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Quasi-Contractual Obligations of Municipal Corporations

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THE QUASI CONTRACTUAL OBLIGATION OF MUNICIPAL CORPORATIONS.

WE use the term, quasi contract, in deference to writers on the science of jurisprudence and to many authors of works on technical law. Personally we do not like the term at all. The qualifying word *quasi* is too frequently used when one is without an idea and wishes to say something, or has an idea but does not know how to express it. Mr. BISHOP, in his work on Contract Law declines to recognize the term and treats of the obligation intended, under a chapter on contracts created by law.[1]

In *Hertzog* v. *Hertzog*, LAURIE, J., gives three kinds of contracts:

"1. Express contracts, where the terms of the agreement are openly uttered and approved at the time of the making:

"2. Implied contracts, which arise from facts showing mutual intention to contract:

"3. *Constructive contracts,* which are fictions of law adapted to enforce legal duties by actions of contract, where no proper contract exists, express or implied."

We have constructive fraud, constructive trusts, constructive notice, and why not constructive contract, a contractual obligation existing in contemplation of law, in the absence of any agreement express or implied from facts? With this apology we shall use the term *quasi contract* as covering an obligation created by law and enforceable by an action *ex contractu.*

We are not for the present interested in the circumstances which may give rise to this obligation as between individuals; nor as between an individual and a private corporation, or quasi public corporation, so-called, as a railroad or other public utility. In these cases the doctrine of unjust enrichment usually controls. Our inquiry relates to the conditions under which an individual may recover in implied assumpsit for money or property received from him by a municipal corporation and applied to municipal purposes under an invalid express contract—invalid for want of power to make the contract, or by reason of an irregular exercise of power. Does the fact that a municipality has been enriched at the expense of the individual, in such cases, give him a remedy in quasi contract?

The cases upon this subject are truly bewildering, and we shall not attempt to classify or reconcile the many decisions on the sub-

[1] Bishop, Contracts, Chap. VIII.

[2] (1857) 29 Pa. St. 465.

ject.[3] The task is hopeless, but it may be of interest to observe the recent tendencies of our courts in relation to the quasi contractual obligation of municipal corporations and we may then form some conclusions as to the law on the subject in some jurisdictions. The courts have considerably modified their views on the question involved, during the past thirty years, and to an extent that renders a recovery in quasi contract against municipal corporations very doubtful. The question generally arises in an action for money had and received, or for labor and material furnished.

1. LIABILITY FOR MONEY HAD AND RECEIVED.—At first the courts were inclined to apply the remedy in implied assumpsit as freely against municipalities as against private corporations. In *Pimental* v. *City of San Francisco*,[4] the city had received the plaintiff's money on a void sale of property and had appropriated the money to city purposes. FIELD, C. J., in allowing recovery, said: The facts "show an appropriation of the proceeds, and the liability of the city arises from the use of the moneys, or her refusal to refund them after their receipt. The city is not exempted from the common obligation to do justice, which binds individuals. Such obligation rests upon all persons, whether natural or artificial. If the city obtain the money of another by mistake, or without authority of law, it is her duty to refund it, from this general obligation. If she obtain other property, which does not belong to her, it is her duty to restore it, or if used, to render an equivalent therefor, from the like obligation. (*Argenti* v. *San Francisco*, 16 Cal. 256, 282.) The legal liability springs from the moral duty to make restitution. And we do not appreciate the morality which denies in such cases any rights to the individual whose money or other property has been thus appropriated. The law countenances no such wretched ethics; its command always is to do justice."

The doctrine of this case has been frequently followed.[5]

In *Long* v. *Lemoyne Borough*,[6] the statute required that the resolution of the borough council, authorizing the borrowing of money for municipal purposes and the giving a note therefor, must be presented to the chief burgess for his approval and signature. Money was borrowed of plaintiff by the council and a note given therefor, but the resolution authorizing the borrowing of money was not

[3] For an attempt to classify the cases under suggested principles of distinction, see 4 Col. L. Rev. 67; 17 Harv L. Rev. 343; 28 Cyc. 667, et seq.

[4] (1863) 21 Cal. 361, quoted approvingly in Clark v. Salina County, 9 Neb. 516; Chapman v. County of Douglas, 107 U. S. 357.

[5] Elliott, Corporations, § 292.

