Buffalo Law Review

Volume 7 | Number 1 Article 86

10-1-1957

Municipal Corporations—Local Bill—Unconstitutional

Richard O. Robinson

operators] are part of the Naval Research Laboratory's plans for the tracking of earth satellites."[27] The writer submits that the erection of such towers as petitioner proposed is a matter in the best public interest.

Local Bill—Unconstitutional

In order to petition a village board to annex an adjacent territory, the majority of the voters, or a majority in value of the property owners therein, must secure written consent of the town board.[28] However the board is allowed to hear only certain objections, all of which pertain to the qualifications of the signers of the petitions and the regularity of the petition itself. Then, after determining whether section 348 of the Village Law has been complied with, they must execute their consent.[29]

In *Cutler v. Herman*,[30] a recent amendment to the Nassau County Civil Division Act[31] which attempted to revise this procedure was struck down as violative of the constitutional prohibition against passing local laws incorporating villages.[32] By this statute the petition would be made to the county board, with the consent of the village board, and the county might reject it if they determine that the annexation would not be in the public interest. Since the Village Law has been held to form the charter of all villages organized under it,[33] this act necessarily affects the incorporating of villages.[34]

The distinction between general and local laws rests on the effect of the acts rather than their terms.[35] For the act to be considered general it may only be necessary that the legislature make the statute applicable to a "class" which it creates so long as it relates to some special situation or conditions peculiar to that class, rather than merely to designate and identify the place or persons to be affected.[36]

In the instant case, the class, which consisted of those villages in Nassau County, may not have been so small as to negative the possibility of the creation of a general law relating to special problems therein, however the Court makes

27. See *State v. Wieland*, 269 Wis. 262, 69 N.W.2d 217 (1955) where the court held as a valid exercise of the police power an ordinance requiring a finding by the village building board that the exterior architectural appeal and functioning plans of a building would not be different than others in the area.
28. N.Y. VILLAGE LAW §348.
29. *Id.* §348(3).
30. 3 N.Y.2d 334, 165 N.Y.S.2d 449 (1957).
31. N.Y. Sess. Laws 1954, c. 818.
32. N.Y. CONST. art. III, §17.
33. Abell v. Clarkson, 237 N.Y. 85, 142 N.E. 360 (1923).
34. Magrum v. Williamsville, 241 App. Div. 55, 271 N.Y. Supp. 472 (4th Dep't 1934).
35. Matter of Henneberger, 155 N.Y. 420, 50 N.E. 61 (1898).
36. Farrington v. Pickney, 1 N.Y.2d 74, 150 N.Y.S.2d 585 (1956).

clear that the only basis shown for the classification was that of locality,[37] in view of which the constitution must be said to have been directly violated.[38]

Covenants Running With The Land—Town Law

An action involving the Town of Hempstead concerned the right of the town to accept land for park purposes subject to a covenant running with the land that the park should be for the exclusive use of the surrounding landowners. The action arose upon an attempt by the landowners to restrain the town from extending the park district into another area in violation of the restrictive covenant running with the land. The lower court[39] granted the injunction, interpreting section 64, subdivision 8, of the Town Law, which allows towns to accept grants of property "for any public use upon such terms and conditions as may be prescribed by the grantor . . .," to allow any restrictions to be placed on a gift which were not violative of law or public policy. This reading, which was rejected by the Court of Appeals,[40] would be to view the phrase beginning with the word "upon" as being in the alternative to the words "public use" rather than complementary to them, a result which has been implicitly rejected in the cases.[41]

The Court of Appeals[42] rested its decision on a broader ground, in dismissing the complaint, since the covenant would in effect abrogate the statutory power of the town to enlarge its park districts[43] or to sell the property and apply the proceeds toward the purchase of other park property.[44] Such an agreement is itself beyond the power of the town to ratify.

In this, the Court is following the majority view that a municipality may not contract away, or make contracts which will embarrass or hinder those powers granted to it by the state, unless the legislature has so provided.[45] Generally the reason for the rule is stated simply that such an act is ultra vires,[46] while the United States Supreme Court has laid it to the general proposition that municipal

37. 3 N.Y.2d at 338, 165 N.Y.S.2d at 451.
38. See Stapleton v. Pickney, 393 N.Y. 330, 57 N.E.2d (1944).
39. Atlantic Beach Property Owners' Association v. Town of Hempstead, 142 N.Y.S.2d 496 (Sup. Ct. 1955).
40. Atlantic Beach Property Owners' Association v. Town of Hempstead, 3 N.Y.2d 434, 165 N.Y.S.2d 737 (1957).
41. Parfitt v. Furguson, 159 N.Y. 111, 53 N.E. 707 (1899); Belden v. City of Niagara Falls, 230 App. Div. 601, 259 N.Y.Supp. 510 (4th Dep't 1930).
42. See note 40 *supra*.
43. N.Y. TOWN LAW §§190-194.
44. *Id.* §198.
45. Gardner v. City of Dallas, 81 F.2d 425 (5th Cir. 1936); Wills v. Los Angeles, 209 Cal. 448, 287 Pac. 962 (1930).
46. Belden v. City of Niagara Falls, *supra* note 44.