



Volume 1 | Issue 1

Article 10

1956

Municipal Corporations - Exemption from Taxation - Proprietary Versus Governmental Functions

Robert P. Garbarino

Joseph R. Glancey

Follow this and additional works at: <https://digitalcommons.law.villanova.edu/vlr>

 Part of the [State and Local Government Law Commons](#), and the [Taxation-State and Local Commons](#)

Recommended Citation

Robert P. Garbarino & Joseph R. Glancey, *Municipal Corporations - Exemption from Taxation - Proprietary Versus Governmental Functions*, 1 Vill. L. Rev. 79 (1956).

Available at: <https://digitalcommons.law.villanova.edu/vlr/vol1/iss1/10>

This Comment is brought to you for free and open access by Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.

from the requirement of an election for "necessary expenses." This is especially so in Pennsylvania where the issue could not be voted on again for fifty-one weeks.⁶⁶

Arthur S. O'Neill, Jr.

MUNICIPAL CORPORATIONS—EXEMPTION
FROM TAXATION—PROPRIETARY VERSUS
GOVERNMENTAL FUNCTIONS.

Traditionally, property owned by a unit of local government and used by it in carrying out the functions of government is exempt from ad valorem taxation. Due to the increased sense of social responsibility which prevails in present-day municipalities, these functions have expanded to such an extent that it is increasingly difficult to determine when a municipality ceases to act as a government and when it begins to function as a private corporation. Coincident with this problem is the difficulty in determining when the tax-exemption privilege of a municipal corporation merges into the duty of a private corporation to pay such a tax.

This difficulty is clearly pointed up by two recent cases. In both cases a state agency had acquired lands in lieu of foreclosure on mortgage bonds purchased by the agency for investment of surplus unemployment compensation and pension funds. The foreclosed lands were subsequently leased and the rents added to the respective funds. The Supreme Court of New Jersey held that the land was not devoted to a public use and, therefore, subject to tax. In refusing to grant the exemption the court said, "The final point made by (*sic*) prosecutor is that the lands in question are in fact devoted to public use. Manifestly they are not as we understand the word 'public use'."¹ Under the same circumstances the Pennsylvania Supreme Court held that such land was devoted to a public use, and hence exempt from taxation. Justice Linn, speaking for the court, stated, "We must reject the argument that this is not public property used for public purposes. . . . Written all over the transaction is the fact that this is a mere change in the form of the investment whose administration is as much for public purposes now as it was when it was created."² The foregoing opinions illustrate the fluid state of the law dealing with the taxation of municipal property. Litigation is frequent and the law subject to rapid change even within jurisdictions.

The purpose of this Comment is to review the problem of tax-exempt municipal property as it is treated throughout the United States, to examine

66. PA. STAT. ANN. tit. 53, § 2011.205 (1954).

1. *Essex County Park Comm'n v. State Bd. of Tax Appeals*, 129 N.J.L. 336, 29 A.2d 739, 741 (Sup. Ct. 1943).

2. *Commonwealth v. Dauphin County*, 354 Pa. 556, 561, 47 A.2d 807, 809 (1946).

the various approaches to the problem, and to aid in forecasting the probability of exemption in jurisdictions where a particular subject has not been litigated. The chart which accompanies this Comment presents the survey in graphic form. Thus, from the chart the reader may examine the treatment accorded specific activities in the various jurisdictions and combine this general information with the more detailed text and footnote material which follows in order to rapidly investigate any special phase of this subject. In addition, the chart, illustrating as it does the present state of the law, including the constitutions, statutes, and decisions in each jurisdiction, is a practical standard from which the reader may forecast, with some accuracy, the future status of the activity with which he is concerned. There are allied problems, close enough to the main one to mention briefly, and yet, sufficiently removed to render them outside the scope of this article. One such problem is that which arises when property is given to a municipality as trustee with the beneficial results directed toward a public purpose. There is a split of authority on this point with some courts holding such property tax-exempt³ while others, in almost identical fact situations, refuse to extend the exemption privilege.⁴ Since this article deals with municipal property owned in fee, the problems incident to property held by a municipality under a lease will not be considered. For the purposes of this discussion the term "municipality" will include both the general function units of local government such as the county, city, township, and village as well as the special function units, namely, school districts, irrigation districts, housing authorities, and so forth.

I.

SOURCE OF EXEMPTION.

The principal source of tax exemption for municipally-owned property is the state constitution. The constitutional provision may be one of four classes: (1) It may be a grant of general taxing power reserving to the legislature the power to permit exemptions.⁵ This type of constitutional provision is usually construed as impliedly exempting municipal property from taxation;⁶ (2) It may exempt municipal property from taxation

3. *Academy of Richmond County v. Augusta*, 90 Ga. 634, 17 S.E. 61 (1892); *Burr v. Boston*, 208 Mass. 537, 95 N.E. 208 (1911).

4. *Mitchellville v. Board of Supervisors*, 65 Iowa 554, 21 N.W. 31 (1884); *St. Louis v. Wenneker*, 145 Mo. 230, 47 S.W. 105 (1898); *Spokane County v. Spokane*, 169 Wash. 355, 13 P.2d 1084 (1932); *State v. Underwood*, 54 Wyo. 1, 86 P.2d 707 (1939).

5. CONN. CONST. art. III, § 1; DEL. CONST. art. VII, § 1; IND. CONST. art. X, § 1; IOWA CONST. art. 3, § 1; ME. CONST. art. IV, pt. 3, § 1; MD. CONST. art. III, § 52; MASS. CONST. § 36; MICH. CONST. art. X, § 3; MISS. CONST. art. IV, § 112; N.H. CONST. art. VI, pt. 2; N.J. CONST. art. 8, § 1; N.Y. CONST. art. I, § 4; ORE. CONST. art. IX, § 1; R.I. CONST. art. IV, § 15; VT. CONST. art. II, § 6; WIS. CONST. art. VIII, § 1.

6. *Worcester County v. Worcester*, 116 Mass. 193 (1874); *In re Downer's Estate*, 101 Vt. 167 (1928).

solely on an "ownership" basis;⁷ in which case, if it is owned by the municipality, regardless of use, it should be tax-exempt. (3) It may exempt from taxation municipal property which is being devoted "exclusively to a public use";⁸ or (4) It may exempt municipal property devoted "generally, but not exclusively, to a public use."⁹ In addition, these constitutional provisions may be self-executing¹⁰ or they may require a statutory

7. ALA. CONST. art. IV, §91; ARIZ. CONST. art. IX, §2; CAL. CONST. art. XIII, §1; COLO. CONST. art. X, §4; GA. CONST. art. VII, para. 4; IDAHO CONST. art. VII, §4; ILL. CONST. art. IX, §3; LA. CONST. art. X, §4; MO. CONST. art. X, §6; MONT. CONST. art. VII, §2; NEB. CONST. art. VIII, §2; NEV. CONST. art. VIII, §132; N.M. CONST. art. VIII, §3; N.C. CONST. art. V, §5; N.D. CONST. art. XI, §176; OKLA. CONST. art. X, §6; S.D. CONST. art. XI, §5; UTAH CONST. art. XIII, §2; VA. CONST. §183; WASH. CONST. art. VII, §2; WYO. CONST. art. XV, §12.

8. ARK. CONST. art. XVI, §5; KAN. CONST. art. XI, §1; MINN. CONST. art. IX, §1; OHIO CONST. art. XII, §2; S.C. CONST. art. X, §4; TENN. CONST. art. II, §28; TEX. CONST. art. XI, §9.

