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Constitutionality of Parking Meter Ordinance

MUNICIPAL CORPORATIONS

CONSTITUTIONALITY OF PARKING METER ORDINANCE

Appellants, owners of business property in the city of Marion, appealed from the superior court, contesting the constitutionality of a parking meter ordinance adopted by the city.[1] Held, that the ordinance did not deprive the appellants of their property without due process of law, and that it was a reasonable exercise of the police power. Andrews et al. v. City of Marion et al., —— Ind. ——, 47 N.E. (2d) 968 (1943).

The city had no specific statutory authority to enact such an ordinance,[2] but in upholding the ordinance the court relied on the general statutory authority delegated to the municipalities for the regulation and control of traffic.[3]

As members of the general public the appellants have a right of free and unobstructed passage of the streets, subject of course to reasonable regulation.[4] This common law right, however, does not include parking, which is a privilege and may be taken away entirely.[5]

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29. N. Y. Times, Feb. 12, 1941, p. 14, col. 3. (Wired from Paris via Berlin).

1. In order to alleviate the difficulties caused by parking for long periods of time, the ordinance authorized the use of parking meters in the more congested parts of the business streets of the city.
2. Apparently, only New York has granted specific statutory authority to municipalities. People v. Baxter, 32 N.Y.S. (2d) 320 (1941); Gilsey Building Inc. v. Incorporated Village of Great Neck Plaza, 170 Misc. 945, 11 N.Y.S. (2d) 694 (1939), aff'd, 16 N.Y.S. (2d) 832 (2d Dep't 1939).
3. Ind. Stat. Ann. (Burns, 1933) §§47-1827, 47-1828, 48-1407.
4. Teague v. City of Bloomington, 40 Ind. App. 68, 81 N.E. 103 (1907); State v. Berdetta, 73 Ind. 185 (1880); Chicago, Burlington & Quincy R.R. v. Quincy, 136 Ill. 563, 27 N.E. 182 (1891). And see Dillon, "Municipal Corporations" (5th ed. 1911) §1163.
5. Ex parte Duncan, 179 Okla. 355, 65 P. (2d) 1015 (1937); Village of Wonenoc v. Taubert, 203 Wis. 73, 233 N.W. 755 (1930); In City of Chicago v. McKinley, 344 Ill. 297, 304, 176 N.E. 261, 264 (1931), the court said, "The traveler on the street has no abso-

However, the appellants have rights more extensive than members of the general public, since they are abutting land owners and own title to the property on which the parking meters have been placed, subject to the public's perpetual easement.[6] This additional right is the right of the abutting owners' ingress and egress to their property.[7]

These rights were first definitely recognized in the Elevated Railroad cases, but in those cases there was no direct conflict with the power of the municipality.[8] Modern decisions have announced that the public interest is superior to the property interest of the abutting owner, and have consistently held that the rights of the abutting owners are subject to reasonable regulation and control under the police power.[9] A great majority of cases have further held that

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lute right to have his vehicle standing on the street while he goes into a neighboring building to transact business . . . . "; Willis, "Constitutional Law" (1936) 748: "The free use of the street does not include the privilege of parking automobiles on the street."

6. At common law, dedication of land for a public roadway left title in the abutting owner, and this view prevails generally today. Clark v. City of Huntington, 74 Ind. App. 437, 127 N.E. 301, 128 N.E. 453 (1920); Town of Freedom v. Norris, 128 Ind. 377, 27 N.E. 869 (1891); McQuillin, "Municipal Corporations" (2d ed. 1928) No. 1409; see also Swain v. City of Indianapolis, 202 Ind. 242, 246, n. 1, 171 N.E. 871, 876, n. 1 (1930). Yet there is no substantial difference as to the question at hand, whether title is in the abutting owner and relief is sought in ejectment or trespass; or the title is held in trust by the city and relief is sought through an action for breach of trust. White v. Northwestern N.C.R., 113 N.C. 610, 18 S.E. 330 (1893); Lewis, "Eminent Domain" (3rd ed. 1909) §128; cf. Barney v. Keokuk, 94 U.S. 324 (1876). But of prime importance is the fact that the public use of land dedicated for a street is not limited by the use prevailing at the time of dedication but may be enlarged to include modern methods of enjoyment. Magee v. Overshiner, 150 Ind. 127, 49 N.E. 951 (1898).

7. Instant case at 971. For cases recognizing this right, see Swain v. Indianapolis, 202 Ind. 233, 242, 171 N.E. 871, 875 (1930); O'Brien v. Central Iron & Steel Co., 158 Ind. 218, 222, 63 N.E. 302, 303 (1902); Dantzer v. Indianapolis Union R., 141 Ind. 604, 39 N.E. 233 (1894); Indiana B&W Ry. v. Eberle, 110 Ind. 542, 11 N.E. 467 (1887).

