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Notes on Recent Cases

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NOTES ON RECENT CASES

CONSTITUTIONAL LAW—Due Process of Law.—Validity of Building line Restriction in Zoning Ordinance. Pursuant to statutory authority, the City of Pittsburgh passed a zoning ordinance providing, *inter alia*, that in all of the districts set aside for residential purposes "there shall be a front yard having a depth of not less than fifteen feet. (b) When the front wall of 80 per cent of all the buildings on one side of the street between two intersecting streets have been kept back from the street line, no building hereafter erected or altered shall be placed nearer to the street line than the distance established by the majority of the 80 per cent, at the time of the passage of this Act; provided that this regulation shall not be interpreted to reduce the buildable width of a corner lot facing on an intersecting street, of record, at the time of the passage of this ordinance, to less than twenty-five feet."

The appellant enclosed a porch, converting it into a room, thus violating the above section of the zoning ordinance. The city officials ordered the structure to be removed. On an appeal taken from a judgment in the Court of Common Pleas in favor of the city, the superior court reversed the judgment, and the Supreme Court affirmed the decision of the Superior Court. The reason for the decision was that the section of the ordinance violated was unconstitutional, as being opposed to the Fourteenth Amendment. The taking of land under this part of the ordinance does not constitute due process of law, and cannot be justified as a legitimate exercise of the police power of the State. *Held* also, the discrimination was unjust. *Appeal of White et al.*, (Supr. Ct. of Pa., 1926) 134 Atl. 409.

The Supreme Court of the United States has recently upheld the validity of general zoning ordinances which divide the city into districts, and regulate the land and buildings in each district. *Village of Euclid et al. v. Ambler Realty Co.*, (1926) 47 Sup. Ct. 114. And many States are in accord. *Opinion of Justices* (Mass.) 127 N. E. 525; *Inspector of Buildings of Lowell v. Stoklosa,* 145 N. E. 262;

Spector v. Building Inspector of Milton, 145 N. E. 265; *State v. City of New Orleans,* 97 So. 440; *Lincoln Trust Co. v. Williams Building Corporation,* 128 N. E. 209; *City of Aurora v. Burns,* 149 N. E. 784; *Deynzer v. City of Evanston,* 149 N. E. 790; *State ex rel. Carter v. Harper,* 196 N. W. 451; *Ware v. City of Wichita,* 214 Pac. 99; *City of Providence v. Stephens,* 33 Atl. 614; *Miller v. Board of Public Works,* 234 Pac. 381. *Contra*: *Goldman v. Crowthers,* 128 Atl. 50; *Ignaciunus v. Risley,* 121 Atl. 783; *Spann v. City of Dallas,* 234 S. W. 513, 19 A. L. R. 1387.

In *Village of Euclid v. Ambler Realty Company, supra,* it was held also that when a zoning ordinance is attacked in a broad sense, the Court will not determine the constitutionality of minor provisions which if attacked separately might be held unconstitutional.

Ordinances providing for the establishment of building lines have been repeatedly held to be unconstitutional. A leading case on this point is *Ewbank v. City of Richmond,* 226 U. S. 137. In this case the United States Supreme Court held that an ordinance which declared, "that whenever the owners of two-thirds of property abutting on any street shall in writing request the Committee on Streets to establish a building line on the side of the square on which their property fronts the said Committee shall establish such line so that the same shall not be less than five feet more than thirty feet from the street line", was unconstitutional as a violation of the Fourteenth Amendment, and that it could not be justified under the police power because it did not promote the health, morals or general welfare of the public. The purpose would be merely aesthetic. Accord: *St. Louis v. Hill,* 22 S. W. 861; *Byrnes v. Riverton,* 44 Atl. 857; *People ex rel Dilzer v. Calder,* 85 N. Y. Supp. 1015.

There is a tendency now in some courts to consider aesthetic reasons sufficient to put laws within the scope of the police power. The billboard cases furnish an excellent example of this tendency. Most of the cases prior to 1911 held that billboard regulations were not a valid exercise of the police power. They were said to be based upon aesthetic reasons alone, and were thought to strain the original idea of the police power a little too much. *Passaic v. Paterson Bill Posting Company,* 64 Atl. 227; *People ex rel Wineburgh Advertising Company v. Murphy,* 29 App.

Div. (N. Y.) 260. Later cases, however, have upheld billboard regulations as a legitimate exercise of police power, although the courts did not expressly approve aesthetic considerations. Thus, in *St. Louis Gunning Co. v. St. Louis,* 144 S. W. 1099, the court said: "Signboards upon which advertisements were placed are a constant menace to the public safety and welfare of the city; they endanger public health, promote immorality, constitute hiding places and retreats for criminals and all classes of miscreants." Evidently the court did not realize that most structures are just as liable to shield "criminals and miscreants". See, for a comparison of cases on Billboard Regulations and Zoning Ordinances, "Aesthetic Zoning Regulations" in XXV Mich. Law Rev. 124; also 34 L. R. A. (N. S.) 998 note. It seems probable that if there develop sufficient public demand for ordinances based upon aesthetic motives, the courts will construe such ordinances to be a necessary regulation within the police power. Modern tribunals seem loath to invalidate majority opinions.

