

October 1969

Chicago v. Pennsylvania Railroad: A Case against Municipal Corporations

Paul L. Price

Follow this and additional works at: <https://scholarship.kentlaw.iit.edu/cklawreview>

 Part of the [Law Commons](#)

Recommended Citation

Paul L. Price, *Chicago v. Pennsylvania Railroad: A Case against Municipal Corporations*, 46 Chi.-Kent L. Rev. 229 (1969).

Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol46/iss2/8>

This Notes is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact dginsberg@kentlaw.iit.edu.

CHICAGO v. PENNSYLVANIA RAILROAD:
A CASE AGAINST MUNICIPAL CORPORATIONS

In the United States, legislatures of the individual states have authority over the municipal corporations that exist within their boundaries, except as limited by the federal and state constitutions. In Illinois, all municipal corporations derive their power from the Illinois General Assembly,¹ the legislative branch of the state. This branch may create any kind of corporation to aid in the administration of public affairs and endow such corporation and its officers with such powers and functions as it may deem necessary;² it is here that municipal corporations are employed extensively and almost exclusively.

A municipal corporation is defined as “a public corporation, created by government for political purposes, and having subordinate and local purposes of legislation.”³ It is a device of convenience utilized by state government to help carry out the policy and laws of the state. The basic need for municipal corporations arose when the state realized that it could not cope with nor solve every problem with which it is faced.

It has been recognized that:

[t]he municipal corporation acts . . . as the instrumentality of the state in exercising powers and duties not strictly or properly local in their nature, but which are in their essence state powers and obligations, and, therefore, to this extent it is a mere agency of the state. . . .⁴

The state uses a municipal corporation to administer affairs affecting the local community in the same manner as they affect all the inhabitants of the state.

However, the primary function of a municipal corporation is community service through officers chosen by electors residing within the area the municipal corporation serves. This unique feature of municipal corporations is best described by this passage from McQuillin’s treatise:

The fundamental idea of a municipal corporation in politics and law is based on the fact that it is an artificial personality or governmental organ—a body politic and corporate—created to regulate and administer the internal or local concerns of the district embraced within its corporate limits in matters peculiar to such place and not common to the state at large.⁵

Thus, the purposes of municipal corporations are two-fold: 1) to assist state government by acting as the agent or arm of the state, and 2) its primary purpose, to regulate and administer local affairs of the area within its boundaries

¹ *People ex rel. Gutknecht v. Chicago*, 414 Ill. 600, 111 N.E.2d 626 (1953); *People v. Chicago*, 349 Ill. 304, 182 N.E. 419 (1932).

² *Geneseo v. Illinois Northern Utilities Co.*, 363 Ill. 89, 1 N.E.2d 392 (1936); *People v. Bowman*, 247 Ill. 276, 93 N.E. 244 (1910).

³ *Black’s Law Dictionary* 1168 (4th ed. 1951).

⁴ 1 *McQuillin, Municipal Corporations* § 1.108 at 391 (3d ed. 1949).

⁵ *Id.* at 390-391.

for the benefit of the local community.⁶ The municipal corporation is thereby a sovereignty within a sovereignty, local within the state, though limited by the state in the extent of its governmental powers.

Now that it has been determined that a municipal corporation can exercise governmental powers at least to a limited extent, we should examine exactly how these powers are obtained. Under the doctrine of separation of powers, each of the three branches of government, legislative, executive and judicial, has a separate function to perform. A maxim of constitutional law further provides that the legislative branch cannot delegate its law-making function to any other body or authority.⁷ However, this maxim is not violated when a state legislature vests a municipal corporation with the power to make laws for the purpose of local self-government⁸ or as to matters purely of local concern.⁹

Inherent in this principle, however, is the recognition of the distinction between delegation to make the law and delegation to execute the law.

There is a distinction between the delegation of true legislative power and the delegation to a subordinate of authority to execute the law. The former involves a discretion as to what the law shall be; the latter is merely an authority or discretion as to its execution, to be exercised under and in pursuance of the law. It is an established rule that the General Assembly cannot delegate its general legislative power to determine what the law shall be. However, it may delegate to others the authority to do those things which the legislature might properly do, but cannot do as understandingly or advantageously.¹⁰

Thus, the mere creation of a municipal corporation by the state to govern matters purely of local concern is not to be treated "as a transfer of general legislative power, but rather as a grant of authority to prescribe local regulations, supported by immemorial practice, but subject of course to the interposition of the superior in cases of necessity."¹¹ This grant of authority is not a delegation in the ordinary sense because the regulation of purely local affairs is not understood properly to belong to the state in the first place.