8. Story v. New York Elev. Ry., 90 N.Y. 122 (1882); Lohr v. Metropolitan Elev. Ry., 104 N.Y. 268, 10 N.E. 528 (1881). The interference here was not on the part of the municipality in the exercise of its police power but by a private party. Later, where the interference was under the municipalities' police power, the New York court held that the abutting owner's rights were subject to reasonable regulation. Sauer v. New York, 180 N.Y. 27, 72 N.E. 579 (1904), aff'd, 206 U.S. 536 (1906).

9. Foster's, Inc., et al .v. Boise City et al., —— Idaho ——, 118 P. (2d) 721 (1941); State v. Burkett, 119 Md. 609, 87 Atl. 514 (1913); Kimmel v. City of Spokane, 7 Wash. (2d) 372, 109 P. (2d) 1069 (1941); see Swain v. City of Indianapolis, 202 Ind. 233, 242, 171 N.E. 871, 875 (1930). In Peck v. Olsen Constr. Co., 216 Iowa 519, 527, 245 N.W. 131, 135 (1930), the plaintiff contended that since his right of ingress and egress was property,

parking meters are a reasonable regulation and do not, as appellants contend, deprive the abutting owner of his property without due process of law.[10]

Yet the Indiana court does not go this far, but further strengthens its case by interpreting the word "parking" in the ordinance as meaning not interfering with the abutting owner's right to load and unload passengers and merchandise.[11] By so interpreting the statute, the court avoids the slightly more difficult question of a temporary stopping for no other reason than immediate access to the abutter's property. It would seem, however, that this interest is also subject to reasonable regulation.[12]

Since the municipality's power in the instant case is confined to regulation under the police power, the further question is presented: is this a revenue measure and thus not within the municipal authority?[13] Several states have held this to be a sufficient reason alone for invalidating parking meter ordinances.[14] Indiana, however, correctly holds that if the primary purpose in imposing the charge is to regulate, the charge is not a tax even if it produces revenue for the public.[15] This holding, plus the fact that the evidence did not show any substantial excess in the amount collected over the amount necessary to pay the costs and expenses of enforcement,[16] substantially negate the contention that this is a revenue measure.

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it couldn't be taken even for a public use without just compensation. The court, in pointing out the fallacy of this argument, said, "One right may be subordinate and one paramount. . . . To say, therefore, that this right to access is property, furnishes no reason for saying that it cannot be subordinate to any paramount right." Cf. Eubank v. Yellow Cab Co., 84 Ind. 144, 149 N.E. 647 (1925), where the court granted an injunction against certain cab stands because they interfered with the abutting owner's right of access.

10. Foster's, Inc., v. Boise City, —— Idaho ——, 118 P. (2d) 721 (1941); City of Louisville v. Louisville Automobile Club, 290 Ky. 241, 160 S.W. (2d) 663 (1942); Gilsey Building, Inc., v. Incorporated Village of Great Neck Plaza, 170 Misc. 945, 11 N.Y.S. (2d) 694 (1939), aff'd, 16 N.Y.S. (2d) 832 (2d Dep't 1939); Ex parte Harrison, 135 Tex. Cr. App. 611, 122 S.W. (2d) 314 (1938); County Court of Webster County v. Roman, 121 W. Va. 381, 3 S.E. (2d) 631 (1939). Alabama is the lone state holding parking to be an incident to the abutting owners' right to ingress and egress. City of Birmingham v. Hood-McPherson Realty Co., 233 Ala. 352, 172 So. 114, 108 A.L.R. 1140 (1937).

11. Instant case at 971. For similar interpolations of the word "parking," see Village of Wonenoc v. Taubert, 203 Wis. 73, 233 N.W. 755 (1930); American Co. of Arkansas v. Baker, 187 Ark. 492, 60 S.W. (2d) 572 (1933).

12. See note 9 supra.

13. See note 3 supra.

14. M. R. Rodes, Inc. v. City of Raleigh, 217 N.C. 627, 9 S.E. (2d) 389 (1940); In re Opinion to the House of Representatives, 62 R.I. 347, 5A. (2d) 455 (1939); City of Shreveport v. Brister, 194 La. 615, 194 So. 566 (1940); Monsour v. City of Shreveport, 194 La. 625, 194 So. 569 (1940).

15. Schmidt v. City of Indianapolis, 168 Ind. 631, 80 N.E. 632, 14 L.R.A. (N.S.) 787, 120 Am. St. Rep. 385 (1907).

16. Instant case at 971.