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Municipal Corporations—Home Rule

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referee's report was not binding, but merely "to inform the conscience of the court."[36]

Home Rule

The New York Constitution expressly prohibits the Legislature from passing any law in relation to the "property, affairs or government" of cities, except by general law which in terms and effect apply alike to all cities or by special request of the particular city.[37] The purpose of these so-called home rule provisions is to prevent special pork-barrel legislation and undue rural influence in respect to cities.[38] As to just what acts constitute such infringement upon the "property, affairs or government" of cities has been a constant source of litigation. *Adler v. Deegan*[39] is the leading case in New York, stating that "property, affairs or government" are words of art, defined not by the common meaning of the words, but as defined by the Court of Appeals. In 1953 the Legislature authorized New York City to turn over its transit facilities to the New York City Transit Authority if the city would comply with certain conditions.[40] Favorable tax provisions would thereby accrue to New York City. A taxpayer's action was brought in *Salzman v. Impellitteri*[41] to enjoin the city from this legislatively authorized transaction and a declaratory judgment was sought as to the constitutionality of the transaction. The Court of Appeals held, per curiam, that "the statutes in question are permissive only,[42] in a field in which the State is concerned[43] . . . and assuming that any transfer will not be by absolute conveyance, but by a lease of limited term with reversion to the city,[44] we cannot say that the legislation is on its face unconstitutional." Judge Dye dissented on the ground that New York City's straightened tax structure made any choice purely illusory, that the legislation deals solely with a proprietory interest of New York City and is thus in violation of the constitutional home-rule provisions.

36. The instant case citing *Bannon v. Bannon*, 270 N. Y. 484, 493, 1 N. E. 2d 975, 979 (1936).

37. NEW YORK CONST. Art. IX, § 11.

38. 1 MCQUILLAN, MUNICIPAL CORPORATIONS § 1.93 (3d ed. 1949); FORDHAM, LOCAL GOVERNMENT LAW 74-79 (1st ed. 1949).

39. 251 N. Y. 467, 167 N. E. 705 (1929).

40. L. 1953, cc. 200-208.

41. 305 N. Y. 414, 113 N. E. 2d 543 (1953).

42. For analogous case of permissive federal legislation not impinging upon state sovereignty see *Massachusetts v. Mellon*, 262 U. S. 447 (1923).

43. *Matter of McAneny v. Board of Estimate*, 232 N. Y. 377, 134 N. E. 187 (1922) held that the New York City transportation system was a matter of state concern and the legislature may therefore act under the police power.

44. N. Y. Const. Art. VIII, § 1 prohibits a city from giving or loaning its credit to a public or private corporation. The transit authority would be a public corporation. GEN. CORP. LAW §§ 2, 3. *Deady v. Lyons*, 39 App. Div. 139, 57 N. Y. Supp. 448 (4th Dep't 1899) held that a village could not give funds for repair of a county courthouse because this would be a gift to a public corporation.