[6] (1908), 222 Pa. St. 311.

presented to the chief burgess for his approval, nor did he sign the resolution. It was held, in an action on the note given, that the approval of the resolution by the chief burgess was a condition precedent to the right to borrow money and that the note was therefore void; but, said the court: "While we are compelled to so hold, the borough will gain nothing by our reversal of the court below. Though the bank cannot recover on the judgment note given to it, because the attempt to do so is an attempt to enforce an express contract which no one had been properly authorized to execute on behalf of the borough, there is an implied obligation resting upon the municipality to pay back what was lent to it in good faith."[7]

In *Luther* v. *Wheeler*,[8] municipal officers, having no authority to do so, borrowed money for the purpose of building a town hall, market and guard house and gave the note of the town for the money borrowed. It was held that the note was void, but that the holder might recover of the municipality, as money had and received, the amount received and actually used for necessary municipal purposes. Mr. Justice WOODS based his decision on: 1. The money was expended for a municipal purpose impliedly authorized by the charter. 2. The town received full benefit of the entire amount expended. 3. The parties concerned in the transaction acted under the belief that the loan was temporary only and that the loan would be paid from the regular income of the town for the current fiscal year. The fact that they were mistaken in this belief did not relieve the town of its liability to the plaintiff.

The majority of the more recent decisions, however, incline to a denial of the right to recover for money had and received by the city without a compliance with the statutory conditions of incurring liability; the courts holding that constitutional or statutory limitations cannot be invaded through the equitable action of implied assumpsit.[9]

Two typical cases may be considered. In *Agawam National Bank* v. *South Hadley*,[10] the treasurer of the defendant town borrowed of plaintiff bank $2000 and applied the same in paying debts due from the town. The statute provided that no debts should be incurred by the town for borrowed money except on vote of two-thirds of the electors at town meeting. It was considered that this limitation on power was to protect the town from extravagance of its officers

[7] See Paul v. City of Kenosha, 22 Wis. 256.

[8] 73 S. C. 83, 4 L. R. A. (N. S.) 746.

[9] Whiteside v. U. S., 93 U. S. 247; Geer 1. School District, 111 Fed. 682; Burgin v. Smith (1909), 151 N. C. 561; Litchfield v. Ballou, 114 U. S. 190.

[10] (1880), 128 Mass. 503.

and that the limitation should not be evaded by allowing a recovery in implied assumpsit for money had and received.

In *McCurdy* v. *Shiawassee County*,[11] by resolution of the Board of Supervisors of the defendant County, the County Treasurer was authorized to borrow for necessary expenses, the sum of $10,000. The money was borrowed of the plaintiff and notes given therefor. The giving of the notes was approved by the Board and interest paid on them from time to time. The money received from plaintiff was paid into the contingent fund of the county. In an action by the plaintiff against the county, it was held that the plaintiff could not recover on the notes for the reason that, under the law, the county had no power to borrow money, except on vote of the electors of the county at an election called for that purpose. The lower court held that the notes were void, but that the plaintiff could recover the money loaned on a count for money had and received, saying: "In many similar cases the highest courts of the States and Nation have held, in effect, that the money of the individual cannot be appropriated to the use of municipal corporations and the true owner thereof be without remedy merely because the original contract, under which the money was obtained, was made without authority of law." (Citing many cases.) "From the foregoing I reach the conclusion that the plaintiff is entitled to recovery upon the equitable count for money had and received."

In the Supreme Court the judgment was reversed. The prevailing opinion, by McALVAY, J., is to the effect that no recovery can be had against the county upon equitable grounds, as for money had and received, for money borrowed by the Board of Supervisors without authority of law; *especially in a case where it is not made to appear that the county has actually used the money for authorized corporate purposes;* and that fact did not appear in this case. The judgment, on its face, seems somewhat severe, but the facts show that the advisability of borrowing money to take up this loan had been submitted to the voters of the county two or three times and for some reason the electors had voted against it. The key of the decision is found in these words of the court: "The facts in this case do not indicate that it would be inequitable to deny relief." This leaves very little law for discussion as the action for money had and received can be supported only on equitable grounds.

In speaking of other Michigan cases on which a recovery had been allowed against a municipality, McALVAY, J., said: "In these cases, except *Thomas* v. *City of Port Huron*, the thing done had been, to

[11] (1908), 154 Mich. 550.

a certain extent, authorized, or something had been sold, or property was exchanged by the municipality. In the case at bar an ordinary loan of money was made to the county. It was without authority of law. Of the illegality of the transaction and the disability of defendant, the plaintiff is presumed to have had knowledge."

