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Municipal Corporations-Constitutional Law

MUNICIPAL CORPORATIONS—CONSTITUTIONAL LAW—Suit in equity to restrain the issuance of $250,000 worth of municipal bonds to defray expenses of establishing a park in the city of Fort Wayne as authorized by Sec. 10678 *et seq.*, Burns Ann. St. 1926. This money was found to be necessary for the improvements. The requirements of the statute had been carried out and the bonds were sold. The demurrers to each paragraph were sustained. Appeal was made on the grounds that the act violated several parts of the Constitution of Indiana, including Article 13, Sec. 1, placing a limitation upon municipal indebtedness. *Held*, affirmed, no violation of the Constitution. *Johnson v. Board of Park Com'rs of Fort Wayne.* Supreme Court of Indiana, December 17, 1930, 174 N. E. 91.

The problem of the debt limitation has become a very serious one for the courts. New corporations taking in the same territorial limits of existing corporations have been upheld on the basis of some new and additional powers and a new name. *West Chicago Park Com'rs v. City of Chicago*, 152 Ill. 392, 38 N. E. 695. The original purpose of Constitutional debt limits seems quite obviously to protect the taxpayer by restricting borrowing power, but in a majority of cases the courts seemingly have been overcome by the form used and have allowed new debts to be incurred. The one principle upon which the courts are consistent is that there can only be one corporation having the same powers over a particular district. *Taylor v. City of Fort Wayne*, 47 Ind. 274, 281; *Strosser v. City of Fort Wayne*, 100 Ind. 443.

Along some lines the courts of Indiana have interpreted the provisions strictly. There have been cases that have laid down the rule that if the Constitutional limit is reached, there may not be liabilities for even current expenses of government. *LaPorte v. Gamewell Fire Alarm Teleg. Co.*, 146 Ind. 466.

In some states the distinction is made between voluntary and involuntary obligations and those states apply the debt limit to the former only. *Ranch v. Chapman*, 16 Wash. 568, 48 Pac. 253; *Barnard v. Knox Co.*, 37 Fed. 563. Indiana adopts the rather stringent rule of making no difference between the obligations. *Sackett v. New Albany*, 188 Ind. 473; *Brashear v. Madison*, 142 Ind. 685. In the principal case, contrary to the general rules of the other decisions, an agency of the city was allowed to issue bonds with no effect upon the debt limit of the city. The general rule is that the indebtedness must be included in that of the corporation where only a depart-

ment or board of the municipality is acting. *Orvis v. Park Com'rs*, 88 Iowa 674, 56 N. W. 294.

The liberal construction of similar limitations in other jurisdictions has led to such burdens upon property as to make the provisions of little or no utility. The discussion of Justice McCabe seems to be one possible solution, "The court of equity may look through and disregard mere forms to substance of things. If it were not so the legislature may in every instance evade the 13th article of the Constitution and make it practically a dead letter. To accomplish that result, whenever it deems it desirable that a municipality or political corporation should become indebted beyond the limit prescribed in the article, all that would be necessary to do so, would be enact a statute authorizing a board of commissioners to issue and sell bonds in the name of the county and levy a tax upon the property within the municipal corporation to pay the bonds." *Board of Com'rs v. Reeves*, 148 Ind. 467, 475. Another possible solution is to pass another amendment limiting the aggregate indebtedness of all corporations within the same territory as is provided in the South Carolina Constitution, Art. 10, Sec. 5. R. R. D.