To recapitulate, we have seen that the state creates municipal corporations, but the municipal corporations have wide discretion in regulating their own local affairs. We have determined that any delegation by the state to the corporation's legislative body to regulate matters purely of local concern does not

⁶ *Mount Pleasant v. Beckwith*, 100 U.S. 514 (1880); *People v. Chicago*, 256 Ill. 558, 100 N.E. 194 (1912).

⁷ 1 Horack, *Sutherland Statutory Construction* § 303 (3d ed. 1943).

⁸ 3 McQuillin, *Municipal Corporations* § 4.08 (3d ed. rev. 1963).

⁹ *People ex rel. Adamowski v. Public Building Commission of Chicago*, 11 Ill. 2d 125, 142 N.E.2d 67 (1957); *People v. Chicago*, 413 Ill. 315, 109 N.E.2d 201 (1952); *People ex rel. Curren v. Schommer*, 392 Ill. 17, 63 N.E.2d 744 (1945); *People v. Springfield*, 370 Ill. 541, 19 N.E.2d 598 (1939); see also 16 Am. Jur. 2d *Constitutional Law* § 251 et seq. (1964).

¹⁰ *Hill v. Relyea*, 34 Ill. 2d 552, 555, 216 N.E.2d 795, 797 (1966); see also *People v. Warren*, 11 Ill. 2d 420, 143 N.E.2d 28 (1957).

¹¹ 3 McQuillin, *Municipal Corporations* § 4.09 at 23 (3d ed. rev. 1963); see also *Cooley, Constitutional Limitations* 264 (7th ed. 1903).

require the usual express and strict standards required in a delegation to an administrative body, a theory supported by immemorial practice. With this in mind, we will now consider the distinction between a delegation of power from the state legislature to a municipal corporation acting as a legislative body as compared to a municipal corporation acting as an administrative body.

Delegations by the state to a municipal legislative body, i.e., the city council, regarding matters of purely local concern have been traditionally accepted.¹² It is also well settled that authority may be delegated by the state legislature to administrative boards or officers provided the authority comes within the scope of the delegating state statute.¹³ This latter delegation, however, requires definite standards or a definite and reasonable rule for the guidance of officers in the exercise of their discretion in administering the delegating statute.¹⁴ The standard acts as a practical guide in determining whether an administrative act is within the scope of the statute under which the administrator purports to act. It also leads to better legislation by compelling the legislature to be exact in stating how an administrative body is to execute the statute,¹⁵ thereby avoiding the use of arbitrary discretion.

The basic reason for the requirement of a standard in a delegation to an administrative body, while none is required in a delegation to a legislative body, is the fact that the latter has an inherent control built into it, while the former requires the standard as its control. The built-in control is the theory of government by consent of the governed. All legislatures in the United States, federal, state and local, are composed of elected representatives of their respective areas. The electors actually control these legislatures via the control they exercise over their representatives, the legislators. If a majority of the electors feels the legislators are no longer doing the job entrusted to them, different legislators will be chosen at the next election. This inherent control device applies to local city councils, as well as to Congress and the state legislatures. Thus, while the delegation of power to an administrative body requires the inclusion of a standard, a delegation to any legislative body has its own device to prevent the abuse of discretion by the legislators.

Furthermore, although a delegation may be broad in its nature and scope in giving a legislative body general powers, it will not be struck down as unconstitutional for failing to include a standard or guide.¹⁶ The reason for this stems from "the necessity and desirability of delegating powers over local affairs to those persons best acquainted with local needs . . ."¹⁷ to insure that only the most useful and relevant legislation will be enacted.

¹² See cases cited note 9.

¹³ 3 McQuillin, *Municipal Corporations* § 4.11 (3d ed. rev. 1963).

¹⁴ *Fisher v. Kemper*, 1 Ill. 2d 603, 116 N.E.2d 332 (1954); see *Recent Developments*, 14 *Stan. L. Rev.* 372 (1962).

¹⁵ 14 *Stan. L. Rev.* 372 (1962).

¹⁶ 1 Horack, *Sutherland Statutory Construction* § 305 (3d ed. 1943).

¹⁷ *Id.* at 61.

When deciding the case of *Chicago v. Pennsylvania Railroad*,¹⁸ the Illinois Supreme Court either was unaware of, forgot or completely ignored the principles discussed above. A further explanation may be that the court decided to change the law and overrule *sub silentio* a vast number of cases and tradition itself in holding as it did.

The city of Chicago enacted an ordinance¹⁹ which provides that:

no person shall . . . paint any . . . advertisement upon the . . . girders, railings, gates or other parts of any public bridge or viaduct . . . except such as may be required by the laws of the state and the ordinances of the city.