The opinion of OSTRANDER, J., concurring in the result, goes somewhat farther and holds that no recovery could be had in this case in any event. He said: "And if it appeared that the money borrowed from the plaintiff was lawfully disbursed for current expenses of the county, the decision must still be against the plaintiff. Some statements of the judges, unnecessary to the decision, aside the decisions of this court, have, with a single exception, recognized and enforced rules which deny, as between the municipality and an individual dealing with it, any remedy for municipal default in cases where the power to deal at all is lacking, as well as in cases where express statutory restrictions upon the manner of dealing have been ignored."

The case of *Allen* v. *LaFayette*,[12] is frequently cited in support of a recovery for money had and received where a municipality has borrowed money without authority. The municipal officers of LaFayette purchased, under acknowledged statutory authority, a college building and grounds, and paid for the same with money borrowed from a Mrs. Frederick for which they gave her city warrants. In a suit by the tax payers to enjoin payment of said warrants it was decided that the money was borrowed without authority and that the warrants were void; but that the court would not enjoin their payment for the reason that the city had received the money so borrowed and had applied it to a corporate purpose, and that Mrs. Frederick had an equitable right to a return of the money loaned. This case is easily distinguishable from the Shiawassee County Case, supra, in that here the money was actually applied to a corporate purpose and Mrs. Frederick and the authorities acted in the utmost good faith; whereas, in the Shiawassee County case the court inclines to the view that the borrowing of money from the plaintiff was, at the beginning, part of a scheme to evade the constitutional provision prohibiting the county from borrowing money for certain purposes and above a certain amount "unless authorized by a majority of the electors of said county voting thereon," and that this evasion was to be accomplished through the action for money had and received. This fact rendered the plaintiff's case hopeless

[12] (1889), 89 Ala. 641.

and strips the judgment of some of its weight as authority in cases where real equities exist.[13]

It must be conceded, however, that the tendency of recent decisions is to deny recovery against a municipality in implied assumpsit for money borrowed unless authority to borrow is expressly given or is necessarily implied, and the fact alone that the moneys borrowed are devoted to corporate purposes will not justify a recovery. The liability of municipalities to bona fide purchasers of municipal securities, valid on their face, is not within the purview of this discussion.

II. LIABILITY FOR LABOR AND MATERIAL FURNISHED.—The reasons for denying a recovery against a municipal corporation on an implied assumpsit for money borrowed without authority, and the distinction between the power to borrow money and the power to become indebted, is clearly stated by SELDEN, J., in *Ketchum,* v. *The City of Buffalo,*[14] as follows: "If the power of the corporation to use its credit is limited to contracting directly for the accomplishment of the object authorized by law, then the avails or consideration of the debt created cannot be diverted to any illegitimate purpose. The contract not only creates the fund, but secures its just appropriation. On the contrary, if the money may be borrowed, the corporation will be liable to repay it, although not a cent may ever be applied to the object for which it was avowedly obtained. It may be borrowed to build a market and appropriated to build a theatre, and yet the corporation would be responsible for the debt. The lender is in no way accountable for the use made of the money. It is plain, therefore, that if the policy of limiting the powers and expenditures of corporations to the objects contemplated by their charters is to be carried out, their right to incur debts for those objects must be strictly confined to contracts which tend to their direct accomplishment. If they may procure the requisite funds by the indirect method of borrowing, they may resort to any other indirect mode of obtaining them, such as establishing some profitable branch of trade, entering into commercial enterprises, etc., the avowed object being to obtain the means necessary to accomplish some authorized purpose."

These reasons when given seemed reasonable, but the experience of the past few years has satisfied many courts that favoritism and extravagance on the part of city officials call for limiting, rather than extending, the remedy of quantum meruit.

In *Nelson* v. *Mayor,*[15] plaintiff sought to recover on the quantum

[13] See Frankfort v. Schmid, 155 Mich. 313.
[14] 14 N. Y. 356, 366.
[15] 63 N. Y. 535.

meruit for sewer drain pipes, etc., furnished the city under a void contract. The court followed the equitable doctrine early announced by Chief Justice FIELD in *Argenti* v. *San Francisco*.[16] RAPALLO, J., said in the Nelson case: "It does not follow, however, that though the contract be void the plaintiff would be entirely without remedy. If, as alleged, the city has obtained his property without authority, but has used it and received the avails of it, it would seem that, independently of the express contract, an implied obligation would arise to make compensation. (Citing *Argenti* v. *San Francisco* approvingly.) * * * If the city obtain money of another by mistake or without authority of law, it is her duty to refund it, not from any contract entered into by her on the subject, but from the general obligation to do justice which binds all persons, whether natural or artificial. If the city obtain other property which does not belong to her, it is her duty to restore it, or if used by her to render an equivalent to the true owner."