9. FLA. CONST. art. XVI, §16; KY. CONST. §170; PA. CONST. art. IX, §1; W. VA. CONST. art. X, §1.

10. *Alabama*: ALA. CONST. art. IV, §91; ALA. CODE tit. 51, §2 (Supp. 1951) (Constitution & statute-ownership).

Arizona: ARIZ. CONST. art. IX, §2; ARIZ. CODE ANN. §73-201 (1939) (Constitution & statute-ownership).

Arkansas: ARK. CONST. art. XVI, §5; ARK. STAT. ANN. §84-206 (Supp. 1953) (Constitution & statute-exclusive public purpose).

California: CAL. CONST. art. XIII, §1; CAL. REVENUE AND TAXATION §202 (Supp. 1953) (Constitution & statute-ownership).

Colorado: COLO. CONST. art. X, §4; COLO. STAT. ANN. c. 142, §22 (Supp. 1953) (Constitution & statute-ownership).

Idaho: IDAHO CONST. art. VII, §4; IDAHO CODE ANN. §63-105 (Supp. 1953) (Constitution & statute-ownership).

Kansas: KAN. CONST. art. XIII, §1; KAN. GEN. STAT. §§13-1406, 14-1001, 15-1101, 70-201 (1949) (Constitution-exclusive public use; statutes exempt property of cities of 1st, 2d, and 3d classes and other municipalities on ownership basis; but general statute which grants specific exemption for firehouses and waterworks used exclusively for public purpose would appear to follow the constitution; however, courts grant exemption solely on ownership basis. State *ex rel.* Becker v. Smith, 144 Kan. 570, 61 P.2d 897 (1936); Sumner County v. Wellington, 66 Kan. 590, 72 Pac. 216 [1903]).

Kentucky: KY. CONST. §170, KY. REV. STAT. §132.190 (1953) (Constitution & statute public purpose).

Louisiana: LA. CONST. art. X, §4; (Constitution, self-executing and detailed-ownership).

Minnesota: MINN. CONST. art. IX, §1; MINN. STAT. ANN. §272.02 (West 1954) (Constitution & statute-exclusive public purpose).

Missouri: MO. CONST. art. X, §6; MO. ANN. STAT. §137.100 (Vernon 1954) (Constitution & statute-ownership).

Montana: MONT. CONST. art. XII, §2; MONT. REV. CODES ANN. §84-202 (Supp. 1953) (Constitution & statute-ownership but statute limits exemption to "no more land than is necessary").

Nebraska: NEB. CONST. art. VIII, §2; NEB. REV. STAT. §77-202 (1943) (Constitution & statute-ownership).

New Mexico: N.M. CONST. art. VIII, §3; (Constitution-ownership).

North Carolina: N.C. CONST. art. V, §5; N.C. GEN. STAT. §105-296 (Supp. 1953) (Constitution-ownership, but statute is exclusive public purpose; after period of uncertainty and conflict, latest decision would indicate judicial interpretation as public purpose rather than ownership. Warrenton v. Warren County, 215 N.C. 342, 2 S.E.2d 463 [1939]).

enactment to bring the exemption into effect.¹¹ The statutes so enacted are likewise capable of classification into the above categories. The obvious

North Dakota: N.D. CONST. art. XI, § 176; N.D. REV. CODE § 57-0208 (1943) (Constitution & statute-ownership; proviso in statute that land purchased by municipality at tax sale shall be taxable till after the period of redemption).

Oklahoma: OKLA. CONST. art. X, § 6; OKLA. STAT. ANN. tit. 68, § 52.2(2) (Supp. 1954) (Constitution & statute-ownership).

South Carolina: S.C. CONST. art. X, § 4; S.C. CODE § 65-1522 (1952) (Constitution & statute-exclusive public purpose).

South Dakota: S.D. CONST. art. XI, § 5; S.D. CODE § 57.0311 (1939) (Constitution & statute-ownership).

Texas: TEX. CONST. art. XI, § 9; TEX. REV. CIV. STAT. ANN. art. 7150, § 4 (Supp. 1954) (Constitution-exclusive public purpose; statute-exempts all property of a municipal corporation on an *ownership basis*; courts, however, interpret the statute as public purpose in order to preserve constitutionality. *Austin v. Sheppard*, 144 Tex. 291, 190 S.W.2d 486 (1945); *Lower Colorado River Authority v. Chemical Bank & Trust Co.*, 144 Tex. 326, 190 S.W.2d 48 (1945); *Abilene v. State*, 113 S.W.2d 631 (Tex. Civ. App. 1937).

Utah: UTAH CONST. art. XIII, § 2; UTAH CODE ANN. § 59-2-1 (1953) (Constitution & statute-ownership).

Virginia: VA. CONST. § 183; VA. CODE § 58-12 (Supp. 1954). (Constitution & statute-ownership; but courts have interpreted as public purpose. *Warwick County v. Newport News*, 153 Va. 789, 151 S.E. 417 (1930); *Nansemond County v. Norfolk*, 153 Va. 768, 151 S.E. 143 (1930); *Commonwealth v. Richmond*, 116 Va. 69, 81 S.E. 69 [1914]).

Washington: WASH. CONST. art. VII, § 2; WASH. REV. CODE § 84.36.010 (Supp. 1954) (Constitution & statute-ownership).

Wyoming: WYO. CONST. art. XV, § 12; WYO. COMP. STAT. ANN. § 32-102 (Supp. 1953) (Constitution & statute-ownership).

11. *Connecticut*: CONN. CONST. art. III, § 1; CONN. GEN. STAT. § 1761 (4) (1949) (Constitution-general taxing power; statute-public purpose).

Delaware: DEL. CONST. art. VII, § 1; DEL. CODE ANN. tit. 9, § 8103 (Supp. 1954).

Florida: FLA. CONST. art. XVI, § 16; FLA. STAT. ANN. 167.38 (Supp. 1954) (Constitution & statute-public purpose; host of specific exemptions also).

Georgia: GA. CONST. art. VII, para. 4; GA. CODE ANN. § 92-201 (Supp. 1951) (Constitution and statute-ownership).

Illinois: ILL. CONST. art. IX, § 3; ILL. ANN. STAT. c. 120, § 500 (Supp. 1954) (Constitution-ownership; statute and judicial interpretation-exclusive public purpose. *Mattoon v. Graham*, 386 Ill. 180, 53 N.E.2d 955 (1944); *People v. Chicago*, 124 Ill. 636, 17 N.E. 56 [1888]).

Indiana: IND. CONST. art. X, § 1; IND. ANN. STAT. § 64: 201 (Burns 1953) (Constitution-general taxing power; statute-ownership; judicial interpretation-ownership).

Iowa: IOWA CONST. art. 3 § 1; IOWA CODE ANN. § 427.1 (2) (Supp. 1954) (Constitution—general taxing power; statute-public purpose; interpretation-public purpose).

Maine: ME. CONST. art. IV, pt. 3 § 1; ME. REV. STAT. c. 92, § 6 (1954) (Constitution-general taxing power; statute-public purpose).

Maryland: MD. CONST. art. III, § 52; MD. ANN. CODE GEN. LAWS, art. 81, § 8 (1951) (Constitution-general taxing power; statute-ownership).

Massachusetts: MASS. CONST. § 36; MASS. ANN. LAWS c. 59, § 5 (Supp. 1954) (Constitution-general taxing power; statute-grants exemption to property of United States & Commonwealth-ownership; but courts imply extension to municipal property if held for public purpose. *Collector v. Boston*, 278 Mass. 274, 180 N.E. 116 [1932]).