P. L.

CONSTITUTIONAL LAW—Power of the Senate and House to compel private individual to appear and give testimony. —The Senate and House passed a resolution authorizing and directing a committee of five senators to investigate and report facts concerning charges brought to their attention of misfeasance and nonfeasance in the Department of Justice while Harry Daugherty held the office of Attorney General. The purpose of the investigation was to afford Congress information to aid it in serving Mal Daugherty, a brother of Harry, with process commanding him to appear before it to give testimony relating to the charges under investigation. He failed to comply and the Senate adopted a resolution directing that process be issued compelling him to appear before the Senate to answer questions pertinent to the investigation. A deputy sergeant at arms took Daugherty into custody and the latter brought a writ of Habeas Corpus in the District Court of Southern Ohio where he was discharged. 299 Fed. 620. The deputy appealed to the Supreme Court which reversed the decision of the lower court and *held,* "the Senate and House may issue process to compel a private individual to appear and give testimony needed to enable efficient exercise of

legislative functions conferred by the Constitution", and the "power of inquiry with process to enforce it is an essential and necessary auxiliary to legislative functions". *McGrain v. Daugherty* (U. S. Sup. Ct. 1927) 47 Sup. Ct. 319.

This decision of the Supreme court was to be expected in view of earlier decisions of that body holding that the power resides in Congress to compel appearance and disclosures for the purpose of efficiently discharging legitimate functions, *(In re Chapman* 166 U. S. 661, 17 Sup. Ct. 677, 41 L. ED. 1154; *Interstate Commerce Commission v. Brimson* 154 U. S. 447, 14 Sup. Ct. 1125, 38 L. ED. 1047) and in view of the generally accepted principle that the power to legislate carries with it the implied power of inquiry as incident and indispensable to the creation of wholesome legislation *(People v. Keeler* 99 N. Y. 463, 2 N. E. 615, 52 Am. Rep. 49; *Burnham v. Morrissey* 14 Gray (Mass.) 226, 74 Am. Dec. 676). Nothwithstanding the theory of separation and delegation of governmental powers, Congress has power to punish for contempt (even a private individual) for action calculated to harrass the House in the exercise of its legislative proceedings. *Marshall v. Gordon* 243 U. S. 521, 37 Sup. Ct. 448, 61 L. Ed. 881, L. R. A. 1917F, 279, Ann. Cas. 1918B, 371. The principal case in all its ramifications goes a long way toward the settlement of many disputes regarding the procedure and propriety of Congressional Investigating Committees, and for this reason should be read and studied to appreciate its importance.

W. L. T.

DEDICATION INTENTION—Sufficiency Thereof.—A plat of land was to be granted for the purpose of providing proper sidewalks for the city of Winnetka. The land was surveyed, and to all appearances, dedication was to follow. The Supreme Court of Illinois in *Village of Winnetka v. Lyons et al* (1926), 154 N. E. 207 held that in order to dedicate land to public use, evidence must show satisfactorily that a dedication has taken place and that the mere fact that the owner considered dedicating this property and had it surveyed was insufficient to prove the dedication. The law is well settled on this proposition and the courts have repeatedly declared that the intention to dedicate must be clearly established. Mere consideration is not enough, even though the intention may be quite obvious, for something more

than deliberation is required. Some overt act of dedication must be proved in addition to the intention. This is shown in *City of Chicago v. Johnson,* 98 Ill. 618. In Tiffany on page 973 the author declares "The act of dedication is, however, affirmative in character, and the intention to dedicate must be *clearly* shown". In 8 R. C. L. page 889, we find the same essential that clarity of intention must be satisfactorily shown to prove the dedication. The same rule is laid down in *Davidson v. Reed,* 111 Illinois 167 and also in *Town of Marion v. Skillman* 127 Ind. 130.

In the principal case the owner of the land made the survey for his own particular information and use at the time that he considered the question of dedication. There was no element of an estoppel in this survey and the Illinois court's reasoning in deciding against such an estoppel is in accordance with the better and most popular rule. S. W.

JURY—Right of Impartial Trial.—Officer providing jury lists belonging to secret society interested in conviction. Defendant was convicted of possession, transportation and sale of intoxicating liquor. Evidence was tendered by him which was partly received, and partly excluded, tending to prove that the chief witness for the state was a detective hired by the Ku Klux Klan and the Ministerial Union for the purpose of investigating and detecting violations of the liquor law with particular attention directed toward the activity of defendat. The officers entrusted by law with the selection of the jury lists were members of the Klan and had contributed to a common fund, raised by the Klan and the Ministerial Union, and paid to the detective for his services. The defendant made a timely motion to quash the panel which was denied. This refusal was assigned as error and on appeal to the Supreme Court that body reversed the conviction and *held,* "It is essential to a fair, impartial administration of justice that the list of sixty names from which the jury is drawn, shall not be selected by officers having an interest in the result of the litigation to be tried by such panel," and, "Where officers providing a jury list from which the jury panel is drawn, at the time of the performance of such duties, in their individual capacities, in combination with members of a secret society in which they have memberships, engage in an endeavor to secure the conviction of a certain defendant, and, for that purpose have employed

or caused to be employed, and at their private expense are compensating a detective to secure evidence and act as complaining witness", the panel so selected is subject to a motion to quash. *Nelson v. State,* (Sup. Ct. Neb. 1926) 211 N. W. 175.

Jury commissioners may be disqualified from acting in the selection of jury lists by reason of their relationship by blood or marriage to the litigants or prosecutor or in a criminal case by their active part in securing defendant's arrest or prosecution. "Juries", 35 C. J. sec. 208, 209, citing cases; 16 R. C. L. 233.

W. L. T.