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Municipal Corporations-Taxation-Supervisory Control of State Board of Tax Commissioners

MUNICIPAL CORPORATIONS—TAXATION—SUPERVISORY CONTROL OF STATE BOARD OF TAX COMMISSIONERS.—Action by the City of Indianapolis to enjoin the Auditor and Treasurer of Marion County from reducing the tax levy of the city as ordered by the State Board of Tax Commissioners upon an appeal to said commission pursuant to the provision of Sec. 200 of c. 95 of the Acts of 1927. (Burns' 1933, Sec. 64-1331.) The complaint alleges that the action of the State Board of Tax Commissioners in making said reduction is illegal and void in that the section of the act in question is unconsitutional, both as to giving the state board authority (1) over municipal activities in regard to those matters affecting the inhabitants in that community, and (2) as authorizing such state board to exercise both legislative and judicial power in matters of taxation. The cause was tried by the Superior Court of Marion County and judgment rendered enjoining the appellees from extending upon the tax duplicates the reduced levies. Held, judgmnt reversed. The General Assembly, in enacting tax laws, has authority to reserve a check upon municipalities levying taxes and assessments and to lodge supervisory control in a state administrative board.[1]

A municipal corporation is a body politic created by the incorporation of the people of a prescribed locality and invested with subordinate powers of legislation to assist in the civil government of the state and to regulate and administer local and internal affairs of the community.[2] The courts have generally regarded a municipal corporation as a subordinate branch of the government of the state and as an instrumentality of state administration for conducting the affairs of the government.[3] In legal theory the municipal corporation is strictly public in character, the creature of the legislative power of the state, whether that power is exercised directly, or by the state legislature. From the principle that the legislative power of the state is the sole source of its corporate life, follows the generally accepted rule that a municipal

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32 (1933) 19 Va. L. Rev. 868; (1933) 17 Marq. L. Rev. 213.

1 Dunn v. City of Indianapolis (1935), 196 N. E. 528.

2 1 McQuillin, Municipal Corporations (1928, 2nd ed.), p. 369; 1 Dillon, Municipal Corporations (1911, 5th ed.), p. 58; Schneck v. City of Jeffersonville (1898), 152 Ind. 204, 52 N. E. 215.

3 State v. Gullatt (1923), 210 Ala. 452, 98 So. 373, 376; Valley Rys. v. Harrisburgh (1924), 280 Pa. 385, 124 Atl. 644, 648; Ottawa v. Carey (1883), 108 U. S. 110; Williams v. Eggleston (1898), 170 U. S. 304, 310; Trenton v. New Jersey (1923), 262 U. S. 182, 43 Sup. Ct. 534, 67 L. ed. 937.

corporation possesses only those powers that are expressly granted or necessarily implied to carry out the express powers. All of its powers are held subject to the will of the state and may be modified or transfered to other public agencies as the public interests may require.[4]

There is much controversy upon the theory of the inherent right of local self-government. Advocates of the doctrine contend that local self-government of a municipal corporation does not arise from nor exist by virtue of written constitutions, nor is it a mere privilege to be conferred by some central authority. This doctrine rests upon a historical basis and the fact is pointed out that local self-government existed before the state constitutions were created.[5] The principle of self-government has been upheld by the Indiana Supreme Court in matters merely local.[6] However, the holdings of the court have been gradually limited so that the early cases are no longer applicable to many of the functions controlled by municipalities when these cases were decided. The authority of the various boards and commissions such as the Public Service Commission,[7] the State Highway Commission,[8] the Railway Commission,[9] and the State Board of Health[10] is illustrative of the many spheres formerly controlled by municipalities which are now controlled by the state. Functions which were until recently regarded as exclusively municipal, as that of control over the local budgets and indebtedness are governed by general laws of modern states.[11] The domain of the home rule powers must yield to the general legislative policy of the state more and more as the state expands the scope of its activities and as public policy requires the subordination of existing local activities to the interest of the state at large.[12] There is no need in this discussion to enter further into the problem of the existence of local self-government and its extent, for the right of taxation is vested in the General Assembly by the Indiana Constitution.[13] The power of taxation is

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[4] Frank v. City of Decatur (1910), 174 Ind. 388, 42 N. E. 173; State v. Abel (1931), 203 Ind. 44, 178 N. E. 683; Chicago Motor Coach Co. v. City of Chicago (1929), 377 Ill. 200, 169 N. E. 22; United States v. Baltimore and Ohio R. R. (1872), 17 Wall. (U. S.) 322, 329, 21 L. ed. 597; Codman v. Crocker (1909), 203 Mass. 146, 89 N. E. 177; Charles W. Tooke, Status of the Municipal Corporation (1932), 16 Minn. L. R. 343, 359.