Michigan: MICH. CONST. art. X, § 3; MICH. STAT. ANN. § 7.7 (Supp. 1953) (Constitution-general taxing power; statute-public purpose).

Mississippi: MISS. CONST. art. IV, § 112; MISS. CODE ANN. § 9697 (Supp. 1954) (Constitution-general taxing power; statute-ownership).

distinction is that made between public ownership and devotion of the property to public use. In general the result under the "ownership" provision is quite obvious; ownership, absent any distortion of the statutory language, should result in a tax exemption. But the distinction which is made between "exclusive public use" and "public use" produces some rather inconsistent results.

II.

EFFECT OF JUDICIAL INTERPRETATION.

In considering the problem of exemption of municipal property from taxation, judicial interpretation is probably the most important single consideration. Although tax boards universally exist to administer the taxing statutes, there is a right of appeal to the courts for judicial interpretation of the exemption privilege where such administrative remedies have been exhausted.¹² The courts have generally interpreted these statutes and constitutional provisions according to the plain meaning of the words, but in a few jurisdictions, where mere ownership by the municipality qualified the property for tax exemption, they have limited the exemption to property owned by the municipality in its governmental capacity.¹³ On the other

Nevada: NEV. CONST. art. VIII, § 132; NEV. COMP. LAWS § 6418 (Supp. 1945) (Constitution & statute-ownership).

New Hampshire: N.H. CONST. pt. II, art. 6; N.H. REV. LAWS c. 73, § 7 (1942) (Constitution-general taxing power; statute-public purpose).

New Jersey: N.J. CONST. art. VIII, § 1; N.J. STAT. ANN. § 54:4-3.3 (Supp. 1954) (Constitution-general taxing power; statute-public purpose).

New York: N.Y. CONST. art. 16 § 1; N.Y. TAX LAW, art. I, § 4(3) (Constitution-general taxing power; statute-public purpose).

Ohio: OHIO CONST. art. XII, § 2; OHIO GEN. CODE ANN. § 5351 (Supp. 1952) (Constitution & statute-exclusive public purpose).

Oregon: ORE. CONST. art. IX, § 1; ORE. COMP. LAWS ANN. § 110-201 (Supp. 1947) (Constitution-general taxing power; statute-public purpose; interpretation-ownership. "[F]ollowing property shall be exempt from taxation: . . . (2) all public and corporate property of the several . . . municipal corporations in this state used and intended for corporate purposes. . . ." Interpret "corporate purposes" as any purpose for the accomplishment of which valid power is granted by the legislature. *Portland v. Multnomah County*, 151 Ore. 504, 50 P.2d 1145 [1935]. *Contra:* *Eugene v. Keeney*, 134 Ore. 393, 293 Pac. 924 [1930]).

Pennsylvania: PA. CONST. art. IX, § 1; PA. STAT. ANN. tit. 72, § 5020-204(g) (Supp. 1954) (Constitution & statute-public purpose).

Rhode Island: R.I. CONST. art. IV, § 15; R.I. GEN. LAWS c. 29, § 2 (1938) (Constitution-general taxing power; statute-exclusive public purpose).

Tennessee: TENN. CONST. art. II, § 828; TENN. CODE ANN. § 1085(1) (Williams 1952) (Constitution & statute-exclusive public purpose).

Vermont: VT. CONST. c. II, § 6; VT. REV. STAT. § 649 (1947) (Constitution-general taxing power; statute-public purpose).

West Virginia: W. VA. CONST. art. X, § 1; W. VA. CODE ANN. § 678 (Supp. 1953) (Constitution & statute-public purpose).

Wisconsin: WIS. CONST. art. VIII, § 1; WIS. STAT. § 70.11 (1953) (Constitution-general taxing power; statute-ownership).

12. 1 COOLEY, TAXATION, § 80 (4th ed. 1924).

13. *Phoenix v. Bowles*, 65 Ariz. 315, 180 P.2d 222 (1947); *Robinson v. Indiana & Ark. Lumber & Mfg. Co.*, 128 Ark. 550, 194 S.W. 870 (1917). *State ex rel. Kinder v. Little River Drainage Dist.*, 291 Mo. 267, 236 S.W. 848 (1921).

TAXATION OF MUNICIPAL PROPERTY—CONSTITUTIONS, STATUTES, AND DECISIONS

	Ala.	Ariz.	Ark.	Cal.	Colo.	Conn.	Del.	Fla.	Ga.	Idaho	Ill.	Ind.	Iowa	Kan.	Ky.	La.	Me.	Md.	Mass.	Mich.	Minn.	Miss.	Mo.	Mont.
Constitution	O	O	EP	O	O	O	O	O	O	O	O	G	G	EP	P	O	G	G	G	G	EP	G	O	O
Statute	O	O	EP	O	O	P	P	P	O	O	EP	O	P	EP	*	O	P	O	P	P	EP	O	O	O
Judicial Interpretation	O	O	EP	O	O	P	P	P	P	O	EP	O	P	EP	P	O	P	O	P	P	EP	O	O	O
Space Leased in Public Building											EP	O	P	O	P	O	P	O	P	P	EP	O	O	O
Lease of Municipal Land			N		E					N					E			N	N		N		E	E
Vacant Municipal Land			E											E										
Tax-Foreclosed Lands			E	E				E														E		E
Retail Stores									E															
Sports Stadia, Golf Courses, Parking Lots			E																					
Wharves																								
Public Housing																								
Airports								E							E									N
Transit Systems																								
Highways and Bridges																								
State Banks																								
Utilities																								
Drainage and Irrigation			E	E	E	E																		
Public Use in the Future			E																					
Privilege Taxes																								

LEGEND
 G—General Taxing Power
 O—"Ownership"
 P—"Public Purpose"
 EP—"Exclusive Public Purpose"

E—Exempt
 N—Not Exempt
 *—None

hand, there are jurisdictions where statutes which demand "exclusive public usage," are construed quite liberally in allowing a certain amount of non-public use before the property loses its tax immunity.¹⁴ Furthermore, courts have sometimes construed "use" statutes so broadly that they are given the effect of "ownership" provisions. A clear example of the latter situation exists in Pennsylvania where the courts have conferred the title "quasi-public" on certain privately-owned corporations and thereby extended the exemption privilege to them; this has been done despite a "general public purpose" statute.¹⁵

In addition, a problem also arises as to the tax status of municipal property which is composed of both exempt and nonexempt elements. Generally, such property is held exempt, but there is disagreement over this question even within jurisdictions. Vermont, in 1908, held such composite property nonexempt,¹⁶ but in 1921, in an opinion which did not recognize any inconsistency with the former holding, the court exempted property which was composed of exempt and nonexempt elements.¹⁷ It is worth noting that many states which exempt municipal property from taxation provided the property is used for a "public purpose", expressly exempt from taxation property owned by the state or federal governments solely because of such ownership.¹⁸

III.

THE STATE OF THE LAW.

Under all views, cemeteries, public parks, libraries, and public buildings such as city halls and court houses, are exempt from taxation when used entirely for a public purpose.¹⁹ However, when access to public parks is limited to a certain portion of the public, they are not exempt under a "use" type statute.²⁰

14. *Warrenton v. Warren County*, 215 N.C. 342, 2 S.E.2d 463 (1939); *State v. Columbia*, 115 S.C. 108, 104 S.E. 337 (1920); *Columbia v. Tindal*, 43 S.C. 547, 22 S.E. 341 (1895) ("Partly, at least, exclusively used for public purpose.")

