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Municipal Corporations-Constitutional Debt Limit

MUNICIPAL CORPORATIONS—CONSTITUTIONAL DEBT LIMIT—The action was brought to enjoin the school town, its trustees, and Oakland City School Realty Co. from performing a lease contract. The appellants con-

tend that the obligations place an indebtedness beyond the limit of 2 per cent of the taxable property thereof as contained in Sec. 1, Art. 13 of the Constitution. The contract as set out followed the Statutes of 1929 Supplement, Sec. 6867.1-6867.3 providing for the leasing of school houses. Here the lease was to be in force for 30 years at an annual rental not to exceed 10 per cent of the value of the cost of the building and the real estate, and the school city was to pay all taxes, water rent, insurance, etc. The annual payments were to be $8,000 for first three years, $9,000 for the next three years and $10,000 per annum for the remaining twenty-four years. There was a demurrer to the complaint that was overruled and then a general denial filed. On hearing the evidence the lower court directed a verdict for appellees. Appeal was made an alleged error in overruling appellant's motion for new trial. *Held,* judgment reversed, not sustained by sufficient evidence. *Bryant v. School Town of Oakland City,* May 22, 1930. Sup. Ct. of Ind, 171 N. E. 378.

The Supreme Court in its disposal of the case was ruled entirely by *Hively v. School City of Napanee* (Ind.), 169 N. E. 51, where a similar contract was entered into and was called void under the Constitutional prohibition. There the court ruled the purpose of the contract was a means of evading the debt limit and the court would look through the form and look at the substance. *State ex rel. Matthews v. Forsythe,* 147 Ind. 466, 473, 44 N. E. 593. In similar contracts by municipal corporations for the purchase of necessities such as water and light the courts have looked upon them favorably and have upheld them in many instances. *Valparaiso v. Gardner,* 97 Ind. 1; *Crowder v. Sullivan,* 128 Ind. 486; *Foland v. Frankton,* 142 Ind. 546. To construe these contracts as constitutional the Indiana courts have invoked the doctrine that until the property contracted for has been actually furnished, although the aggregate would exceed the limit, there is no indebtedness within the meaning of the Constitution. *Brasheer v. Madison,* 142 Ind. 685; *Voss v. Waterloo Water Co.,* 163 Ind. 69. Debt as defined by the cases is a specified sum which is due or owing from one person to another and denotes not only the duty of the obligor to pay, but the right of the creditor to enforce payment. *State v. Hawes,* 12 Ind. 323; *Laporte v. Gainnewell Fire Alarm Tele. Co.,* 146 Ind. 466. Essential to the idea is that an obligation should have arisen which entitles the holder to receive the money without regard to any contingency within the control of municipality. *Quill v. Indianapolis,* 124 Ind. 292.

It is the duty of the School Board to build, buy, or otherwise provide a school building. Burns Ann. Stat. (1926), Sec. 6795 and 6537. That the rent was unreasonable might be inferred here since the aggregate of the rent (if 10 per cent was the figure) would total enough to pay for the building as well as the interest on the investment. There have been Indiana cases in respect to contracts for necessities, such as water plants or light plants, that have been declared void because they place the ultimate indebtedness upon the municipal corporation or it will lose what it has invested. *Eddy Valve Co. v. Crown Point,* 166 Ind. 613, 76 N. E. 536.

The contract in the instant case was not set out in all its terms. The lower court evidently believed it was a true lease contract in which the payments were due only as rent for the periods covered. Nothing was mentioned of an option to buy or the terms of such option, if it existed,

so that it might be shown that a subterfuge was intended. (The statutes provide for a bona fide option. Burns 1929, 6867.2.) The value of the proposed building was also omitted leaving it rather doubtful as to the reasonableness of the so called rent and whether or not more than 6 per cent was being charged. It might well be a bona fide contract of lease rather than for purchase from the facts stated.

It seems to be the better view and the weight of authority that a school district, being a municipal corporation, can make contracts for future payments upon the ground that until consideration has been furnished for the contract to pay rent there is no indebtedness, rather than the theory that the indebtedness is created at once and time of payment is postponed. 1 Dillon, *Municipal Corporations* (5th Ed.), Sec. 196. Thus if the contract in the present case could fairly be construed as a bona fide lease, at a reasonable rental, there would be no objection to it on constitutional grounds if the annual rent did not carry the indebtedness beyond the constitutional limit. *City of South Bend v. Reynolds,* 155 Ind. 70, 57 N. E. 706.

R. R. D.