



---

Volume 38 | Issue 1

Article 18

---

December 1931

## Municipal Corporations--Implied Power to Tax for Advertising Purposes

Donald M. Hutton

*West Virginia University College of Law*

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>

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

---

### Recommended Citation

Donald M. Hutton, *Municipal Corporations--Implied Power to Tax for Advertising Purposes*, 38 W. Va. L. Rev. (1931).

Available at: <https://researchrepository.wvu.edu/wvlr/vol38/iss1/18>

This Recent Case Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact [ian.harmon@mail.wvu.edu](mailto:ian.harmon@mail.wvu.edu).

Since this is a property tax and ownership is the subject of the tax it can readily be understood why the lessee should bear the burden here. The criterion is not to whom the benefit accrues but in whom the property is vested. Emphasizing the benefit element is rather confusing, especially so since the conclusion is undoubtedly correct and inasmuch as the court alludes indirectly to the element of ownership.

—WILLIAM CALLAHAN.

---

MUNICIPAL CORPORATIONS — IMPLIED POWER TO TAX FOR ADVERTISING PURPOSES. — May a municipality levy a tax for municipal advertising purposes, in the absence of any express statutory authority or provision in the charter? The question arose, apparently for the first time,<sup>1</sup> and was decided in the negative in the recent case of *Leob v. City of Jacksonville*.<sup>2</sup>

To uphold the power to levy this tax the power must be necessarily or fairly implied in or incident to the powers expressly granted such corporation, in accordance with the widely quoted general rule,<sup>3</sup> for there is no express power, and it seems obvious such power is not essential to the declared objects and purposes of the corporation.

It is true the interests of the inhabitants may require the acquisition and operation by the city of certain businesses and properties such as water, lighting, and street railways. Cities are so empowered by legislatures, but is an incidental power thereto the advertising of such proprietary rights to the end that such activities may be increased, and thus better civic institutions secured by reason of increased population? The court in the principal case held that no such incidental power exists, and it is submitted that the decision of the court is correct, and desirable as well.

Expenses incurred by public officials or employees in at-

---

<sup>1</sup>But *cf.* *Mitchell v. St. Paul*, 114 Minn. 141, 130 N. W. 66 (1911) where the 1905 charter of the city of St. Paul authorized the establishment of "a contingent fund not to exceed \$10,000 to be used by the common council for such purposes as it may deem calculated to promote the general welfare of the city." It was held that advertising the city, through a publicity bureau, was a purpose provided for by the contingent fund.

<sup>2</sup>134 So. 205 (Fla. 1931).

<sup>3</sup>1 DILLON, MUNICIPAL CORPORATIONS (5th ed. 1911), § 237, quoted with approval in *Hyre v. Brown*, 102 W. Va. 505, 135 S. E. 656 (1926).

tending conventions for the purpose of educating delegates with reference to questions pertaining to municipal administration have been generally held not to be a proper charge on public funds.<sup>4</sup> Municipal aid in financing private enterprises with public funds is held not a municipal or public purpose,<sup>5</sup> although the benefits of added trade seem more obvious than those from advertising. Stimulation of trade has never been held to be either a governmental or municipal function of cities or towns.<sup>6</sup> There is a growing tendency to hold valid expenditures to put up monuments and hold patriotic celebrations as "tending to stimulate patriotism," although it is not clear to what express power such expenditures are incident.<sup>7</sup>

A too liberal application of the doctrine of implied powers may lead to abuse. In corporations generally the act of the majority is the act of the corporation; to protect individual rights of the minority their liability should not be extended to unlimited and indefinite objects. Otherwise there will be no limit to the amount of money which may be expended under implied powers, nor to the mode in which such expenditures may be made; except that which the will of the majority prescribe. The objection on the score of probable abuse of power may be lessened by express authorization imposing definite restrictions on the power, and defining the terms of its exercise. Authorization of such powers by statutes or home rule charters would apparently be constitutional.<sup>8</sup>

Although public opinion in the future may change the existing social policy, yet as local political conditions now exist efficiency and economy do not always go hand in hand with the expenditure of public funds. Therefore, may not the advertising of municipal advantages better be left to some civic organization, such as the Chamber of Commerce?

—DONALD M. HUTTON.

---

<sup>4</sup> See collection of cases, note L.R.A. 1917E 331. *Contra*: *Tousley v. Leach*, 230 N. W. 788 (Minn. 1930).

<sup>5</sup> *Ohio Valley Iron Works v. City of Moundsville*, 11 W. Va. 1 (1877); *Parkersburg v. Brown*, 106 U. S. 487, 27 L. Ed. 238 (1882).

<sup>6</sup> McQUILLIN, *THE LAW OF MUNICIPAL CORPORATIONS* (2d ed. 1928) §§ 2325, 2328, 2329.

<sup>7</sup> *Battle, The Powers of a Municipality to Spend its Funds for Public Celebrations, Monuments, etc.* (1924) 10 VA. L. REV. 417.

<sup>8</sup> Debts incurred under statutory authorization by City of Philadelphia for Sesqui-Centennial celebration held valid. *Sambor v. Hadley*, 291 Pa. 395, 140 Atl. 347 (1928).