15. *Longvue Disposal Corp. v. Bd. of Property Assessment*, 375 Pa. 35, 99 A.2d 464 (1953); *Atlantic Freight Lines, Inc. v. Rankin*, 373 Pa. 517, 96 A.2d 870 (1953); *Conoy Twp. Supervisors v. York Haven Electric Power Plant Co.*, 222 Pa. 319, 71 Atl. 207 (1908); *Texas Eastern Transmission Corp. v. Rankin*, 79 Pa. D. & C. 589 (C.P., Fay. 1951).

16. *Swanton v. Highgate*, 81 Vt. 152, 69 Atl. 667 (1908).

17. *Orange v. Barre*, 95 Vt. 267, 115 Atl. 238 (1921).

18. ARK. STAT. ANN. § 84-206 (Supp. 1953); IOWA CODE ANN. § 427.1(1) (Supp. 1954); MASS. ANN. LAWS c. 59, § 5 (Supp. 1954); MICH. STAT. ANN. § 4.52 (Supp. 1953) (Exempts federal property only); N.C. GEN. STAT. § 105-296 (Supp. 1953); ORE. COMP. LAWS ANN. § 110-201 (Supp. 1947); R.I. GEN. LAWS c. 29, § 2 (1938); S.C. CODE § 65-1522 (Supp. 1954); VT. REV. STAT. § 649 (1947); W. VA. CODE ANN. § 678 (Supp. 1953).

19. *E.g.*, ILL. ANN. STAT. c. 120, § 500 (Supp. 1954); MO. ANN. STAT. § 137.100 (Vernon 1954); N.Y. TAX LAW § 4(3); PA. STAT. ANN. tit. 72, § 5020-204 (Supp. 1954).

20. *People ex rel. Scott v. Ricketts*, 248 Ill. 428, 94 N.E. 71 (1911); *McChesney v. People*, 99 Ill. 216 (1881).

Space Leased in Public Building.

The space in a public building leased to a private corporation or individual is exempt from taxation in the majority of jurisdictions,²¹ but a few states refuse to extend the exemption to the space so leased.²² A survey of the cases on this point reveals that the exemption is generally allowed in the southern jurisdictions but not granted in the northeastern section of the nation. Perhaps the availability in the past of space for commercial use in the more industrialized areas was a factor which entered into these decisions.

Lease of Municipal Land.

When a municipality leases municipally-owned land to a private user the land is then generally subject to taxation²³ unless the exemption is granted under an "ownership" type statute.²⁴ The tax, however, is usually imposed on the lessee by viewing his leasehold interest as an interest in land and taxing it as such;²⁵ however, some courts are reluctant to tax the lessee's interest. They base their decision on the fact that adequate ma-

-
21. *Maine*: *Camden v. Camden Village Corp.*, 77 Me. 530, 1 Atl. 689 (1885).
Missouri: *State ex rel. Mills v. Fleming*, 275 Mo. 509, 204 S.W. 1085 (1918).
Montana: *Colwell v. Great Falls*, 117 Mont. 126, 157 P.2d 1013 (1945).
New Hampshire: *Piper v. Meredith*, 83 N.H. 107, 139 Atl. 294 (1927).
New York: *Bush Terminal Co. v. New York*, 152 Misc. 144, 273 N.Y. Supp. 331 (Sup. Ct. 1934), *aff'd*, 282 N.Y. 306, 26 N.E.2d 269 (1940).
Oregon: *Portland v. Multnomah County*, 151 Ore. 504, 50 P.2d 1145 (1935).
South Carolina: *State v. Columbia*, 115 S.C. 108, 104 S.E. 337 (1920); *Columbia v. Tindal*, 43 S.C. 547, 22 S.E. 341 (1895).
22. *Massachusetts*: *Collector v. Boston*, 278 Mass. 274, 180 N.E. 116 (1932).
Ohio: *Pfeiffer v. Jenkins*, 141 Ohio St. 66, 46 N.E.2d 767 (1943).
23. *Arkansas*: *School Dist. v. Howe*, 62 Ark. 481, 37 S.W. 717 (1896).
Illinois: *Mattoon v. Graham*, 386 Ill. 180, 53 N.E.2d 955 (1944); *People v. Chicago*, 124 Ill. 626, 17 N.E. 56 (1888).
Massachusetts: *Essex County v. Salem*, 153 Mass. 141, 26 N.E. 431 (1891).
New York: *Long Island Land Research Bureau, Inc. v. Hempstead*, 283 App. Div. 663, 126 N.Y.S.2d 857 (2d Dep't 1954).
New Jersey: *Jamouneau v. Local Government Board*, 6 N.J. 281, 78 A.2d 553 (1951).
Ohio: *Dayton v. Haines*, 156 Ohio St. 366, 102 N.E.2d 590 (1951); *Division of Conservation & Natural Resources v. Board of Tax Appeals*, 149 Ohio St. 33, 77 N.E.2d 242 (1948).
Oregon: *Eugene v. Keeney*, 134 Ore. 393, 293 Pac. 924 (1930).
Pennsylvania: *Rupp v. Levin*, 44 Dauph. 313 (C.P., Pa. 1937).
Tennessee: *Shelby County v. McCanless*, 163 S.W.2d 63 (Tenn. 1942).
24. *Colorado*: *Colorado Springs v. Fremont County*, 36 Colo. 231, 84 Pac. 1113 (1906).
Utah: *Springville v. Johnson*, 10 Utah 351, 37 Pac. 577 (1894).
25. *Arkansas*: *Little Red River Levee Dist. v. Moore*, 197 Ark. 945, 126 S.W.2d 605 (1939).
California: *Tilden v. Orange County*, 89 Cal. App. 2d 929, 201 P.2d 86 (1949).
Florida: *Panama City v. Pledger*, 140 Fla. 629, 192 So. 470 (1939).
Illinois: *Carrington v. People*, 195 Ill. 484, 63 N.E. 163 (1902).
Kentucky: *Broadway & Fourth Ave. Realty Co. v. Louisville*, 303 Ky. 202, 197 S.W.2d 238 (1946).

chinery has not been provided to determine the exact extent of this interest.²⁶ In addition, if the lease is for a long period of time, the courts may view such a lease as investing the lessee with the fee, and hence he will be taxed for the assessed value of the fee.²⁷ In at least two jurisdictions the lessee is liable for taxation on fixtures placed on the leased lands by him, even though such fixtures will revert to the municipality at the termination of the lease.²⁸ Generally, the lessee is not liable for assessment for public improvements made on the land although the lessor-municipality is subject to such assessment.²⁹ The State of Washington has, by statute, made a specific exception to this almost universal rule by requiring that the lessee pay for local improvements where the lease is one of harbor facilities.³⁰ Of course, as between the parties, the lease itself may provide for payment of the taxes by the lessee or the lessor.

Vacant Lands.

Lands owned by a municipality and not put to any use but allowed to stand vacant are usually subject to tax³¹ unless the exemption is granted under an "ownership" statute.³²

Maryland: Philadelphia Wilmington & Baltimore R.R. v. Appeal Tax Court, 50 Md. 397 (1878).

Massachusetts: Lowell v. Boston, 322 Mass. 709, 79 N.E.2d 713 (1948).

Mississippi: Lord v. Kosciusko, 170 Miss. 169, 154 So. 346 (1934).

Nebraska: State *ex rel.* Sioux County v. Tucker, 38 Neb. 56, 56 N.W. 718 (1893).