The doctrine of this case came before the same court in the case of *McDonald* v. *Mayor*,[17] so frequently cited approvingly that it may be regarded as a leading case. It distinguishes the case of *Nelson* v. *Mayor* in that in the latter case the city had not only obtained the property of plaintiff under a void contract, *but had collected the value of it from the property owners by means of assessments*. The general doctrine of that case is disapproved of, and the court held that "where the municipal charter prohibits its officers from contracting on its behalf for the purchase of materials, save in cases and in a manner specified, the municipality is neither liable upon a contract made by an official in violation of, or without a compliance with, the requirements of the charter, nor can the value of materials furnished under the contract be recovered upon any implied liability."

In the McDonald case plaintiff had delivered to the Superintendent of Streets stone and gravel which were used in repairing the streets of the city. The plaintiff believed that the Superintendent had authority to contract for the same; but the necessity for the purchase or the use of the material was not certified to by the head of the Department of Public Works, nor was the expenditure authorized by the common council, nor was a contract entered into with the lowest bidder after publication of a notice inviting proposals, as was provided by the charter, in this case. The court decided that the plaintiff was not entitled to recover on implied assumpsit. FOLGER, J., in delivering the opinion of the court said: "It is plain, that if the restriction put upon municipalities by the legislature, for

[16] 16 Cal. 256.
[17] 68 N. Y. 23.

the purposes of reducing and limiting the incurring of debt and the expenditure of the public money, may be removed, upon the doctrine now contended for, there is no legislative remedy for the evils of municipal government, which of late have excited so much attention and painful foreboding. Restrictions and inhibition by statute are practically of no avail, if they can be brought to naught by the unauthorized action of every official of lowest degree, acquiesced in, or not repudiated by, his superiors. * * * Its purpose is to forbid and prevent the making of contracts by unauthorized official agents, for supplies for the use of the corporation. This opinion goes no further than to hold, that where a person makes a contract with the city of New York for supplies to it, without the requirements of the charter being observed, he may not recover the value thereof upon an implied liability."

It is believed that this opinion is in accord with authority at this time, and has had salutary effect in protecting tax payers from the extravagance of irresponsible city officials.[18]

The law in Michigan on the right of an individual to recover on the quantum meruit for benefits conferred, by way of labor and material, upon municipalities, under a void contract, is somewhat disturbed by the two decisions handed down in the Shiawassee County case (supra). Previous to that case a recovery in implied assumpsit had been frequently allowed, although the decisions had been somewhat in conflict.

In *Peterson* v. *City of Ionia,*[19] it was decided that "Where the common council of a city under due authority let a contract for the improvement of a street, and later, without observing the formalities required by the charter, employed the contractor to raise the grade of the street two feet higher than his original contract provided, and the work was performed as agreed, the city is liable for the additional work."

The formality required by the charter in this case was that the Superintendent of Streets should advertise for bids for making such improvements and the contract should be given to the lowest bid acceptable to the council. The contract was let to plaintiff without this formality being taken. Counsel for plaintiff, seeking to recover on the quantum meruit, urged that as the city had taken the benefit of the improvement, the defense of ultra vires was inequitable and unjust and could not be successfully urged. This contention was allowed by the court, and it was decided that the city, having re-

[18] See Appleton Water Works Co. v. Appleton (1907), 132 Wis. 570; Highland v. Michie (Ky.), 107 S. W. 216.

[19] (1908), 152 Mich. 678.

ceived the benefit, the plaintiff should have his right to recover. In the opinion handed down by OSTRANDER, J., in the Shiawassee case, supra, MONTGOMERY and HOOKER, JJ., concurring it was said: "That when a municipality is forbidden to execute public works, except under contracts with the lowest bidder, there can be no recovery, as upon an implied contract, for work done for the benefit of the municipality. * * * The decision in *Peterson* v. *City of Ionia,* clearly lays down an opposed rule and has the effect of overruling, without expressly so announcing, a large number of previous decisions. I think *Peterson* v. *City of Ionia* should be now expressly overruled."

While the majority of the court did not concur in this opinion, nevertheless the judgment in the Shiawassee County case indicates that liability for benefits received can not arise as against a municipality or be enforced through an implied assumpsit unless the statutory or charter provisions which may be fairly regarded as conditions precedent to the incurring of such liability, have been substantially complied with. Municipal officers have not the power to waive compliance with the provisions and they ought not to be evaded by allowing a recovery in implied assumpsit.