This ordinance was legislated pursuant to § 9-112 of the Illinois Highway Code.²⁰ This statute provides that no advertising shall be placed on any bridge over Illinois highways or over "any other highway other than such as may be directed by the authority having jurisdiction over such highway." Under § 2-213 of the Code,²¹ the highway authority having responsibility over municipal streets is the corporate authority of that municipality, the city council.

Basing its claim on the ordinance, the city sought to enjoin the Pennsylvania Railroad from painting advertisements on the sides of the railroad's privately owned bridges which traversed public streets in Chicago. This was a test case, seven other similar actions having also been brought by the city. The trial court issued the injunction to remove all existing advertisements and to enjoin all such future advertising by the defendant railroad.

The Illinois Supreme Court reversed as a matter of law holding § 9-112 of the Illinois Highway Code unconstitutional on its face "[d]ue to the complete absence of standards to guide the exercise of discretion by the City in granting

¹⁸ 41 Ill. 2d 245, 242 N.E.2d 152 (1968).

¹⁹ Chicago, Ill., Code § 36-30 (1939):

No person shall post, stick, stamp, tack, paint or otherwise fix, or cause the same to be done by any person, any notice, placard, bill, card, poster, advertisement or other device calculated to attract attention of the public, to or upon any sidewalk, cross-walk, curb or curbstone, flagstone, or any other portion or part of any public way, lamp post, electric light, telegraph, telephone or trolley line pole, hydrant, shade tree or treebox, or upon the piers, columns, trusses, girders, railings, gates or other parts of any public bridge or viaduct, or upon any pole box or fixture of the fire alarm or police telegraph system, except such as may be required by the laws of the state and the ordinances of the city.

²⁰ Ill. Rev. Stat. ch. 121, § 9-112 (1967):

No person shall place or cause to be placed any sign or billboard or any advertising of any kind or description upon any State highway other than such as may be directed by the Department, or upon any other highway other than such as may be directed by the authority having jurisdiction over such highway. This provision shall also apply to signs, billboards, or any other advertising except signs designating the name of the railroad and the clearance provided upon any bridge, other structure, wire, cable, or other device, over or above such highway, whether constructed by the Department or others.

²¹ Ill. Rev. Stat. ch. 121, § 2-213 (1967):

Highway authority or highway authorities—The Department with respect to a State highway; . . . or the corporate authorities of a municipality with respect to a municipal street,

or refusing permission for the placing of advertising 'upon' (. . . 'over') the City's streets."²²

In this writer's opinion, the court was wrong for various reasons. First of all, and most importantly, the delegation by the General Assembly of power over municipal streets to the city council of that municipality requires no standards or guidelines. Since this is a grant of power to a legislative body, not to an administrative body, the standards requirement does not apply. The city council of any municipal corporation is controlled by the electors of the city who, if dissatisfied with an alderman's work, will choose someone to replace him. This inherent control applies to *Chicago v. Pennsylvania Railroad*²³ where the aldermen acting under the statute in question are liable to be replaced by the voters in their districts at the next election. Thus, there is no need for a standard in the statute.

Secondly, since this delegation of power to Chicago's City Council was held invalid, the very concept and tradition of municipal corporations as governments for local affairs have been destroyed. Chicago's City Council was performing its primary purpose when regulating the local streets of Chicago for the benefit of the local community. Chicago's streets are matters of purely local concern because they are peculiar to Chicago and are not common to Illinois at large. Only Chicago's legislators can advantageously deal with the local needs of Chicago because they are best acquainted with those needs. Thus, a state delegation of power to Chicago regarding control over the city's streets is valid. And since the power was delegated to Chicago's legislative body, no standards were required. This has been the traditional view because the grant of authority to regulate purely local affairs is not understood properly to belong to the state in the first place.

Next, the Illinois Supreme Court relied solely on precedents which involved delegations of power to administrative bodies, not to a legislative body as in the *Pennsylvania Railroad* case. Foremost in the court's opinion was *O'Brien v. State Highway Commissioner*,²⁴ which held a delegation to an administrative body unconstitutional because of a lack of standards in the delegating statute. This case, however, may be distinguished from *Chicago v. Pennsylvania Railroad*.²⁵ The relevant part of § 9-112 of the Illinois Highway Code delegated power to "the authority having jurisdiction over . . . such highway."²⁶ The Michigan statute in the *O'Brien* case delegated power to remove signs to "the proper commissioner or commissioners."²⁷ The difference between "authority"

²² *Chicago v. Pennsylvania Railroad*, 41 Ill. 2d 245, 241, 242 N.E.2d 152, 155 (1968).

²³ *Chicago v. Pennsylvania Railroad*, 41 Ill. 2d 245, 242 N.E.2d 152 (1968).

²⁴ 375 Mich. 545, 134 N.W.2d 700 (1965).