New Hampshire: Granite State Land Co. v. Hampton, 76 N.H. 1, 79 Atl. 25 (1911).

New Jersey: State v. Haight, 36 N.J.L. 471 (1873).

North Dakota: Otter Tail Power Co. v. Degnan, 64 N.D. 413, 252 N.E. 619 (1934).

Oklahoma: American Oil and Refining Co. v. Cornish, 173 Okla. 470, 49 P.2d 81 (1935).

Ohio: Zumstein v. Consolidated Coal & Min. Co., 54 Ohio St. 264, 43 N.E. 329 (1896).

Texas: Davis v. Burnett, 77 Tex. 3, 13 S.W. 613 (1890).

Washington: Rabe v. Seattle, 44 Wash. 482, 87 Pac. 520 (1906); Moeller v. Gormley, 44 Wash. 465, 87 Pac. 507 (1906).

26. *Arizona:* Maricopa County v. Fox Riverside Theatre Corp., 60 Ariz. 260, 135 P.2d 513 (1943). Maricopa County v. Fox Riverside Theatre Corp., 57 Ariz. 407, 114 P.2d 245 (1941).

27. *United States:* J. W. Perry Co. v. Norfolk, 220 U.S. 472 (1911).

New Hampshire: Piper v. Meredith, 83 N.H. 107, 139 Atl. 294 (1927).

Ohio: Bentley v. Barton, 41 Ohio St. 410 (1884).

28. *New York:* People v. Barker, 153 N.Y. 98, 47 N.E. 46 (1897).

Tennessee: Smith v. Nashville, 88 Tenn. 464, 12 S.W. 924 (1890).

29. *United States:* Trimble v. Seattle, 231 U.S. 683 (1914).

30. *Washington:* North American Lumber Co. v. Blaine, 89 Wash. 366, 154 Pac. 446 (1916).

31. *New Jersey:* New Jersey Turnpike Authority v. Washington Township, 16 N.J. 38, 106 A.2d 4 (1954).

New York: Watkins Glen v. Hager, 140 Misc. 816, 252 N.Y. Supp. 146 (Sup. Ct.), *aff'd*, 234 App. Div. 904, 254 N.Y. Supp. 1016 (3d Dep't 1931); Clark v. Sprague, 113 App. Div. 645, 99 N.Y. Supp. 302 (2d Dep't 1906).

Ohio: Application of City of Marion, 68 N.E.2d 391 (Ohio 1946).

32. *California:* Anderson-Cottonwood Irrig. Dist. v. Klukkert, 13 Cal.2d 191, 88 P.2d 685 (1939).

Iowa: Callanan v. Wayne County, 73 Iowa 709, 36 N.W. 654 (1888).

Tax-Foreclosed Lands.

The tax status of land acquired by a municipality in a tax foreclosure proceeding is uncertain. If the statutory exemption depends on ownership by the municipality the land is clearly exempt from taxation.³³ If, on the other hand, the statute demands that the land in question be held for a "public use" in order to qualify for the exemption, there is an irreconcilable split of authority with some jurisdictions allowing the exemption³⁴ and others withholding it.³⁵

Retail Stores.

Perhaps in no other endeavor is a municipal corporation more liable to taxation than when it engages in a retail business³⁶ other than the operation of market houses. The latter are usually specifically exempt by statutes.³⁷ Except where the exemption is granted solely on the basis of ownership,³⁸ these retail establishments are even denied the exemption under a liberally-construed "public purpose" statute.³⁹

Sports Stadia, Golf Course, & Parking Lots.

In Ohio, which has an "exclusive public purpose" statute, these municipally-owned properties are exempt provided the following requirements are met: (1) the profit motive must be incidental and not substantial, and (2) the enterprise must be in furtherance of a public benefit. On this basis the

33. *California*: Sutter-Yuba Inv. Co. v. Waste, 52 Cal. App. 2d 785, 127 P.2d 25 (1942); La Meta Lemon Grove v. Hornbeck, 8 P.2d 1031 (Cal. 1932) (reversed on other grounds).

Idaho: State *ex rel.* Hoover v. Minidoka County, 50 Idaho 419, 298 Pac. 366 (1931).

Mississippi: Alvis v. Hicks, 150 Miss. 306, 116 So. 612 (1928).

Missouri: State v. Baumann, 348 Mo. 164, 153 S.W.2d 31 (1941); Grand River Drainage Dist. v. Reid, 341 Mo. 1246, 111 S.W.2d 151 (1937).

North Dakota: State v. Burleigh County, 55 N.D. 1, 212 N.W. 217 (1927).

Texas: Austin v. Sheppard, 144 Tex. 291, 190 S.W.2d 486 (1945); Lubbock Independent School Dist. v. Owens, 217 S.W.2d 186 (Tex. Civ. App. 1948).

34. *Arkansas*: Robinson v. Indiana & Ark. Lumber & Mfg. Co., 128 Ark. 550, 194 S.W. 870 (1917).

Pennsylvania: Commonwealth v. Dauphin County, 354 Pa. 556, 47 A.2d 807 (1946); Commonwealth v. Schuylkill County, 361 Pa. 126, 62 A.2d 922 (1949).

35. *New Jersey*: Essex County Park Commission v. State Board of Tax Appeals, 129 N.J.L. 336, 29 A.2d 739 (Sup. Ct. 1943).

New York: Union Free School Dist. No. 11 v. Steuben County, 178 Misc. 415, 33 N.Y.S.2d 854 (Sup. Ct.), *aff'd*, 264 App. Div. 945, 36 N.Y.S.2d 440 (4th Dep't 1942); Herkimer v. Herkimer, 251 App. Div. 126, 295 N.Y. Supp. 629 (4th Dep't 1937), *aff'd*, 279 N.Y. 560, 18 N.E.2d 854 (1939). *Contra*: Sweeney v. Rome, 190 Misc. 263, 75 N.Y.S.2d 154 (Sup. Ct. 1947).

36. 3 McQUILLIN, MUNICIPAL CORPORATIONS § 1264 (2d ed. 1943).

37. *E.g.*, *Illinois*: ILL. ANN. STAT. c. 120, § 500(9) (Supp. 1954); *Missouri*: MO. ANN. STAT. § 137.100 (Vernon 1954); *Ohio*: OHIO GEN. CODE ANN. § 5351 (Supp. 1952); *Texas*: TEX. REV. CIV. STAT. ANN. art. 7151, § 9 (Vernon 1954).

38. *Georgia*: Walden v. Whigham, 120 Ga. 646, 48 S.E. 159 (1904).

39. *North Carolina*: Warrenton v. Warren County, 215 N.C. 342, 2 S.E.2d 463 (1939).

Ohio Supreme Court refused to exempt a stadium since it was leased for profit the greater part of the year.⁴⁰ However, it has exempted the personalty in a municipal golf course since it was operated for use by the public.⁴¹ The court further indicated that the latter exemption would probably be extended to include the realty, but this was not decided due to a procedural defect in the complaint. Arkansas, which also has an "exclusive public purpose" statute, exempted this type of municipal property from taxation even where an incidental profit was derived.⁴² From these decisions, exempting such enterprises under "exclusive public purpose" statutes, it seems that this class of municipal property would probably be exempt in those jurisdictions with a general "public purpose" statute, and almost certainly in jurisdictions which grant exemptions solely on the basis of ownership.

Wharves.

Municipal wharves are almost universally exempt from taxation even though an incidental profit is received.⁴³ Virginia is the only jurisdiction which has refused to extend the exemption to municipally-owned wharves.⁴⁴

Public Housing.