There is, however, a recent case in Nebraska in accord with the Peterson case. In *Nebraska Bitulithic Company* v. *Omaha,*[20] the action was on the quantum meruit for labor and material furnished under a contract with the city which was void because of the failure to advertise for bids as required by the charter. The court decided that the city had the power to repair its streets, and that although the power had been irregularly exercised, the plaintiff could recover the fair and reasonable value of the use of plaintiff's plant in performing the work; citing many Nebraska cases. It is not thought that this decision can be in accord with the more recent decisions in similar cases.

In Bartlett v. *Lowell,*[21] plaintiff had furnished the City of Lowell a quantity of gravel to be used on its public streets under contract with the Superintendent of Streets. The Superintendent had no authority to make the contract; the authority to purchase supplies being given by statute to the chief of the department, subject to the approval of the mayor. The gravel was placed upon the streets and the city had the benefit. In an action to recover its value it was decided that the plaintiff was conclusively presumed to know the Superintendent's want of power to make the contract, and the court disallowed the contention that the defendant having had the benefit of

[20] (1909), 84 Neb. 375.
[21] (1909), 201 Mass 151, 155.

the plaintiff's property should pay the reasonable value thereof. The court said: "If the court were to adopt that result it would be putting the seal of the law upon a plain evasion of St. 1896, c. 415, Sec. 3; and if that be law all statutes imposing limitations upon the creation of municipal indebtedness can be evaded by a person, who is not a contractor, delivering personal property, and after that property has been used so that it cannot be restored, claiming to be paid the reasonable value of it."

III. LEGISLATIVE PROHIBITION OF THE QUASI CONTRACTUAL OBLIGATION.—Most states regulate the making of municipal contracts by prescribing the manner and form, thus leaving open the question of liability on implied assumpsit. A few states, however, have gone further. The most striking example is found in the law of the State of Ohio. In 1876 the Legislature of Ohio enacted a statute providing how and by whom municipal contracts should be made, and providing further "the power or authority to make a contract, agreement or obligation to bind the corporation, or to make an appropriation, shall not be delegated; and every contract, agreement, or obligation, and every appropriation of moneys made contrary to the provisions of this section shall be void as against the corporation, but binding on the person or persons making it."

For several years after the enactment of this statute the Supreme Court of the state had allowed the recovery against municipalities upon implied assumpsit. In *City of Wellston* v. *Morgan*,[22] the entire subject of implied liability of municipal corporations under this statute came before the court. Plaintiff's assignor had furnished gas for lighting streets, etc., to the defendant municipality under a void contract. A recovery was sought on the quantum meruit for the gas used by the city. The statute above referred to was relied upon as a defence to the action. The court held that under this statute no recovery whatever could be had against a municipality in Ohio upon an implied assumpsit, in cases where the statute applied. The court said: "There can, therefore, be no implied contract, agreement or obligation, against a municipality, and no implied liability, but all liability, ex contractu, must be express, and be entered into by ordinance or resolution of the council. * * * A strict adherence to the provisions of the restrictive statutes of the state will be for the general good; and it devolves upon those who deal with public officers, to see for themselves that the statutes have been complied with. * * * There being no implied municipal liability in cases ex contractu, under our restrictive statutes, it follows that to

[22] (1901), 65 Oh. St. 219.

state a good cause of action against a municipality in such cases, the petition must declare upon a contract, agreement, obligation, or appropriation made and entered into according to statute. A petition on an account merely, or quantum meruit, in such cases, is not sufficient."

The statutes of some states require contracts with municipalities for public works to be reduced to writing, the consideration to be expressed therein, and the writing to be signed by the parties before the work is undertaken. Such is the statute of the State of Missouri. This statute came before the court for construction in *Cook & Son* v. *City of Cameron*.[23] Plaintiff had entered into a written contract, complete in every detail, with the defendant, to construct a municipal water works system for the city. During the progress of the work it became necessary to change the route of the system at an extra cost of about $1,000. This change was approved by the city engineer with power to do so. His action was approved by the city council by resolution. After the work had been completed the city council accepted it by ordinance and acknowledged plaintiff's claim for extra compensation. In a suit to recover this extra compensation the court held that this contract for extra compensation was void by the express terms of the statute because it was not reduced to writing, and signed by the parties, and that there could be no recovery on an implied assumpsit based on benefits received. It was conceded that there was an inherent power in the corporation to make the contract, but the statute had provided that the power could be exercised only through a written contract, and that it could not be exercised otherwise. The court said: "It is, however, clear that, if the statute forbidding public bodies from entering into contracts, except in writing, is to have any effective enforcement, it will be necessary to deny the right of recovery for the value of services rendered on the ground of any implied undertaking." Plaintiff was not allowed to recover.