[5] People v. Detroit (1873), 28 Mich. 228, 15 Am. Rep. 202; 1 McQuillin, Municipal Corporations (1928, 2nd ed.), sec. 91.

[6] State v. Denny (1888), 118 Ind. 382, 21 N. E. 252; City of Evansville v. State (1888), 118 Ind. 426, 21 N. E. 252, 4 L. R. A. 93; State ex rel. Holt v. Denny (1888), 118 Ind. 449, 21 N. E. 274, 4 L. R. A. 65.

[7] In re Northwestern Indiana Tel. Co. (1930), 201 Ind. 667, 171 N. E. 65.

[8] Hammond etc. Ry. Co. v. State Highway Commission (1926), 198 Ind. 456, 152 N. E. 806.

[9] Vandalia R. Co. v. Railroad Commission of Indiana (1913), 182 Ind. 382, 101 N. E. 85.

[10] Isenhour v. State (1901), 157 Ind. 517, 62 N. E. 40, 87 Am. St. Rep. 228.

[11] Citizens Bank of Anderson v. Town of Burnettsville (1932), — Ind. —, 179 N. E. 724; McQuire v. Wentworth (1932), 120 Cal. App. 340, 7 Pac (2nd) 729; Phillips v. Hume (1930), 122 Ohio St. 11, 170 N. E. 438; Leonard v. City of Metropolis (1916), 278 Ill. 287, 115 N. E. 813.

[12] Ex parte Daniels (1920), 183 Cal. 636, 192 Pac. 442; Lovejoy v. Portland (1920), 95 Ore. 459, 188 Pac. 207; Schneiderman v. Sesanstein (1929), 121 Ohio St. 80, 167 N. E. 158; Adler v. Deegan (1929), 251 N. Y. 467, 167 N. E. 705.

[13] Constitution of the State of Indiana, Art. 10, sec. 1.

inherent in the state and is a legislative power limited only by the provisions of the constitution.[14]

The imposition of a tax is primarily a legislative function, and all taxation is based on legislative authority; but the legislature may delegate this power to local subdivisions of the state as governmental agencies to perform this sovereign function.[15] Since taxation is a sovereign power, a municipality, being a dependent derivative body drawing all governmental and administrative authority from legislative enactment, cannot hold such power in the absolute, but holds it subject to legislative control.[16] A legislature may delegate a small or large measure of the power and after the original grant it may enlarge, curtail, or wholly revoke it, subject only to the vested rights of creditors.[17] It is apparent that the legislature cannot provide in detail for the administration of the tax law and some supervision must be lodged in an official board or commission.

The powers under our form of government are divided into three divisions: the Legislative, the Executive, and the Judicial.[18] Numerous decisions and authorities hold that judicial or legislative functions cannot be delegated to administrative or other departments of government.[19] The creation of municipal corporations to exercise local self-government has never been held to violate this principle. Such legislation is not regarded as a transfer of legislative power, but rather as a grant of authority, to prescribe local regulations according to the principle stated, and is supported by immemorial practice.[20] Courts have permitted the wide delegation of powers to boards and commissions in other respects such as the power to change tariff schedules and regulate utility rates.[21] Basically and intrinsically they are no different in legal principle from the power to supervise a tax levy established by a local municipal corporation.

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[14] State ex rel. Goodman v. Halter (1897), 149 Ind. 292, 297, 47 N. E. 665, 49 N. E. 7; Beard v. Peoples Savings Bank (1913), 53 Ind. App. 185, 101 N. E. 325; State v. Bristol (1902), 109 Tenn. 315, 70 S. W. 1031; McCulloch v. Maryland (1819), 4 Wheat. (U. S.) 316, 4 L. ed. 579; Providence Bank v. Billings (1830), 4 Pet. (U. S.) 514, 7 L. ed. 939.

[15] City of Logansport v. Seybold (1877), 59 Ind. 225; Smith v. Howell (1897), 60 N. J. Law 384, 38 Atl. 180; Pioneer Iron Co. v. City of Negaunee (1898), 116 Mich. 430, 74 N. W. 700.

[16] Jones v. Foley (1889), 121 Ind. 180, 22 N. E. 987; Schneck v. City of Jeffersonville (1898), 152 Ind. 204, 52 N. E. 212; State ex rel. Schroeder v. Morris (1927), 199 Ind. 78, 155 N. E. 198; Zoercher v. Agler (1930), 202 Ind. 214, 172 N. E. 186, 70 A. L. R. 1232.