Statutes are commonly found in most states which specifically exempt from taxation property devoted to public housing;⁴⁵ but, absent a statute, there is a split of authority as to the granting of the exemption.⁴⁶

40. *Ohio*: Board of Park Commissioners v. Board of Tax Appeal, 160 Ohio St. 451, 116 N.E.2d 725 (1951).

41. *Ohio*: State *ex rel.* Hepperla v. Glander, 160 Ohio St. 59, 113 N.E.2d 357 (1953).

42. *Arkansas*: Hope v. Dodson, 166 Ark. 236, 266 S.W. 68 (1924).

43. *Florida*: Panama City v. Pledger, 140 Fla. 629, 192 So. 470 (1939).

Kentucky: Commonwealth v. Louisville, 133 Ky. 845, 119 S.W. 161 (1909).

New York: People *ex rel.* International Nav. Co. v. Barker, 153 N.Y. 98, 47 N.E. 46 (1897); People v. Accessors, 111 N.Y. 505, 19 N.E. 90 (1888).

Ohio: Zumstein v. Consolidated Coal & Min. Co., 54 Ohio St. 264, 43 N.E. 329 (1896).

Tennessee: Luttrell v. Knox County, 89 Tenn. 253, 14 S.W. 802 (1890).

Texas: State v. Beaumont, 161 S.W.2d 344 (Tex. Civ. App. 1942); Galveston Wharf Co. v. Galveston, 63 Tex. 14 (1884).

West Virginia: Greene Line Terminal Co. v. Martin, 122 W. Va. 483, 10 S.E.2d 901 (1940).

44. *Virginia*: Black v. Sherwood, 84 Va. 906, 6 S.E. 484 (1888) (Overruled on other grounds).

45. *E.g.*, CONN. GEN. STAT. § 939 (1949); DEL. CODE ANN. tit. 31, § 4116 (Supp. 1954); FLA. STAT. ANN. § 423.01 (Supp. 1954); LA. REV. STAT. ANN. § 40:505 (Supp. 1954).

46. *Missouri*: State v. Donnell, 349 Mo. 975, 163 S.W.2d 940 (1942).

Ohio: Non-exemption. Dayton Metropolitan Housing Authority v. Evatt, 143 Ohio St. 10, 53 N.E.2d 896 (1944); Columbus Metropolitan Housing Authority v. Thatcher, 140 Ohio St. 38, 42 N.E.2d 437 (1942). *Contra*: *Florida*: State *ex rel.* Grubstein v. Cambell, 146 Fla. 532, 1 So.2d 483 (1941).

North Carolina: Mallard v. Eastern Carolina Regional Housing Authority, 221 N.C. 334, 20 S.E.2d 281 (1942).

Airports.

Statutes are also commonly found which exempt municipally-owned airport property from taxation.⁴⁷ Even without such a statute the "ownership" and "public purpose" jurisdictions usually grant the exemption.⁴⁸ Those states having "exclusive public purpose" statutes tend to construe the exemption strictly when airport property is involved. In Ohio, one of these latter jurisdictions, such property is exempt only to the extent it is actually necessary to the operation of the airport.⁴⁹ New York, by statute, holds that a public airport outside the corporate boundaries is taxable by the municipality wherein it is located unless there is a contrary agreement between the two municipalities.⁵⁰

Transit Systems.

Taxation of municipally-owned transit systems follows the general pattern with "ownership" and "public purpose" jurisdictions holding such property exempt⁵¹ while jurisdictions which demand an "exclusive public use" refuse to extend the exemption to this area.⁵²

Highways and Bridges.

Highways and bridges open to the public are exempt from taxation in all jurisdictions, but this exemption may not include toll roads. However, such revenue-producing highways are usually exempt by virtue of special legislation passed simultaneously with their construction.⁵³ Even in the absence of such specific statutory provision, one jurisdiction, Kentucky, has exempted from taxation a bridge whose construction was financed by a municipal bond issue, although the ownership and management of the bridge was vested in a private corporation.⁵⁴

State Bank.

Litigation concerning the taxability of state banks has taken place in only one jurisdiction, Tennessee. The Supreme Court of that state while

47. *E.g.*, ARK. STAT. ANN. § 74-616 (Supp. 1953); FLA. STAT. ANN. §§ 149.13, 322.05 (Supp. 1954); IOWA CODE ANN. § 427.1(21) (Supp. 1954); MINN. STAT. ANN. § 360.035 (West 1954); NEB. REV. STAT. § 3-209 (1943); OKLA. STAT. ANN. tit. 68, § 771 (Supp. 1954).

48. *New Jersey*: Hanover Township v. Morristown, 66 A.2d 187 (N.J. Super., App. Div. 1949).

South Dakota: Yankton v. Madson, 70 S.D. 627, 20 N.W.2d 371 (1945). *Contra*: McLaughlin v. Chattanooga, 180 Tenn. 638, 177 S.W.2d 823 (1944) (Not necessary to decision).

49. Application of City of Marion, 68 N.E.2d 391 (Ohio 1946); Toledo v. Jenkins, 143 Ohio St. 141, 54 N.E.2d 656 (1944).

50. *People ex rel. Buffalo v. Mazurowski*, 294 N.Y. 370, 62 N.E.2d 608 (1945).

51. *Arizona*: Phoenix v. Bowles, 65 Ariz. 315, 180 P.2d 222 (1947).

Massachusetts: Collector v. Boston, 278 Mass. 274, 180 N.E. 116 (1932).

52. *Ohio*: Zangerle v. Cleveland, 145 Ohio St. 347, 61 N.E.2d 720 (1945).

53. *E.g.*, ILL. ANN. STAT. c. 121, § 312a43 (Supp. 1954); N.J. STAT. ANN. § 27:32-12 (Supp. 1954); N.Y. PUBLIC AUTHORITIES LAW § 289 (Supp. 1954).

54. *Kentucky*: Commissioner v. Newport & C. Bridge Co., 32 Ky. L. Rep. 196, 105 S.W. 378 (1907).

interpreting an "exclusive public purpose" statute, exempted not only the property of the bank proper, but also held exempt from taxation a lot next to the bank which was being reserved for future expansion.⁵⁵ Perhaps the opinion of Chief Justice Marshall in *McCullough v. Maryland*⁵⁶ with its emphasis on the governmental nature of banking and protection of the federal banks from taxation has, by analogy, limited controversy in this field.

Utilities.

By way of contrast, probably no segment of this field has been the subject of more litigation than that dealing with municipally-owned utilities. The problem is capable of division into two parts: (1) Taxation of the utility property, and (2) Taxation of the utility product, whether it be electricity, gas, water, etc.

1.

Property.