Of these last two cases we are inclined to say that it may be true that the legislature has the power to abolish all remedy upon implied assumpsit as against a municipality, but the wisdom and justice of doing so present quite a different question. It is said that the people must be protected against the extravagance and corruption of the officers they have elected to represent them; that the people must not be burdened with taxes imposed through the conduct of unworthy officials. The people selected them and why should not the people bear some portion of responsibility for their misconduct?

[23] (1910), 128 S. W. 269.

Why should the entire burden be cast upon the individual dealing in good faith with the corporation through its accredited agents? Would it not be well that the electors and tax payers feel that through the power of taxation they might be held responsible in some way at least for the misconduct of their agents, agents of their own selection? Perhaps this sense of responsibility in the electors might improve our municipal government. Courts ought not to be expected to right the evils in municipal government by rendering unrighteous judgments. The remedy is with the people. They should elect better servants.

That the breach of an express contract, invalid for want of form or substance, cannot give a right of action on the contract may be conceded; but in the cases last above referred to it is held in substance and effect that even where the municipality has the power to make the contract in question—in fact not only has the power but is burdened with the duty to do so—and the contract is made by and with the sanction of the officers and boards having full authority in the matter, and the contract is carried out in good faith by both parties except as to payment by the municipality for the benefits received, there can be no recovery in implied assumpsit because the contract was not reduced to writing and signed by the parties as required by statute. This is making the evidence of a thing of more importance than the thing itself. Under the Statute of Frauds the writing required is not the contract, but only the evidence of it. A breach of an oral contract coming under its provisions will not give a right of action, but if it has been carried out in whole or in part, a recovery may be had for the reasonable value of the benefits received under it. No such remedy, it is said, can be allowed against a municipality under an oral contract required by statute to be reduced to writing, even though the contract was made by the proper authorities, with full power to make it, and has been fully performed, and the municipality has received the full benefit contracted for. We do not believe any statute has been passed that calls for such a construction, or that any legislature contemplated any such inequitable result. Judicial legislation, if you choose to call it such, is certain to modify and lessen the severity of some of the decisions on this subject. The stand of the courts against any attempt to evade statutory requirements, in municipal contracts in matters substantial, has resulted in great good, but in some cases this has been carried so far that it would be well to hark back to the words of Chief Justice FIELD in *Pimental* v. *City of San Francisco* (supra).

Independent of any personal views, it may be conceded that the

remedy in quasi contract, as against municipalities, is subject to several limitations.

First. A municipality cannot be required to pay for benefits received under a contract that it had not the power to make. If it cannot make an express contract in relation to the subject matter, then no contract can be implied.

Second. An individual contracts with a municipality at his peril. He is conclusively presumed to know the limitations upon its power and upon the authority of its officers in making the contract.

Third. A municipality cannot be held liable for borrowed money unless the power to borrow money is expressly given by statute, or necessarily implied.

Fourth. Where the statute provides that a municipal contract must be made only on the taking of some steps which may fairly be regarded as conditions precedent to the incurring of liability; as on the vote of electors, or on the approval of some officer or committee, or on advertising for bids, then in case an express contract is made without these conditions precedent being complied with, the contract is void; and the fact that the municipality has received benefits under it and the other party has sustained loss does not give a remedy in quasi contract for the benefits received. To allow a recovery in such a case would sanction an evasion, if not a violation, of statutes passed to protect the public from recklessness and extravagance in public officials.

Fifth. Where a municipality has received money or other property of another under a contract that it is without power to make and has such property in its possession, it may be compelled to refund or restore the same; but if the money has been expended, or the property devoted to municipal purposes, then, as a rule, no recovery involving an increase in taxation can be had.

Sixth. When the statute expressly prohibits the enforcing of an implied obligation against a municipality in relation to a subject matter, then there is no remedy in quasi contract.

Seventh. Some courts have held that where the statute provides that certain contracts of a municipality shall be void unless reduced to writing and signed by the parties, there can be no recovery on express or implied assumpsit for benefits received by the municipality under any circumstances, unless the contract has been reduced to writing. Perhaps this is correct?

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