²⁵ 41 Ill. 2d 245, 242 N.E.2d 152 (1968).

²⁶ Ill. Rev. Stat. ch. 121, § 9-112 (1967).

²⁷ C. L. 1948, § 247.278; Rev. Stat. Ann. § 9.1408 (1958):

The proper commissioner or commissioners shall cause to be removed all signs, guide posts, markers and advertising devices that have not been duly authorized. Any person, firm or corporation who erects or maintains, or causes to be erected or

and "commissioner" may appear slight at first blush, but it is extremely material. It is clear that the authority over Chicago's streets is Chicago's City Council; § 2-213 of the Illinois Highway Code grants the power to the corporate authority of the municipality, which in Chicago is the City Council, a legislative authority. The Michigan statute granted power to a commissioner, which can only mean to an administrative head, department or body. The very meaning of the word limits its use to this function.²⁸ This sufficiently solidifies the position that standards were not required in the *Pennsylvania Railroad* case because no administrative body was involved.

The Illinois Supreme Court also relied upon *Hoyt Bros. v. Grand Rapids*.²⁹ Here the court invalidated a city ordinance on the ground that no standards were included therein to guide the city manager when granting permits to solicit funds for charitable purposes. In a cursory examination of the Pennsylvania Railroad's appellate brief filed with the Illinois Supreme Court, the case of *Pure Oil Co. v. Northlake*³⁰ was discovered as relied upon by the defendant railroad, though it was not cited by the court in its opinion. In this writer's opinion, the Illinois Supreme Court held invalid a delegation by the city council of Northlake, a legislative body, which purported to vest an administrative body of the city council with the power to deny, without any standards or restrictions, permission to construct driveways across public walks. Since the city council can act either as a legislative or administrative body, and since issuing driveway permits is normally an administrative function, this decision thereby satisfies the requirement that standards must be included in a delegation from a legislative to an administrative body, even when the delegation occurs within the same entity.

These two cases invalidated city ordinances delegating power to administrative bodies because no standards were included in the ordinances. In the *Pennsylvania Railroad* case, however, the court went one step further and held invalid the Illinois statute upon which the city ordinance was based; no decision was made regarding the Chicago ordinance itself. But this statute required no standards because there was no delegation to an administrative body, as there was in the *Hoyt Bros.* and *Pure Oil* cases. These two cases then actually provide further authority for the rule that standards are needed only when delegations of power are made to administrative, not legislative, bodies.

Finally, since § 9-112 of the Illinois Highway Code has been held invalid for a lack of standards, most of the General Assembly's delegations of powers to municipal corporations should likewise be doomed. Chapter 24 of the Illinois

maintained, any sign, guide post, marker or advertising device in violation of the provisions hereof, or who injures, defaces or removes any sign or guide post erected or maintained by the proper highway commissioner or commissioners, or with his or their consent, shall be liable for the expense occasioned by such unlawful act.

²⁸ Webster's Third New International Dictionary 456 (1964):

Commissioner . . . the representative or agent of the sovereign power or governmental authority in a district, province, or other governmental unit often having both judicial and administrative powers.

²⁹ 260 Mich. 447, 245 N.W. 509 (1932).

³⁰ 10 Ill. 2d 241, 140 N.E.2d 289 (1957).

Revised Statutes deals generally with all the grants of power to municipal corporations, but no section therein can be found to contain any standards or guidelines. For example, Ill. Rev. Stat. ch. 24, § 11-80-2 (1967) reads, "the corporate authorities of each municipality may regulate the use of streets and other municipal property." Ill Rev. Stat. ch. 24, § 11-80-11 (1967) provides that "the corporate authorities of each municipality may provide for and regulate cross-walks, curbs, and gutters." Should these sections, as well as many others, which read nearly the same in form, be held invalid because no standard appears? No, of course not. Standards required in a delegation of legislative power to a legislative authority would be impracticable if not impossible. The Illinois General Assembly cannot legislate for each individual municipality and its peculiar needs. This function should be left to the legislative bodies of each municipal corporation.

Thus, it can safely be said that the decision in *Chicago v. Pennsylvania Railroad*⁸¹ has thrown the state of the law in the area of delegations of power to municipal corporations into utter confusion. It is inconceivable that the Illinois Supreme Court intended to invalidate or cause the eventual invalidation of most of Chapter 24 of the Illinois Revised Statutes. However, this conclusion can logically be drawn from the holding in the *Pennsylvania Railroad* case. Only future decisions will clarify the position taken by the court in this case. However, clarification will not justify the result that was reached.

PAUL L. PRICE

⁸¹ 41 Ill. 2d 245, 242 N.E.2d 152 (1968).