Property of municipally-owned utilities is universally exempt from taxation if it is located within the boundaries of the owning municipality,⁵⁷ and some jurisdictions even grant the exemption where the property is located outside the municipal boundaries.⁵⁸ New Jersey has made a curious

-
55. *Tennessee*: *Nashville v. Bank of Tennessee*, 1 Swan 269 (Tenn. 1851).
56. 17 U.S. (4 Wheat.) 314 (1819).
57. *Arizona*: *Phoenix v. State*, 53 Ariz. 28, 85 P.2d 56 (1938).
Connecticut: *North Haven v. Wallingford*, 95 Conn. 544, 111 Atl. 904 (1920);
Norwalk v. New Canaan, 85 Conn. 119, 81 Atl. 1027 (1911).
Illinois: *Mattoon v. Graham*, 386 Ill. 180, 53 N.E.2d 955 (1944).
Indiana: *Chadwick v. Crawfordsville*, 216 Ind. 399, 24 N.E.2d 937 (1940).
Iowa: *Osceola v. Board of Equalization*, 188 Iowa 278, 176 N.W. 284 (1920).
Kansas: *State ex rel. Becker v. Smith*, 144 Kan. 570, 61 P.2d 897 (1936);
Sumner County v. Wellington, 66 Kan. 590, 72 Pac. 216 (1903).
Kentucky: *Ryan v. Louisville*, 133 Ky. 714, 118 S.W. 992 (1909); *Covington v. Highlands*, 33 Ky. L. Rep. 323, 110 S.W. 338 (1908).
Maine: *Augusta v. Augusta Water Dist.*, 101 Me. 148, 63 Atl. 663 (1906).
Maryland: *Anne Arundel County v. Annapolis*, 126 Md. 445, 95 Atl. 40 (1915).
Massachusetts: *Wayland v. Middlesex County*, 4 Gray 500 (Mass. 1855).
Michigan: *Traverse City v. Blair Township*, 190 Mich. 313, 157 N.W. 81 (1916).
Minnesota: *Anoka County v. St. Paul*, 194 Minn. 554, 261 N.W. 588 (1935).
Nebraska: *Omaha v. Douglas County*, 96 Neb. 865, 148 N.W. 938 (1914).
New Jersey: *Perth Amboy v. Barker*, 74 N.J.L. 127, 65 Atl. 201 (Sup. Ct. 1906).
North Carolina: *Andrews v. Clay County*, 200 N.C. 280, 156 S.E. 855 (1931).
Ohio: *Toledo v. Hosler*, 54 Ohio St. 418, 43 N.E. 583 (1896).
Pennsylvania: *Allegheny Township v. Altoona*, 23 Pa. County Ct. 381 (1900).
Tennessee: *Johnson City v. Booth*, 261 S.W.2d 820 (Tenn. 1953).
Texas: *San Antonio Independent School Dist. v. Waterworks Board*, 120 S.W.2d 861 (Tex. Civ. App. 1938).
Vermont: *Orange v. Barre*, 95 Vt. 267, 115 Atl. 238 (1921); *Swanton v. Highgate*, 81 Vt. 152, 69 Atl. 667 (1908).
Virginia: *Warwick County v. Newport News*, 153 Va. 789, 151 S.E. 417 (1930); *Nansemond County v. Norfolk*, 153 Va. 768, 151 S.E. 143 (1930); *Commonwealth v. Richmond*, 116 Va. 69, 81 S.E. 69 (1914).
58. *Arkansas*: *Yoes v. Fort Smith*, 207 Ark. 694, 182 S.W.2d 683 (1944).
California: *San Francisco v. McGovern*, 28 Cal. App. 491, 152 Pac. 980 (1915).
Colorado: *Stewart v. Denver*, 70 Colo. 514, 202 Pac. 1085 (1921).

deviation in dealing with municipally-owned utility property located outside the municipal limits. By statute, it has provided that the equipment which carries the utility product, e.g., pipes, conduits, etc., is not subject to taxation, but the land through which such product passes is taxable.⁵⁹

2.

Sales.

Generally sales of these utility products are not subject to taxation;⁶⁰ however, where some of the product is sold outside the municipal boundaries, there is a definite split as to whether these outside sales are taxable. On the surface this latter situation appears anomalous. Of the three states (Arkansas, Tennessee, and Texas) which have exempted such sales,⁶¹ two have "exclusive public purpose" statutes. On the other hand, the three jurisdictions (Iowa, Maine and Vermont) which have refused to exempt such sales,⁶² grant exemptions on the basis of "public purpose." Perhaps this apparent contradiction may be explained on the basis of the available water power in these jurisdictions. With the exception of Iowa, those states refusing to grant the exemption have many water sites and each municipality may readily provide for its own needs. Conversely, except for Tennessee, those states which exempt these sales from taxation are relatively arid and do not have such water sites available; hence they must, of necessity, depend on neighboring municipalities for their water supply.

Drainage.

Litigation concerning the taxability of drainage and irrigation districts has occurred in only three jurisdictions. One of these had an "ownership" statute,⁶³ the second an "exclusive public purpose" statute,⁶⁴

Illinois: *Mattoon v. Graham*, 386 Ill. 180, 53 N.E.2d 955 (1944).

Kentucky: *Commonwealth v. Covington*, 128 Ky. 36, 107 S.W. 231 (1908).

Maine: *Boothbay v. Harbor*, 88 A.2d 820 (Me. 1952).

Michigan: *Traverse City v. Blair Township*, 190 Mich. 313, 157 N.W. 81 (1916).

Nebraska: *Omaha v. Douglas County*, 96 Neb. 865, 148 N.W. 938 (1914).

New Hampshire: *Keene v. Roxbury*, 81 N.H. 332, 126 Atl. 7 (1924).

New Jersey: *Perth Amboy v. Barker*, 74 N.J.L. 127, 65 Atl. 201 (Sup. Ct. 1906).

59. *New Jersey:* *Jersey City v. Blum*, 101 N.J.L. 93, 127 Atl. 214 (1925).

60. See note 57 *supra*.

61. *Arkansas:* *Yoes v. Forth Smith*, 207 Ark. 694, 182 S.W.2d 683 (1944).

Tennessee: *Johnson City v. Booth*, 261 S.W.2d 820 (Tenn. 1953).

Texas: *Bryan v. A. & M. Consolidated Ind. School Dist.*, 179 S.W.2d 987 (Tex. Civ. App. 1944).

62. *Iowa:* *Muscatine v. Swickard*, 232 Iowa 1175, 6 N.W.2d 23 (1942).

Maine: *Greaves v. Houlton Water Co.*, 140 Me. 158, 34 A.2d 693 (1943).

Vermont: *Orange v. Barre*, 95 Vt. 267, 115 Atl. 238 (1921).

63. *Missouri:* *State ex rel. Kinder v. Little River Drainage Dist.*, 291 Mo. 267, 236 S.W. 848 (1921).

64. *Arkansas:* *Little Red River Levee Dist. v. Moore*, 197 Ark. 945, 126 S.W.2d 605 (1939).

while in the third jurisdiction the courts utilized a "public purpose" interpretation.⁶⁵ Despite this difference in the standards used in these three jurisdictions, they were unanimous in holding irrigation districts exempt, even though a small income was derived.⁶⁶ Again, these states, Arkansas, Missouri, and Texas, are partially arid, and, since such irrigation districts are definitely fulfilling a public need, the public purpose basis for the decisions may be rationalized.

Public Use in the Future.

If land is held by a municipality which has a general "public purpose" statute and such land is not presently used for a public purpose but there is a definite intention to put such property to a public use in the future, the property is usually exempt from taxation.⁶⁷ However, if there is a profit derived from the land independent of a public use this exemption is not granted.⁶⁸ In a case of this type, Michigan has changed the rule by statute with respect to property of a school district,⁶⁹ and allowed the immunity to continue. Jurisdictions having "exclusive public purpose" statutes refuse to extend the exemption privilege to this situation generally,⁷⁰ but even one of these, Arkansas, has held such property exempt from taxation.⁷¹ In addition, New Jersey, with a general "public purpose" statute, has refused to grant the exemption to land which was given to the city to be used as a public park with a provision that the donor retain exclusive use of the park during his lifetime. The New Jersey court found that the city was the owner of the park and that it definitely was to be devoted to a public use in the future; but it also held that the park was not used for a present public purpose, and, hence, the court refused to grant the exemption to the city.⁷²

Privilege Taxes.

