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Constitutional Law-General and Special Laws

RECENT CASE NOTES*

Constitutional Law—General and Special Laws—Appellant brought an action seeking a judgment declaring Chapter 31, p. 153 of the Acts of 1933 unconstitutional. The statute provides that in all second and fourth class cities (Hammond, Gary, Whiting and East Chicago) located in a county having a population of not less than 250,000 nor more than 400,000 (Lake), the office of city treasurer is abolished, and all of the rights, powers, and duties of such city treasurer are conferred upon and shall be performed by the county treasurer: that the county treasurer shall appoint a deputy to collect and disburse the taxes and assessments in each such city. Appellant contended the law was local and special and therefore offended section 23 of Article 4 of the Constitution of Indiana. Section 23 provides that "In all cases enumerated in the preceding, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform application throughout the state." Held, the statute is a local and special law and unconstitutional because in conflict with section 23 of article 4 of the Constitution of Indiana.[1]

A law which applies generally to a particular class of cases is not a local or special law.[2] The question which then arises is "What is a proper classification?" The Indiana law on this point is well summarized in the cases cited in the principal case:[3]

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* This department is devoted to the publication of critical comments and annotations of Indiana cases from both the Supreme and Appellate courts, decisions of the United States Supreme Court and cases in the Federal District and Circuit Court of Appeals arising in Indiana. The work done in preparing this material is performed by the students and faculty of the Indiana University Law School.

1 Heckler v. Conter (1933), 187 N. E. 878 (Ind.).

2 131 Ind. 446.

3 Fountain Park Co. v. Hensler, 199 Ind. 95, 155 N. E. 465; School City of Rushville v. Hayes, 162 Ind. 193, 70 N. E. 198; Bullock v. Robison, 176 Ind. 198, 93 N. E. 998.

"The characteristics which can serve as a basis of a valid classification must be such as to show an inherent difference in situation and subject-matter of the subjects placed in different classes which peculiarly requires and necessitates different or exclusive legislation with respect to them."[4]

"Classification must embrace a class of subjects or places, and not omit any one naturally belonging to the class. It must be based on some reasonable ground, which bears a just and proper relation to it, and not be a mere arbitrary selection. . . . The characteristics serving as a basis must be of such substantial nature as to mark the objects so designated as particularly requiring exclusive legislation. There must be a substantial distinction having reference to the subject-matter of the proposed legislation, between the objects or places embraced in it and the objects or places excluded. Whether a law is general or special depends on its subject-matter, not its form."[5]

The requirements for a valid classification seem to be (1) a reasonable basis for the classification, and (2) the law must operate upon all within the class.[6]

The following classifications have been sustained as reasonable: an act applying to privately owned public utilities and not to those owned or operated by municipalities;[7] an act applying to cities having a population of not less than 50,000 nor more than 100,000.[8] But where an act applied to cities of more than 85,000 and less than 86,000 inhabitants, the act was held local and special, and unconstitutional.[9] The court took judicial notice that the statute applied only to Evansville.[9]

A special law is one made for individual cases, or for less than a class requiring laws appropriate to its particular condition and circumstances, or one relating to particular persons or things of a class.[10]

Acts providing that when a certain number of freeholders of a township or townships petition for highways or highway improvements, the proper board of commissioners shall proceed with such case are held to be general laws.[11]

Under a constitution providing that where a general law can be made applicable, no special law shall be enacted, laws of a general nature do not necessarily have to operate upon every locality in the state, but such laws must apply equally to all classes similarly situated and to like conditions and subjects.[12]

It must be noticed that under section 23 of article 4, a general law is not necessary except in cases where a general law can be made applicable.[13] Who is to decide in a given case whether or not a general law can be made applicable? In the principal case, it was contended by appellees that this was a question for the legislature, and that the legislative determination of that question was not subject to judicial review. In support of their position,

4 Fountain Park Co. v. Hensler, 199 Ind. 95, 155 N. E. 465.

5 Bullock v. Robison, 176 Ind. 198, 93 N. E. 998.

6 Hirth-Krause Co. v. Cohen (1911), 177 Ind. 1; Railroad Commission v. Grand Trunk (1912), 179 Ind. 255; Sarlls v. State (1928), 201 Ind. 88.

7 Springfield Gas & Electric Co. v. City of Springfield (1920), 292 Ill. 236, 126 N. E. 739.

8 Bumb v. City of Evansville (1906), 168 Ind. 272.

9 Rosencranz v. City of Evansville (1923), 194 Ind. 499, 143 N. E. 593.

10 State v. Foster, 28 N. M. 273, 212 P. 454; 7 Words and Phrases (3rd series), p. 76.

11 Gilson v. Board of Commissioners (1890), 128 Ind. 65; Strange v. Board of Commissioners (1909), 173 Ind. 640.

12 Sapulpa v. Land, 101 Okla. 22, 225 Pac. 640; See also Cooley: Constitutional Limitations, p. 259.

13 Constitution of Indiana, Article 4, Section 23.

appellees cited the case of Gentile v. State.[14] In that case it was held that since all members of the legislature were required to take oath to support the constitution of the state, it could not be presumed that the members would disregard their obligations in this respect in deciding whether or not the constitutional restriction on special laws was or was not applicable. The court in the principal case properly repudiated the doctrine of Gentile v. State, pointing out that the same reasoning would apply to all provisions of the constitution limiting the power of the legislature, and that whenever the legislature over-stepped one of these bounds, the fact that the members had been bound by oath would not prevent such legislation being held unconstitutional. S. S.