[17] Williamson v. New Jersey (1889), 130 U. S. 189, 196, 9 Sup. Ct. 453, 32 L. ed. 915; State v. Kolsem (1891), 130 Ind. 434, 29 N. E. 595, 14 L. R. A. 566; State ex rel. Moenter (1918), 99 Ohio St. 110, 124 N. E. 70; Cooley, Taxation (1924, 4th ed.), sec. 84.

[18] Constitution of the State of Indiana, Art. 3, sec. 1.

[19] Meshmeir v. State (1858), 11 Ind. 482; Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N. E. 82; People v. Barnett (1931), 344 Ill. 62, 176 N. E. 108; Cooley, Constitutional Limitations (1903, 7th ed.), pp. 163-169.

[20] Stoutenburgh v. Hennick (1889), 129 U. S. 141; Arms v. City of Chicago (1924), 314 Ill. 316, 145 N. E. 407; Opinion of the Justices (1925), 124 Me. 501, 128 Atl. 181; Cooley, Constitutional Limitations (1903, 7th ed.), p. 261; McQuillin, Municipal Corporations (1928), sec. 148.

[21] State v. Lears (1918), 187 Ind. 564, 120 N. E. 129; Hill v. Chicago etc. R. Co. (1919), 188 Ind. 130, 122 N. E. 321; Winfield v. Public Service Com-

Our system of law and government, combined with our complex social and economic structure, necessitates the assigning of certain functions to ministerial and administrative boards. Legislative power can be exercised more effectually and more in accordance with the spirit of the constitution through delegation than directly. This consideration should weigh against any rigid and unyielding application of the theory regarding the non-delegation of legislative power. Such adherence to the doctrine would not be in step with the modern trend of lodging control in a vast congeries of agencies.[22] Moreover, the question of whether a commission is acting in an administrative or legislative capacity is one of great nicety. The distinction has been made to rest upon the exercise of discretion.[23] But it cannot be said that every grant of power to executive or administrative boards involving the exercise of discretion or judgment must be considered a delegation of legislative authority.[24] The discretion delegated to the State Board of Tax Commissioners in reviewing the levy of a municipality seems to be a proper exercise of power and is not a legislative act. Practical considerations make the objections of unlawful delegation of legislative power more apparent than real. The board cannot increase the tax; it may only affirm or decrease the levy fixed by local tax officials. This cannot properly be objected to as an unlawful delegation of legislative power. Boards exercising no legislative function may be delegated duties in regard to taxation which are ministerial or administrative in nature.[25]

The dissenting opinion in the principal case points to the evils which might arise because of the power to limit the revenue which the municipal government may raise by taxation. The fact that the power might be abused would seem to be no reason for denying it. Where there is sufficient evidence of transgressions, the board's functions and acts can be curtailed. The board is a creature of the people through legislative enactment, and the people are not obliged to continue its existence. It is submitted that the instant case is in line with modern legal development and is sound in principle. B. S.

CONTRACTS—DISCHARGE BY INCONSISTENT PROVISIONS OF SUBSEQUENT CONTRACT. —Plaintiff, a public utility, operating under and in accordance with a franchise granted by defendant city in 1899 and accepted by plaintiff, seeks recovery for water furnished the city for the period between April 1, 1930, and June 30, 1931, at a rate provided in a contract entered into between said city and plaintiff in 1919, the rates therein fixed being approved by the Public Service Commission of Indiana. The original franchise was to run for a period of

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mission (1921), 187 Ind. 53, 118 N. E. 531; City of Logansport v. Public Service Commission (1931), 202 Ind. 523, 177 N. E. 249.

22 See Frankfurter, Task of Administrative Law (1927), 75 U. of Pa. L. Rev. 614; Freund, Standards of American Legislation, p. 302.

23 Cooley, Taxation (1924, 4th ed.), sec. 78; Whitfield, Legislative Powers (1910), 20 Yale L. J. 87.

24 Southern Ry. Co. v. Hunt (1908), 42 Ind. App. 90, 83 N. E. 721; State v. Board of Commissioners (1908), 170 Ind. 595, 85 N. E. 513; Egyptian Transportation System v. Louisville & N. R. Co. (1926), 321 Ill. 580, 152 N. E. 510.

25 People ex rel. Pexley v. Lodi H. S. Dist. (1899), 124 Cal. 694, 57 p. 660; City of Little Rock v. Board of Improvements (1883), 42 Ark 152; Cooley, Taxation (1924, 4th ed.), sec. 81.