Privilege taxes are those taxes imposed on a municipality by virtue of its having the privilege of carrying on a trade or business under a license

65. *Texas*: Lower Colorado River Authority v. Chemical Bank & Trust Co., 144 Tex. 326, 190 S.W.2d 48 (1945).

66. Little Red River Levee Dist. v. Moore, 197 Ark. 945, 126 S.W.2d 605 (1939); *State ex rel. Kinder v. Little River Drainage Dist.*, 291 Mo. 267, 236 S.W. 848 (1921); Lower Colorado River Authority v. Chemical Bank & Trust Co., 144 Tex. 326, 190 S.W.2d 48 (1945).

67. *Pennsylvania*: Easton v. Koch, 152 Pa. Super. 327, 31 A.2d 747 (1943).

68. *Massachusetts*: Essex v. Salem, 153 Mass. 141, 26 N.E. 431 (1891).

69. *Michigan*: Traverse City v. East Bay Twp., 190 Mich. 327, 157 N.W. 85 (1916).

Michigan: Rural Agricultural School Dist. v. Blondell, 251 Mich. 525, 232 N.W. 377 (1930).

70. *Ohio*: Application of City of Marion, 68 N.E.2d 391 (Ohio 1946); Cincinnati v. Lewis, 66 Ohio St. 49, 63 N.E. 588 (1902).

71. *Arkansas*: Hudgins v. Hot Springs, 168 Ark. 467, 270 S.W. 594 (1925).

72. *New Jersey*: Teaneck Twp. v. Division of Tax Appeals, 10 N.J. Super, 76 A.2d 823 (App. Div. 1950).

or franchise.⁷³ Generally, a municipality is not exempt from privilege taxes;⁷⁴ but such an exemption may be granted by statute.⁷⁵ However, one jurisdiction, Tennessee, by implication treats privilege taxes identically with ad valorem taxes when dealing with municipal property, and grants the exemption to municipally-owned waterworks.⁷⁶

Special Assessments.

An exemption of property of the state, county, or municipality from taxation, does not carry with it an exemption from special assessments for local improvements.⁷⁷ However, the legislature has the power to exempt property from local assessments as well as from general taxation, but this exemption must be clear and unambiguous.⁷⁸

IV.

FEDERAL-LOCAL RELATIONS.

A distinction exists between the tax status of property owned by the federal government and property owned by the individual states. Every activity of the federal government is viewed as governmental in nature and hence enjoys an immunity from state and local taxes, and even from

73. BLACK, LAW DICTIONARY (4th ed. 1951).

74. *Arizona*: Phoenix v. Bowles, 65 Ariz. 315, 180 P.2d 222 (1947); Phoenix v. State, 53 Ariz. 28, 85 P.2d 56 (1938); *Illinois*: Chicago v. Ames, 365 Ill. 529, 7 N.E.2d 294 (1937); *Michigan*: Bay City v. State Board of Tax Administration, 292 Mich. 241, 290 N.W. 395 (1940); *Oklahoma*: City of Ardmore v. Oklahoma Tax Commission, 177 Okla. 210, 58 P.2d 584 (1936); *Washington*: Klickitat County v. Jenner, 15 Wash. 2d 373, 130 P.2d 880 (1942).

75. *E.g.*, IND. ANN. STAT. § 64-942 (Burns 1953); N.M. STAT. ANN. 872-17-4 (1953); N.C. GEN. STAT. § 105-116 (Supp. 1953); TENN. CODE ANN. § 1248.126 (Williams 1952).

76. *Tennessee*: Smith v. Nashville, 88 Tenn. 464, 12 S.W. 924 (1890); Nashville v. Smith, 86 Tenn. 213, 6 S.W. 273 (1887).

77. *Illinois*: South Park Commissioners v. Wood, 270 Ill. 263, 110 N.E. 349 (1915).

Missouri: Kansas City Exposition Driving Park v. Kansas City, 174 Mo. 425, 74 S.W. 979 (1903).

New York: Board of Education of Union Free District v. Town of Greenburgh, 227 N.Y. 193, 13 N.E.2d 768 (1933).

Oklahoma: Blythe v. City of Tulsa, 172 Okla. 586, 46 P.2d 310 (1935).

South Dakota: Whittaker v. Deadwood, 23 S.D. 538, 122 N.W. 590 (1909); 5 McQUILLIN, MUNICIPAL CORPORATIONS § 2212 (2d ed. 1943).

78. *Maryland*: Church Home & Infirmary of City of Baltimore v. Baltimore, 178 Md. 326, 13 A.2d 596 (1940).

Missouri: Kansas City Exposition Driving Park v. Kansas City, 174 Mo. 425, 74 S.W. 979 (1903).

New York: People v. Cummings, 166 N.Y. 110, 59 N.E. 703 (1901); Dyker Meadow Land & Improvement Co. v. Cook, 3 App. Div. 164, 38 N.Y. Supp. 222 (2d Dep't 1896).

Utah: State v. McGonagle, 38 Utah 277, 112 Pac. 401 (1910).

Wisconsin: Lamaseo Realty Co. v. Milwaukee, 242 Wis. 357, 8 N.W.2d 372 (1943); McQUILLIN, MUNICIPAL CORPORATIONS § 2215 (2d ed. 1943).

special assessments.⁷⁹ Frequently, however, the federal government by statute specifically waives this privilege and allows the state to tax the property of federal instrumentalities;⁸⁰ but when property of the state or municipality is the subject of federal taxation a determination is made as to the governmental or proprietary character of the activity. This distinction as to the character of the activity has had a decided effect on state courts in their interpretation of the exemption when dealing with inter-governmental taxation within the state. However, in the recent case of *New York v. United States*,⁸¹ the Supreme Court, while holding that the sale by New York of Saratoga Springs' mineral water was subject to the federal soft drink tax, declared that this governmental versus proprietary formula was no longer acceptable in deciding on state immunity from federal taxation. The court did not propose a new test, but in a dissenting opinion, Justices Black and Douglas indicated, significantly, that they would treat all state activities as governmental and within the immunity privilege in this area of tax exemption. This is especially striking when one considers that action by any unit of government within a state is considered state action for constitutional law purposes.

V.

CONCLUSION.

Since interpretation by the courts is the keystone of both inter-governmental tax immunity and tax immunity among various governmental units within a state, a new formulation of the test used by the Supreme Court in the area of federal-state taxation would no doubt have a decided impact on the scope of tax immunity granted within the states. However, absent any such radical change in the test used by the Supreme Court, which, in any event, would not be binding on the state courts in the area of *intrastate* taxation, it is submitted that the courts will continue to apply the governmental versus proprietary test. The application of this test will depend upon the class of constitutional or statutory provision—namely “ownership,” “exclusive public purpose,” or “public purpose,” and its interpretation by the courts.

Robert P. Garbarino
Joseph R. Glancey

79. *United States v. Allegheny County*, 322 U.S. 174 (1944); *Mullen Benevolent Corp. v. United States*, 290 U.S. 89 (1933); *United States v. Fremont County*, 145 F.2d 329 (10th Cir. 1944), *cert. denied*, 323 U.S. 804 (1945).

80. Aintieau, *Municipal Power to Tax*, 8 VAND. L. REV. 698, 711 (1955).

81. 326 U.S. 572 (1946).