curriculum, is, therefore, one of selection of subject matter and of presentation in such form as to produce an awareness of matters lying beyond those specifically treated. To the reviewer Professor Stason seems to have done the most workmanlike job thus far accomplished in this direction.

The approach of the book is traditional in that it remains a volume devoted largely to cities, or municipal corporations in the narrow sense, which are distinguished in the introduction from "public quasi-corporations." To the latter only incidental attention is given, in connection with such matters as indebtedness, tort liability, and the effect of changes of corporate boundaries upon property rights. Occasionally a misleading narrowness creeps in, as, for instance, in the statement in an editorial note that "The 'charter' is the source of all municipal powers." Cases which follow, of course, present a truer picture which includes general legislation as a source of power. The question needs to be raised, however, whether the time has not come to discard entirely the traditional classification of local public corporations, with cities, invested still with special dignity, singled out for particular treatment. With the state indubitably supreme over all local units; with constitutional home rule being extended to counties as well as cities; with forms of city and county government becoming to some extent similar; with permanent special-purpose districts, having multiple functions, coming into increased use; and with legal doctrines often losing sight of the alleged distinction between cities and other local units, there seems little point in maintaining an arbitrary classification for teaching purposes. Professor Stason himself suggests that as concerns the determination of implied municipal powers the distinction between cities and "public quasi-corporations . . . is being broken down to a measurable degree." (P. 105, note 2.)

Within the field chosen for treatment Professor Stason's selection of material, arrangement, and annotations are excellent. An introductory note, accompanied by useful references, summarizes the history, problems, and present forms of city government. The outline of the book is simple and logical, proceeding from Legislative Control Over Municipal Corporations, through Municipal Powers of various sorts, Municipal
Contracts, and Municipal Indebtedness, to Tort Liability and Municipal Property, with a chapter on Special Assessments at the end. Citations in the footnotes are numerous and sometimes exhaustive. Editorial text, both in the body of the book and in the footnotes, supplies summarization and the statement of trends. Frequently the editor's comments refer laconically to textbooks for material which is merely descriptive or supply a shrewd observation which cuts through masses of traditional legal verbiage. Thus in a footnote discussion of alleged tests for the existence of implied municipal powers the editor states (p. 107):

"The fact is that mere application of a definition to cases is not a particularly helpful means of disposing of them. Rather, one should determine the existence or non-existence of an implied power from a more fundamental consideration: Is it contemplated by the laws creating and giving life to the municipality that the power in question be made available to it. This, in turn, depends upon a variety of subordinate considerations such as the conventionality of the exercise of the power by contemporary municipalities, the cost to the taxpayers, possibilities of abuse, usefulness to the inhabitants, etc. Any good textbook or encyclopedia will give an enumeration of the powers usually implied under modern American municipal charters."

Similarly, in regard to tort liability, the nuisance doctrine "has become a device by which recovery can be permitted by a liberal court if it so desires." (P. 629, note 19.)

The editor's selection of cases runs heavily to the contemporary, especially in dealing with such changing problems as tort liability and the promotion of welfare by municipalities. Typical statutes and charter provisions are included in helpful fashion. Especially full and well arranged are the treatment of contracts, indebtedness, and tort liability. Special assessments and control of streets are dealt with sketchily. Taxation is omitted entirely except as regards "public purpose" and to distinguish taxes from license fees. The choice of topics, however, could scarcely be improved upon within the same space.

Professor Stason, in other words, has produced a first-class teaching tool. It is a lawyer's book in that it ventures little into the political science aspects of the subject. Teachers who wish to branch out in this direction can, of course, assign supplementary material, to some of which the editor refers. With further supplementation in the form of local material and occasional excursions into additional problems if time permits, the volume will supply the needs of virtually anyone's law school course in the subject.

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In reviewing a casebook the desideratum would seem to be an estimation of its value as a pedagogical tool. This necessitates consideration of the editor's aim. Professor Leach takes as his point of departure the fact that every generation the bulk of the property of the nation changes hands. The legal devices preeminently appropriate to this change are future interests. In the hands of the expert these devices shift the property with a minimum of strain on the social fabric. In the hands of one unfamiliar with their use they can disrupt families, tribes, nations, and the social order. A course in future interests, then, is necessarily a course in the fine art of accurate draftsmanship. With